IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.	)	Case No. CV-2016-09-3928
	)	
Plaintiffs,	)	Judge James Brogan
	)	
vs.	)	**Dr. Sam Ghoubrial's Brief in Opposition**
	)	**of Plaintiffs' Motion for Leave to File**
Kisling, Nestico & Redick, LLC, et al.	)	**Fifth Amended Complaint**
	)	
Defendants.	)	

Now comes Defendant Sam Ghoubrial, M.D., and hereby respectfully requests this Honorable Court to deny Plaintiffs' Motion for Leave to file Fifth Amended Complaint for the following reasons:

1. Mr. Harbour's purported claims arise out of "medical diagnosis, care, or treatment" and are therefore "medical claims" governed by O.R.C. 2305.113 and subject to a one-year statute of limitation. Dr. Ghoubrial's medical treatment of Mr. Harbour concluded in 2016, and thus all claims are barred by the statute of limitation.

2. Any claim regarding medical treatment before October 25, 2014, is barred by Ohio's four-year statute of repose. *Id.*

3. Plaintiffs failed to attach an Affidavit of Merit pursuant to Ohio Civil Rule 10(D)(2) or a Motion to Extend the time to attach such Affidavit of Merit, which is a prerequisite to filing a "medical claim."

4. A "class" is not appropriate for claims involving individualized medical care, as each case would involve individualized proof (a "trial within a trial") to determine the necessity and efficacy of the medical treatment for each class member;

5. Multiple allegations by Movant Harbour are demonstrably false by his own prior testimony and Plaintiffs cannot establish a *prima facie* case against Dr. Ghoubrial.

Since all of the claims contained in the Fifth Amended Complaint against Dr. Ghoubrial fail as a matter of law, it would be futile to allow the amendment, and the Motion for Leave should therefore be denied.

I. INTRODUCTION

The Plaintiffs seek to add a new set of class action claims (Class "E") relating to patients treated by Dr. Ghoubrial. The Plaintiffs claim Dr. Ghoubrial had a practice of "inflating medical bills by coercively administering as many extremely overpriced injections as KNR clients will let him get away with." While Defendant Ghoubrial adamantly denies these false allegations, the Court does not even need to weight the truth or falsity of the allegations, as the claims fail as a matter of law. Ohio law does not permit "clever pleading" to transform "medical claims" into claims for fraud, breach of fiduciary duty, or unjust enrichment. All of Harbour's proposed claims against Dr. Ghoubrial are "medical claims" and thus subject to and barred by Ohio's statutes of limitation and statute of repose. O.R.C. 2305.113.

Additionally, Plaintiffs failed to attach an Affidavit of Merit or leave to file such affidavit, which is fatal to a "medical claim" pursuant to Ohio Civil Rule 10(D)(2). Moreover, individual issues for each proposed class member predominate over any class issues, as individualized proof relating to the medical treatment provided to each class member would have to be examined on its own, with separate medical records, medical experts, inquiry into the need for injections on each patient, the patient's response to such treatment, and examination of other medical facts specific to each class member's "medical claim." The "medical claim" is simply not appropriate for class certification.

Moreover, as it relates to Plaintiffs' claim the trigger point injections were "overpriced", which is not true, the price of the injections is irrelevant. Ohio law does not prohibit doctors from profiting from the sale of medical supplies to patients.

Finally, Plaintiffs fail to make a *prima facie* case against Dr. Ghoubrial, as demonstrated by Richard Harbour's own sworn deposition testimony.

II. LAW AND ARGUMENT

Ohio law clearly prohibits leave to amend when the amendent would be **"futile."** *Hensley v. Durrani*, 1st Dist. Hamilton No. C-130005, 2013-Ohio-4711, ¶14. Ohio law also prohibits amendments to a Complaint when a Plaintiff cannot make a "*prima facie* showing of support" for the new claim. *Wilmington Steel Products, Inc. v. Cleveland Electric Illuminating Co.*, 60 Ohio St.3d 120, 573 N.E.2d 622 (1991), syllabus. In addition, while Ohio Civil Rule 15(A) allows for liberal amendments to pleadings, amendment should not be permitted if based upon bad faith, undue delay, or undue prejudice to the opposing party." *Wagoner v. Obert*, 180 Ohio App.3d 387, 2008-Ohio-4041, ¶ 111, 905 N.E.2d 694 (5th Dist.), citing *Hoover v. Sumlin*, 12 Ohio St.3d 1, 465 N.E.2d 377 (1984), paragraph two of the syllabus.

