

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, <i>et al.</i> , Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan Plaintiffs' Motion for a Status Conference Regarding the Scheduling of Depositions and Extension of the Class-Discovery Deadline
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Given what has transpired between the parties in conducting discovery in this case to date, the most recent developments of which are described in Plaintiffs' four motions filed on December 20 and 21, 2018, the Court might not be especially surprised to learn that the parties are having continued difficulties scheduling depositions in compliance with the Civil and Local Rules. The Defendants have refused to provide dates for various depositions—including many of those identified in Plaintiffs' first motion for an extension of the class-discovery deadline that the Court granted on October 1, 2018—that Plaintiffs have repeatedly requested. Additionally, at the two substantive depositions that Plaintiffs have managed to schedule and conduct to date, Defendants' obstructive conduct required Plaintiffs' currently pending motion to bar speaking objections at depositions (filed Dec. 20, 2018), and the postponement of any further depositions until that motion is resolved.

As shown in the attached correspondence and described in more detail below, Defendants' conduct reflects a barely restrained intent to obstruct discovery, including by keeping Plaintiffs from questioning key witnesses. For these Defendants, a pending discovery deadline apparently only serves as an incentive to obstruct and delay as much as possible until the deadline expires, and it has become increasingly clear that they will hardly consider complying with their discovery obligations

absent a Court order.

Thus, it is necessary for Plaintiffs to request a status conference with the Court where the parties may confer regarding available deposition dates, and set a new class-discovery deadline for a date after which the necessary depositions and any additional necessary documentary discovery can be workably completed.

Facts, Law, and Argument

On September 18, 2018, the Plaintiffs filed a motion for a status conference and an extension of the then-pending class-discovery deadline of November 1, citing as grounds, *inter alia*, the purported unavailability of Defendant Nestico to be deposed until October 31, and the need to conduct thirteen depositions in addition to Nestico's, most of which Plaintiffs needed to take after obtaining Nestico's testimony. *See* Plaintiffs' Sept. 18 Motion, citing, *inter alia*, *In re Oxbow Carbon LLC Unitholder Litigation*, Ch., 2017 Del. Ch. LEXIS 135, at *8 (July 28, 2017) (explaining and endorsing the "general custom" of "giv[ing] the party with the burden of proof the ability both to determine the order of witnesses and to question first if the party wishes to exercise that option," which, "like the opportunity to present evidence first and to open and close, follow the burden of proof."), *Russo v. Burns*, 2014-0952 (La. App. 4 Cir 09/09/14), 150 So.3d 67, 71-72 (observing that a trial court's discretion "over trial proceedings and the order of witnesses" should not be "exercised in such a way that deprives a litigant of his day in court.").

On September 27, the Court held the requested status conference by phone, and on October 1, the Court granted Plaintiffs' motion to extend the class-discovery deadline, setting a new deadline of February 1.

On October 2, Plaintiffs' counsel received a phone call from Defendant Ghoumbrial's employee Richard Gunning, M.D., who informed Plaintiffs that Ghoumbrial pressured him to sign an affidavit and that he feared retaliation from Ghoumbrial. On this call, Gunning spoke with Plaintiffs'

counsel for two hours, during which he also confirmed the fraudulent nature of Ghoubrial's treatment of KNR clients as alleged in the Fifth Amended Complaint (and as detailed in Plaintiffs' pending motion to compel Gunning's continued deposition, filed on Dec. 20), thus giving rise to Plaintiffs' urgent need to obtain Dr. Gunning's testimony on the record.

Shortly thereafter, on October 16 and 17, Plaintiffs took the deposition of KNR operations manager Brandy Gobrogge, during which, (1) Gobrogge repeatedly denied the plain meaning of or any knowledge at all about her own documented directives to KNR employees,¹ and (2) defense counsel lodged numerous improper speaking objections as noted above and detailed in Plaintiffs' pending motion for a protective order (also filed on Dec. 20).