The present Motion is futile, lacks a prima facie showing, and is made in bad faith. Each individual reason is sufficient grounds for denying Plaintiffs' Motion for Leave to Amend for a fifth time.

A. Plaintiffs' Motion to Amend to Add Medical Claims is Futile

1. Plaintiffs' Claims" against Dr. Ghoubrial are "Medical Claims"

The Plaintiffs' proposed amended complaint, although crafted to allege fraud, breach of fiduciary duty, unjust enrichment, and unconscionable contract on behalf of proposed Class E, is simply a medical malpractice claim disguised to avoid the applicable statute of limitations and statute of repose. R.C. 2305.113(E)(3) broadly defines "medical claim" as "**any claim** that is asserted in any **civil action** against a **physician** . . . and that **arises out** of the **medical diagnosis, care, or treatment** of any **person**." (Emphasis added.)

Analyzing each element of the statute's definition of "medical claim" make it clear the present claims fall within the purview of O.R.C. 2305.113:

"Any claim": "Any claim" means any claim, regardless of how a claim is pled. If the claim arises from the care and treatment, it is a medical claim. See *Amadasu v. O'Neal*, 176 Ohio App.3d 217, 222 (1st Dist. Ct. App. 2008) ("Malpractice by any other name still constitutes malpractice. It consists of the professional misconduct of members of the medical profession. Thus, the one-year statute of limitations for medical-malpractice actions applied to [plaintiff's] entire complaint.").

"in any Civil Action": The proposed Amended Complaint is a civil action, as evidenced by the causes of action so pled and the case heading: CV-2016-09-3928.

"against a Physician": O.R.C. 2305.113(E) defines physician as "a person who is licensed to practice medicine." Paragraph 15 of the Complaint alleges Dr. Ghoubrial is a "medical doctor." The Complaint lists "M.D." after Dr. Ghoubrial's name. (See also, Affidavit of Dr. Ghoubrial, attached hereto as Exhibit "A.")

"that arises out of": Plaintiffs' Motion for Leave admits the claim is "regarding" Dr. Ghoubrial's "practice" of medicine relating to trigger point injections. *See Wick v. Lorain Manor Inc.*, 9th Dist. Lorain No. 12CA010324, 2014-Ohio-4329, ¶ 18 (holding that regardless whether a claim was for wrongful death or medical malpractice, the facts giving rise to the claim involved a nursing facility's care of the plaintiff during her residency satisfied the "arise out of" element for purposes of R.C. 2305.113(E)(3)).

"medical care, diagnosis, or treatement": The terms "medical diagnosis" and "treatment" relate to the "identification and alleviation of a physical or mental illness, disease, or defect." *Rome v. Flower Mem. Hosp.*, 70 Ohio St.3d 14, 16, 1994-Ohio-574, 635 N.E.2d 1239. Proposed paragraphs 15, 86, and 103 - 110 set forth the factual allegations for the claims of proposed Class E. The subject matter involves Movant Harbour being seen by Dr. Ghoubrial for medical treatment for injuries sustained from motor vehicle accidents. The Fifth Amended Complaint alleges Dr. Ghoubrial provide medical treatment involving the administration of cortisone shots and prescriptions for muscle relaxers, among other things.

"of any Person": Richard Harbour is clearly a "person", and is identified as a resident of Rittman, Ohio. See Paragraph 19 of the proposed Fifth Amended Complaint.

No dispute can exist as to the above. The proposed Fifth Amended Complaint sets for the "claims" (multiple claims actually) against a "physician" (Dr. Ghoubrial)" that "arise out of the medical care, diagnosis or treatment" (trigger point injections and prescription medications) of a "person" (Richard Harbour).

Wordsmithing does not change the nature of a "medical claim." For example, alleging fraud as it relates to medical treatment does not transform the cause of action from a "medical claim" into a "fraud" claim. See, for example, *Hensley v. Durrani*. In *Durrani*, where the Court held a Plaintiffs' Motion for Leave to Amend was **futile**, as the medical claims disguised as fraud claims were subject to the one-year medical malpractice statute of limitations. In that case, the Court held:

> Here, Ms. Hensley's allegations go squarely to her diagnosis, care and treatment. In essence, she alleges that Dr. Durrani committed fraud by recommending unnecessary surgery and by not telling her that the procedure he intended to use was risky and untested, and that his record as a doctor was not unblemished. **Clever pleading cannot transform what are in essence medical claims into claims for fraud.** The allegation about misrepresentations concerning the medical necessity of surgery is simply an attack on Dr. Durrani's "medical diagnosis." R.C. 2305.113(E)(3). And questions about additional disclosures and representations about BMP and Dr. Durrani's past record go to whether Dr. Durrani failed to disclose "material risks and dangers" of the procedure, or in other words, whether he obtained her informed consent. A claim of lack of informed consent is a medical claim.

(Emphasis added.) (Citations omitted.) *Durrani*, at ¶19.

Likewise, Movant Harbour's claims on behalf of proposed Class E are "medical claims." Every claim alleged by Plaintiffs, whether sounding in fraud, fiduciary duty, equity, or contract arises out of Dr. Ghoubrial allegedly administering unnecessary and over-priced cortisone

injections, medication, and electronic nerve-stimulation devices. Each is simply an attack on Dr. Ghoubrial's medical diagnosis or treatment.

Accordingly, each proposed claim on behalf of proposed Class E constitutes "medical claims" subject to the statute of limitations and statute of repose for medical malpractice actions. As such, each is futile and the Court should deny Plaintiffs' Motion for Leave to Amend.

2. Plaintiffs' "Medical Claims" are Barred by the Statute of Limitations

All "medical claims" are subject to a one-year statute of limitation. R.C. 2305.113(A). Paragraph 103 of the Complaint falsely alleges Dr. Ghoubrial treated Mr. Harbour from 2011 – 2016. Mr. Harbour's last date of medical treatment with Dr. Ghoubrial actually occurred on June 20, 2012. (See Exhibit "A", Affidavit of Dr. Ghoubrial). Since this treatment occurred more than one year prior to the filing of the Motion for Leave, the claims are barred by the statute of limitation.

The "discovery rule" does not extend the statute of limitations as it relates to Mr. Harbour's claim. Pursuant to the "discovery rule", the statute of limitation for a medical claim begins to run "upon the discovery by the patient, or the point when, in the exercise of reasonable care and diligence, the patient should have discovered, the resulting injury." *Oliver v. Kaiser Community Health Found.* (1983), 5 Ohio St.3d 111, 5 Ohio B. 247, 449 N.E.2d 438, syllabus; *Frysinger v. Leech* (1987), 32 Ohio St.3d 38, 512 N.E.2d 337, paragraph one of the syllabus.

Movant Harbour allegedly received the medical treatment giving rise to Plaintiffs' Motion during 2011 - 2016. (See Plaintiffs' Proposed Fifth Amended Complaint at ¶¶ 103, 108 and Exhibt "A", Affidavit of Dr. Ghoubrial). The Complaint alleges the trigger point injections were forced upon him and did not provide a benefit. Even if these allegations were true, which they are not, Mr. Harbour would have been aware of these facts immediately upon them happening. This is not a case of a patient discovering a retained sponge following an exploratory laparotomy or some other injury

that did not manifest itself at the time of treatment. Moreover, if Plaintiffs claim the resulting injury was the allegedly overpriced medical treatment and equipment provided, then Movant Harbour plainly became aware of the amount charged for his treatments when agreed to payment on April 25, 2012 and July 29, 2015. (See Exhibits B and C, Plaintiff Harbour's settlement memorandums.) A reasonably caring patient would not ignore existing injury for over five-years. Movant has been aware of the treatment he received and its pricing since 2012 and 2015. Plaintiffs' cannot use Civ.R. 15 to avoid the applicable one-year statute of limitations.

Therefore, Plaintiffs' medical claims pursued through Movant Harbour on behalf of proposed Class E are barred by the one-year statute of limitations. Accordingly, Plaintiffs' Motion for Leave is futile.