Immediately after Ms. Gobrogge's deposition, defense counsel requested a one-month postponement of Defendant Nestico's deposition that was scheduled for October 29 and 30, as well as a commensurate extension of the discovery deadline, the parties' joint motion for which the Court granted on November 6. Defendants ostensibly proposed this extension so that the parties could participate in a global mediation as instructed by the Court in the related coverage action brought by KNR's malpractice insurer in federal court in the Northern District of Ohio, and assured Plaintiffs that they intended to negotiate in good faith. *See Exhibit 1*, emails between Mannion and Pattakos. At this mediation on November 1, however, Defendants refused to provide Plaintiffs with even the most basic information necessary to determine a workable class-action settlement, and presiding Magistrate Judge Limbert sent Plaintiffs' counsel home after approximately one hour understanding that their participation was futile. *See Ex. 1; Exhibit 2*, Oct. 25, 2018 letter from Pattakos to Judge Limbert.

¹ *See, e.g.*, Gobrogge Tr. at 115:13–25 (“I don’t know what I was thinking at this moment.”); 120:24–25 (“I don’t know why I put that in there.”); 151:8–10 (“I felt like there were a lot.... I don’t know 6 years ago what that meant.”); 154:11–14 (“I’m saying, no, I don’t feel like the reason why I said that six years ago was because I was scared we were going to lose a case to another law firm.”); 240:7–8 (“That’s what I wrote in the email. That’s not entirely what I meant.”); 257:10–12 (“I may have typed those specific words, but I’m telling you the meaning behind it.”).

On October 31, 2018, Plaintiffs' counsel emailed defense counsel reiterating previous requests to schedule twelve depositions of party and non-party witnesses. *See Exhibit 3*, Oct. 31 email from Pattakos to defense counsel. On November 1, and then again on November 2, Plaintiffs' counsel followed up on this request in the wake of the failed mediation, urging the importance that these dates be confirmed given the pendency of the class-discovery deadline, and requesting that counsel participate in a conference call so that available dates could be determined before confirming them with the third-party witnesses. *See Exhibit 4*, Nov. 1 and 2 emails from Pattakos to defense counsel. These requests, and Plaintiffs' repeated follow-up requests (discussed below), have essentially been ignored by defense counsel.

In the meantime, Plaintiffs were able to schedule and conduct Dr. Gunning's deposition, if only partially (*See* Plaintiffs' motion to compel Gunning's continued deposition, filed Dec. 20), and only after (1) Defendants postponed this deposition twice on dubious grounds, and (2) the Court granted Plaintiffs' motion to compel the deposition to take place on December 12.

Additionally, while Defendant Nestico's deposition was scheduled to go forward the following week, on December 18 and 19, on December 12 (the same day as Gunning's deposition) the KNR Defendants filed a motion for a protective order broadly seeking to bar "Plaintiffs' counsel from inquiring at the depositions of Nestico, Redick or any employee of KNR into alleged violations of the Ohio Rules of Professional Conduct, including, but not limited to, questions relating to 'unlawful quid pro quo referral relationships with a network of healthcare providers' and 'direct client-solicitation by unlawfully communicating through chiropractors to solicit car-accident victims without disclosing the quid pro quo nature of that relationship.'" *See* KNR Defs' Dec. 12 motion at 6. The pendency of this motion and the corresponding likelihood that defense counsel would instruct Nestico not to answer questions about its highly and broadly relevant subject matter, as well as Plaintiffs' need—confirmed by defense counsel's conduct at Gunning's deposition (as detailed in

Plaintiffs' Dec. 20 motion)—to obtain a protective order barring speaking objections at depositions, required that Nestico's deposition again be postponed until these motions can be resolved.

The parties have since confirmed February 8 and 9 for Defendant Nestico's deposition to go forward, the deposition of KNR investigators Michael Simpson and Aaron Czetli are scheduled for January 15, and Defendants' depositions of Plaintiffs Norris and Harbour are tentatively scheduled for January 28 and 29. Plaintiffs' repeated requests for dates on which the remaining depositions can take place have, however, continued to be disregarded by Defendants, who have instead repeatedly engaged in a bizarre waltz around the issue as follows:

1. Plaintiffs' counsel requests defense counsel's availability for the remaining depositions that Plaintiffs need to take;
2. Defense counsel ignores this request, and instead responds with a request that Plaintiffs provide dates for their own depositions;
3. Plaintiffs' counsel informs defense counsel that they would gladly provide dates for the remaining Plaintiffs' depositions that are necessary, but that it makes sense to do so as part of a global scheduling conference, given that Plaintiffs' and Plaintiffs' counsel's schedules are more flexible than Defendants and the third-party witnesses;
4. Defense counsel responds by accusing Plaintiffs of refusing to provide dates for their depositions, and continues to ignore Plaintiffs' requests that Defendants provide available deposition dates or engage in a global scheduling conference regarding the same.