3. Plaintiffs' Medical Claims are Barred by Ohio's Four-Year Statute of Repose

Plaintiffs' proposed claims also are subject to Ohio's statute of repose for medical malpractice claims, which provides an absolute bar prohibiting the commencement of an action on a medical claim more than four-years after the act or omission on which the claim is based. R.C. 2305.113(C). As stated, the proposed amended complaint brings claims arising out of medical treatment occurring over five-years ago. The Plaintiff cannot bring any claim for any medical treatment which occurred prior to October 22, 2014, four year prior to the filing of the Motion to Amend for Leave to File Fifth Amended Complaint.

4. Plaintiffs' Medical Claims are Barred for Failure to Attach an Affidavit of Merit

Beyond the futility of Plaintiffs' Motion based on untimeliness, proposed Class E's medical claims against Dr. Ghoubrial are unsupported as a matter of law, as neither Movant Harbour nor any other proposed class-members' claims are supported by an Affidavit of Merit.

Ohio Civ. R. 10(D)(2) states that "a complaint that contains a medical claim . . . as defined in R.C. 2305.113, shall be accompanied by one or more affidavits of merit relative to each defendant named in the complaint for whom expert testimony is necessary to establish liability." Plaintiffs' proposed Fifth Amended Complaint includes medical claims against Dr. Ghoubrial on behalf of a purported class of plaintiffs, but none of the claims are supported by an Affidavit of Merit. Therefore, the proposed claims against Dr. Ghoubrial are unsupported as a matter of law. Accordingly, the Motion for Leave is futile.

B. Plaintiffs' Motion to Amend to Add Class "E" is Futile

1. Plaintiffs' Untimely Medical Claims are Inappropriate for Class Certification because Individual Issues Regarding the Medical Necessity of Dr. Ghoubrial's Treatment Predominate over Class Allegations

Medical malpractice claims in Ohio require Affidavits of Merit in support of each named defendant because of the inherent individualized nature of medical malpractice claims. In a class action seeking damages, the court must find that common questions of law or fact predominate over questions that are individual to members of the class. *Hamilton v. Ohio Sav. Bank* (1998), 82 Ohio St.3d 67, 79. "'[A] claim will meet the predominance requirement when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position.'" (Emphasis added.) *Cope v. Metro. Life Ins. Co.* (1998), 82 Ohio St.3d at 429–430, 696 N.E.2d 1001, quoting *Lockwood Motors, Inc. v. Gen. Motors Corp.* (D.Minn.1995), 162 F.R.D. 569, 580. Individualized proof is required from each member of proposed Class E to recover. Thus, a class action is inappropriate.

The numerous individual sets of operative facts required for each class member to succeed against Dr. Ghoubrial demonstrate the inappropriateness of a class action to resolve this controversy. Determining the operative facts would include: reviewing each individual's medical records;

determining the medical necessity of each medical procedure, supply, and prescription; and attaching a separate affidavit of merit for each class member. Individuality is why an affidavit of merit is required in medical claims and individuality defeats commonality. Accordingly, Plaintiffs' Motion for leave is futile.

C. Plaintiffs' Motion to Amend is Futile because Ohio Law does not Prohibit Physicians from Profiting from Treatment or the Sale of Medical Supplies.

As discussed at length in Dr. Ghoubrial's prior memorandum in opposition to Plaintiffs' Motion for Leave to File Fourth Amended Complaint, which is incorporated herein by reference, Ohio law does not require a physician to inform patients of the amount of profit they will make from the administration of medical treatment and sale of medical supplies to their patients. (See Docket 9/17/2018.) As with the Fourth Amended Complaint, the proposed Fifth Amended Complaint extends the same claims against Dr. Ghoubrial on behalf of a new proposed class of plaintiffs. The claims remain baseless and cite no statute supporting the notion that Ohio law extends the fiduciary duty of a doctor to inform patients of the amount of profit they will make from the sale of medical equipment to their patients in the doctor's office.

NO LAW EXISTS to hold a doctor liable for not communicating his profit margin on medical equipment sales to patients. Although the Ohio Supreme Court has supported the notion that a physician undisputedly owes a fiduciary duty to his or her patient with respect to diagnosing and treating diseases and injuries (see *Tracy v. Merrell Dow Pharmaceuticals* (1991), 58 Ohio St.3d 147, 150, 569 N.E.2d 875), no Ohio court has gone to the extent of extending this duty beyond the medical sphere and into the business arena.

Again, both cases cited in Plaintiffs' proposed Fifth Amended Complaint have nothing to do with the extent of the fiduciary duty of a doctor to their patient. *See In re Binder's Estate*, 137 Ohio St. 26 (involving a trustee bank's fiduciary duties owed to the beneficiaries of a trust); *Myer v.*

Preferred Credit, Inc., 117 Ohio Misc.2d 8 (involving a mortgage broker's fiduciary duties regarding fee-splitting agreements). Plaintiff cites no relevant statutory or case law because none exists. Therefore, even if the claims were not disguised medical malpractice claims, they still would not have any merit under Ohio law. Accordingly, Plaintiffs' Motion for Leave is futile.

D. Plaintiffs' Motion to Amend makes no prima facie showing in support.

"Where a plaintiff fails to make a prima facie showing of support for new matters sought to be pleaded, a trial court acts within its discretion to deny a motion to amend the pleading." *Wilmington Steel Prods., Inc. v. Cleveland Elec. Illum. Co.*, 60 Ohio St.3d 120, 120, 573 N.E.2d 622 (1991), at syllabus. Critically, Plaintiffs' allegation that Dr. Ghoubrial paid cash "kickbacks" to defendant Nestico is completely unsupported. This unsupported allegation is required to even connect the claims against Dr. Ghoubrial to the present lawsuit. Given the extensive number of motions for leave to add numerous new "classes" to the present lawsuit, the Court should deny Plaintiffs' Motion for Leave because the repeated failure of counsel to submit evidence in support of their never-ending string of claims purportedly linking KNR to numerous other defendants.

Additionally, Plaintiffs' not only fail to submit any evidence in support of their claims regarding Dr. Ghoubrial's pain-relief injections, several allegations within the newest proposed complaint are palpably false considering Movant Harbour's sworn deposition testimony. For example, the proposed amended complaint alleges Dr. Ghoubrial "coerced KNR clients into accepting [the pain injections]" or would even "administer the injections against the clients' will" and that the cortisone shots "are ineffective." (See proposed Fifth Amended Complaint at ¶¶ 85, 86.) Yet, at his deposition, Movant Harbour testified that after Dr. Ghoubrial examined him and determined that there was stiffness and tenderness in particular areas, then he decided to prescribe a

muscle relaxer and provided cortisone shots in the area, which Harbour agreed provided relief. (Harbour Dep. at 101:21-102:6; attached as Exhibit D.)

The inconsistencies between Plaintiffs' amended complaints and the class representative's deposition testimony is common-place in this lawsuit. In fact, the explicit inconsistencies between Plaintiff Matthew Johnson's deposition testimony and the language of Plaintiffs' amended complaints have led Plaintiffs' counsel to currently seek leave from this Court to remove Plaintiff Johnson as a class representative.[1]

The repeated failure of Plaintiffs' to provide evidence supporting their demonstrably false allegations requires this Court to deny the present Motion for Leave for failure to make a prima facie showing to support the proposed amendment.

E. Plaintiffs' Motion for Leave to Amend was Filed in Bad Faith

Finally, Plaintiffs' inclusion of extremely salacious allegations of racial prejudice on behalf of Dr. Ghoubrial without any evidentiary support is made in blatant bad faith. The highly offensive, unsupported allegations are included for the sole purpose of harassing and embarrassing Dr. Ghoubrial. Accordingly, the Motion for Leave should be denied.

[1] Compare the dichotomy between the facts pleaded in Plaintiffs' Second Amended Complaint regarding Class C (allegedly based on new evidence from Plaintiff Johnson) and the subsequent deposition testimony of Plaintiff Johnson. (See e.g. Johnson Dep. at pp. 185-87, 243:17-22 attached hereto as Exhibit E.)

IV. CONCLUSION

For the aforementioned reasons, Dr. Ghoubrial respectfully requests that the Court deny Plaintiffs' futile, unsupported, and salacious Motion for Leave to File Fifth Amended Complaint.