See Exhibits 5 and Exhibit 6, email exchanges between counsel. *See also Exhibit 7*, Jan. 1, 2019 email from Mannion ("Jim: Have you heard a single word from Mr. Pattakos as to whether or not he is presenting his clients for deposition duces tecum as properly noticed? I've asked him numerous times, and he refuses to answer.").²

Thus, it is clear that the Court's intervention is required to permit completion of the remaining depositions needed by Plaintiffs and any additional documentary discovery that is

² On December 27, 2018, Defendants unilaterally noticed Plaintiffs Norris and Harbours' depositions for January 28 and 29, 2019. Attorney Pattakos has since informed Defendants that he is available on that date subject to the Plaintiffs' availability, which Plaintiffs' counsel is in the process of confirming.

necessary prior to class-certification briefing.³ While Plaintiffs have also requested Defendants' consent for such an extension in scheduling these depositions, it is apparent at this point that Defendants are seeking to take advantage of the developments discussed above by taking the position that these depositions should not go forward and that the class-discovery deadline be maintained. *See, e.g., Ex. 5, Ex. 6.*

Civil Rule 1(B) provides that the Civil Rules "shall be construed and applied to effect just results by eliminating delay, unnecessary expense and all other impediments to the expeditious administration of justice." Civil Rule 26(B)(1) provides that parties may obtain, through discovery, any information that "appears reasonably calculated to lead to the discovery of admissible evidence." Local Rule 17.02(b)(1) requires counsel "to make a timely and good faith effort to confer and agree to schedules for taking of depositions." And "[i]t is well-established that the regulation of discovery is committed to the sound discretion of the trial court and that this regulation will not be disturbed by a reviewing court absent an abuse of discretion." *Grantz v. Discovery for Youth*, 12th Dist. Butler Nos. CA2004-09-216, CA2004-09-217, 2005-Ohio-680, ¶ 11-19.

As the Court stated in its April 6, 2018 order denying Defendants' motion to strike Plaintiffs' class-action allegations, Plaintiffs' complaint is "well-pleaded," containing "fifty-six (56) pages of well-defined allegations, proposing four (4) separate classes." In the same order, the Court also held

³ Plaintiffs have been and remain willing to proceed with these depositions despite Defendants' failure to comply with Plaintiffs' duly issued written discovery requests—including Ghoubril's and Floros's near complete refusal to engage in written discovery at all—as detailed in Plaintiffs' pending motions to compel discovery from the Defendants. *See, e.g., In re Santa Fe Natural Tobacco Co. Marketing & Sales Practices & Prods. Liab. Litigation*, D.N.M. No. MD 16-2695 JB/LF, 2018 U.S. Dist. LEXIS 140453, at *40 (Aug. 18, 2018) (requiring "plaintiffs to deliver responses to the [d]efendants' written discovery requests ... before the depositions of the [p]laintiffs' witnesses, so that the [d]efendants may make meaningful use of the responses at the depositions" and "because it would eliminate any potential need to reopen discovery to account for late-received materials") (internal quotations omitted); *In re San Juan Dupont Plaza Hotel Fire Litigation*, D.P.R. MASTER FILE MDL 721, 1988 U.S. Dist. LEXIS 17332, at *84 (Dec. 2, 1988) ("In order to ensure that all parties can evaluate the benefits of attending particular depositions, and are properly prepared to participate in scheduled depositions, written discovery shall commence prior to deposition discovery");

that “Plaintiffs have not yet moved for [class-certification]; nor are they required to when discovery has been delayed in such fashion as present in the circumstances of this case.” Given the volume of the evidence at issue regarding the separate fraudulent schemes alleged, as documented by the many emails quoted in the complaint, Plaintiffs should not be denied a fair opportunity to take fewer than a dozen depositions of key non-party witnesses, the need for which Defendants have been on notice for months. Plaintiffs have not been dilatory in pursuing this discovery and it is not legitimate for Defendants to insist on strict discovery deadlines while also doing whatever they can to obstruct Plaintiffs’ efforts to obtain discoverable information during the defined time period.