Respectfully Submitted,

Brad J. Barmen (0076515)
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 East 9th Street, Ste. 2250
Cleveland, Ohio 44114
216-586-8810
Brad.Barmen@lewisbrisbois.com
Counsel for Defendant Dr. Sam Ghoubrial

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via ordinary mail and electronic mail to Plaintiffs' counsel and Defendants' counsel on this 5th day of November, 2018.

/s/ Brad J. Barmen
Brad J. Barmen (0076515)

STATE OF OHIO)
) SS: **AFFIDAVIT**
COUNTY OF SUMMIT)

I, Dr. Sam Ghoubrial, Affiant, being first duly sworn, have personal and firsthand knowledge of all facts contained herein and am competent to testify to the following:

1. I am a licensed physician in the state of Ohio and was duly licensed at all times relevant herein.

2. I did provide medical treatment and care to Plaintiff Richard Harbour.

3. My treatment and care of Plaintiff Richard Harbour included reaching various diagnoses.

4. I last provided medical treatment and care to Plaintiff Richard Harbour on June 20, 2012.

5. I have not seen or provided any treatment or care to Plaintiff Richard Harbour since I last saw him on June 20, 2012.

6. All care and treatment I provided to Plaintiff Richard Harbour met or exceeded the requisite standard of care.

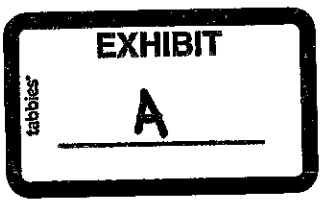
7. All charges for the medical care and treatment I provided to Plaintiff Richard Harbour, including all medical equipment and devices prescribed and/or provided, were customary and reasonable.

8. All charges for the treatment, care, equipment and devices prescribed and/or provided to Plaintiff Richard Harbour were made known to Plaintiff.

9. Plaintiff Richard Harbour never questioned or complained about any charge for any treatment or service provided to him during the course of my care and treatment.

10. Neither the care and treatment I provided to Plaintiff Harbour, nor the fees and charges for the care and treatment I provided to Plaintiff Harbour, proximately caused him any damages whatsoever.

11. Further affiant sayeth naught.



Dr. Sam Ghoubrial

SWORN TO BEFORE ME and subscribed in my presence this 5 day of November, 2018.

NOTARY PUBLIC

Erin Elefritz
Notary Public
In and For the State of Ohio
My Commission Expires
16 January 2022

4/25/2012

214858 / Richard A Harbour

Settlement Memorandum

Recovery:

REC	Erie Insurance	$ 20,000.00
		$ 20,000.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC

Akron General Medical Center **;	$ 31.23
Akron General Medical Center **; Records/KN	$ 34.38
AMC Investigations;	$ 50.00
Clearwater Billing Services, LLC;	$ 50.00
Akron General Health System;	$ 1.50
Total Due	$ 167.11

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron General Medical Center **	RAH	$ 2,470.00
Akron General Medical Center **	RAH	$ 342.00
General Emergency Medical Specialists, Inc.*	RAH	$ 130.00
Ghoubrial, M.D., Dr. Sam N.		$ 2,000.00
Kisling, Nestico & Redick, LLC		$ 4,700.00
Rolling Acres Chiropractic Inc		$ 3,700.00
Total Due Others		$ 13,342.00

Total Deductions	$ 13,509.11
Total Amount Due to Client	$ 6,490.89

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initiated by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: X 4/25/12

Name: X
Richard A Harbour

Firm:
Kisling, Nestico & Redick, LLC

EXHIBIT
tabbies
B

7/27/2015

221620 / Richard Harbour

Settlement Memorandum

Recovery:

MP	Progressive Insurance*	$ 5,000.00
REC	Erie Insurance	$ 17,500.00
		$ 22,500.00

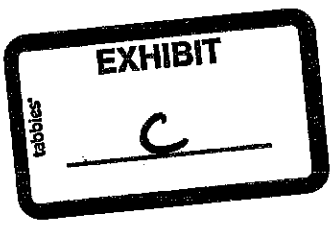
DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC	
AMC Investigations;	$ 40.00
Clearwater Billing Services, LLC;	$ 50.00
First Healthcare**; dd	$ 12.00
HealthPort; dd	$ 48.23
Kisling, Nestico & Redick, LLC; Filing Fee/rjk	$ 386.25
Professional Receivables Control, Inc.*;	$ 16.00
Trisha Beban Yost, RPR; #6018/depo of Fischer	$ 55.00
Akron General Health System*;	$ 2.50
Total Due	$ 609.98

DEDUCT AND RETAIN TO PAY TO OTHERS:

Bath Fire Department	$ 450.00
Clearwater Billing Services, LLC	$ 1,900.00
Kisling, Nestico & Redick, LLC	$ 6,388.33
Progressive Insurance*	$ 3,335.00
Radiology & Imaging Services	$ 38.00
Radiology & Imaging Services	$ 47.01
Rolling Acres Chiropractic Inc	$ 3,331.68
Total Due Others	$ 15,490.02

Total Deductions	$ 16,100.00
Total Amount Due to Client	$ 6,400.00
Less Previously Paid to Client	$ 0.00
Net Amount Due to Client	$ 6,400.00



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Date: 7/29/15

Name: Richard Harbour

Firm: Kisling, Nestico & Redick, LLC

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

- - -

RICHARD A. HARBOUR,)

Plaintiff,)

vs.) Case No. 2014-03-1254

THOMAS J. FISCHER,)

et al.,)

Defendants.

- - -

Deposition of RICHARD HARBOUR, a Plaintiff herein, called by the Defendants for cross-examination pursuant to the Ohio Rules of Civil Procedure, taken before me, the undersigned, Heidi Tsimpiris, an RPR and Notary Public in and for the State of Ohio, at the offices of Kisling, Nestico & Redick, 3412 West Market Street, Akron, Ohio, on Thursday, the 12th day of March, 2015, at 11:04 a.m.

Trisha Beban Yost, RPR
1940 Crystal Drive
Akron, Ohio 44312
(330) 699-6152
Fax: (330) 699-4089
e-mail: trisha.yost@gmail.com

APPEARANCES:

On Behalf of the Plaintiff:

Kisling, Nestico & Redick

By: Kristen M. Lewis, Attorney at Law
3412 West Market Street
Akron, Ohio 44333
(330) 869-9007

On Behalf of the Defendants:

Hanna, Campbell & Powell

By: R. Brian Borla, Attorney at Law
3737 Embassy Parkway
Akron, Ohio 44333
(330) 670-7300

- - -

Hospital.
Q. We'll get to those in one second.
A. Okay.
Q. Now, who referred you to Dr. Ghobrial?
A. Dr. Auck did.
Q. Why?
A. Because I was having, you know, pain, he felt pain management would also be appropriate care to go along with his care.
Q. Pain management meaning give you medications?
A. If need be, yes.
Q. Did you tell him you had a primary care physician that could do that?
A. Yes, I did, but I also told him my primary care physician had verbalized to me that he did not like to get involved with motor vehicle accidents.
Q. But, I mean, in all fairness, Dr. Heim was involved in this case already for your headaches, wasn't he?
A. Correct.
Q. So what did Dr. Ghobrial do for you?
A. He examined me, determined that I did have some tenderness and pain in my low back area, and that my neck was, you know, stiff, I believe. I can't recall his exact words at the time of, you know,

his first examination. He prescribed a muscle relaxer, Flexril, to take as needed. He then also would give me, I believe, cortisone shots in my low back area.

Q. And did that treatment provide you relief?

A. The cortisone shots did, yes.

Q. How many times did you see Dr. Ghobrial?

A. To the best of my knowledge, half a dozen times.

Q. Where did you go?

A. His office on Brown Street is, I believe, where he is located at.

Q. Well, he's got one in Wadsworth. You didn't go out to Wadsworth, did you?

A. No, sir. I was in the city of Akron.

Q. Again, our records reflect that you saw Dr. Ghobrial three times, okay, with the last visit being June 20th of 2012.

A. Okay.

Q. Do you think you saw him more than that?

A. I can't recall, but I gave you an estimate to the best of my --

Q. And I understand that. What I'm trying to figure out is what we're missing, what records we don't have, okay? So if you think that you may have seen him since June 20th of 2012, we need to go

STATE OF OHIO,)
COUNTY OF SUMMIT.) SS:

IN THE COURT OF COMMON PLEAS

MEMBER WILLIAMS, et al.,)
)
Plaintiffs,)
)
vs.) JUDGE PAUL GALLAGHER
) CASE NO. CV-2016-09-3928
KISLING, NESTICO &)
REDICK, LLC, et al.,)
)
Defendants.)

- - - - -

THE VIDEOTAPED DEPOSITION OF MATTHEW W. JOHNSON
FRIDAY, JULY 6, 2018

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The videotaped deposition of MATTHEW W. JOHNSON, called by the Defendants for examination pursuant to the Ohio Rules of Civil Procedure, taken before me, the undersigned, Sarah R. Drown, Registered Professional Reporter and Notary Public within and for the State of Ohio, taken at the offices of Kisling, Nestico & Redick, LLC, 3412 West Market Street, Fairlawn, Ohio, commencing at 10:52 a.m., the day and date above set forth.

APPEARANCES:

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ALSO PRESENT:

Ivan Bercian, Videographer

Rob A. Nestico, Esq.

John J. Reagan, Esq.

Robert Redick, Esq.

A No, sir, I don't.

Q You knew Jenna -- excuse me.

You spoke with Jenna on the phone and/or emailed with her a total of dozens of times, fair?

A I don't know. I didn't count them all.

Q Over 10, sir, you would agree?

A I would have to take some time here to count them.

Q Okay. Well, if we look at the bottom of Exhibit 9, you sent an email to Jenna July 16, 2012, at 12:02 p.m., true? At the bottom.

A Yes, sir.

Q And can you read the subject line?

If you go back to the first page, please, sir. The subject line of that email.

A "Anymore help available."

Q Any more help available, is that what you said?

A Exactly.

Q And by "help," what did you mean?

A I don't know. Six years ago.

Q Let's look at the email on the next page.

"This doesn't need to waste phone time, just wondering if there was any financial boost available anymore till the end."

Did I read that correctly?

Sir?

A Yep.

Q And so when you said "any more help available," you were talking about financial help, true?

A I don't know. It's kind of vague.

Q The email you sent to her is kind of vague?

A It just says help.

Q And in the body of it, you asked for any financial boost available, true?

A Agree.

Q And you indicated in there that you had missed some work and so you thought you would email and ask her, true?

A That's what it looks like.

Q Okay. Now if you go to the first page of that Exhibit 9, please.

Did Jenna respond to you, from looking at this exhibit?

A It looks like she replied at 12:12.

Q Within 10 minutes?

A Yep.

Q And what Jenna told you was, "The only option available is for you to take out a loan against your case, but you have to pay interest on

it...so essentially you're paying money to borrow money."

Is that what she told you?

A It sure looks like it.

Q "But if the need is necessary, I can definitely get you the information."

Did I read that correctly?

A Sure did.

Q So you knew whatever loan it was that you were going to take there would be interest to pay, true?

A Yes, sir.

Q Now, you've told us already that the 50 percent or whatever you recall the interest being was exorbitant. Those are your words, something similar to that?

A Yes.

Q What do you believe the interest should have been?

A I don't know.

Q Okay.

A I'm not a financial ...

Q I mean what you're complaining about is that the interest was too high, fair?

A Well, I'm not complaining that the interest is

Q Okay. If you would look back at the loan agreement, Exhibit 11, please.

Sir, Exhibit 11. Right underneath that, I believe.

Go to the very last page. Five lines up from the bottom in the middle starting with the word "While." Do you see that?

"While I am not."

A Uh-huh.

Q "While I am not endorsing or recommending this transaction."

Did I read that part of the sentence correctly?

A Yes, sir.

Q And it's signed by KNR, true?

A Yes, sir.

Q So that would be referencing KNR was not endorsing or recommending this transaction, correct?

A Yes, sir.

Q And you initialed that knowing that, true?

A Yes, sir.

Q And it then goes on to say, "I have reviewed the contract and all costs and fees have been disclosed to my client."