Defense counsel’s conduct in ignoring Plaintiffs’ repeated requests to schedule depositions has simply made a mockery of Local Rule 17.02(b)(1) and the Civil Rules in general. Thus, the Court should use its discretion to set a status conference during which counsel should be required provide available dates for these depositions, and set a new class-discovery deadline for a date after which the necessary depositions and any additional necessary documentary discovery can be workably completed.

Respectfully submitted,

/s/ Peter Pattakos

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Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on January 2, 2019 using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

Attorney for Plaintiffs



Peter Pattakos <peter@pattakoslaw.com>

Williams v KNR RE: Dates for Order

Peter Pattakos <peter@pattakoslaw.com>

Wed, Nov 7, 2018 at 12:01 PM

To: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>

Tom, please tell me how it was anything but a blatant misrepresentation for you to write, as you did below, that "Rob and his partners will be at the mediation on November 1st with FULL INTENTIONS to settle the case." We were transparent with Judge Limbert and your clients about the information we had that could support a principled settlement demand, and the information that we still needed to even approximate such a demand, including in a letter to the Judge that we authorized him to share with your clients (attached for your convenience). Your clients did not engage with us at all and Judge Limbert sent us home after we were there for only an hour. There was no indication at all that your clients had any intentions to settle the case with us, and there still has not been. Thus, we are left with the inference that they were only engaging in gamesmanship to postpone Mr. Nestico's deposition in the wake of Ms. Gobrogge's damaging testimony. If I am missing something here please let me know. Thanks.

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On Fri, Oct 19, 2018 at 10:28 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter:

I have to run to hearing on my trial Monday, but wanted to get this to you. We need to add in extra time for briefs (if Court set briefing schedule, I didn't look). And we have to add in your signature line. Plus whatever revision you have.

I can't talk with Ghoubril about this matter, but I want to let you know Rob and his partners will be at the mediation on November 1st with FULL INTENTIONS to settle the case. I'm not sure whether Dr. Ghoubril will show (or if he can given that he's not in that case), but Rob does not want Ghoubril to control potential settlement between Plaintiffs and KNR. I have to run now, but maybe we can talk later.

Let me know your thoughts on proposed motion.

Tom

From: Peter Pattakos [<mailto:peter@pattakoslaw.com>]
Sent: Thursday, October 18, 2018 7:14 PM

To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Cc: David Best <dmb@dmbestlaw.com>; Jim Casey <JCasey@dlcfirm.com> (JCasey@dlcfirm.com) <jcasey@dlcfirm.com>
Subject: Re: Dates for Order

Tom,

That sounds fine to me in principle but it occurs to me that we do not yet have any assurance that Dr. Ghoumbrial intends to meaningfully participate in these settlement negotiations. I am disinclined to agree to postpone any dates without such a commitment. Also, I understand that Julie Ghoumbrial provided deposition testimony last Friday in her divorce case and I have reason to believe that some of this testimony is highly relevant to our case. I believe that my clients are entitled to discover this information and that, for various reasons, spousal privilege cannot legitimately be asserted over it nor can it be kept from us by any confidentiality agreement. In any event, I therefore also need assurances that the Defendants, including Dr. Ghoumbrial, do not intend to take advantage of our contemplated postponement to keep us from accessing this testimony.

Please advise.

Thank you.

Peter Pattakos

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On Thu, Oct 18, 2018 at 8:32 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter:

We should at least get dates in place and agreed upon for Rob's deposition. How about we move all dates approx. 30 days? All dates in Scheduling Order moved 30 days. Depose Rob Nov 29 rather than Oct 29, and pass around dates to get all the others scheduled. Just let

me know who is okay to be deposed before Rob, if anyone. I say when we get dates for Horton, we look at early to mid January so he can enjoy his holiday. Then again, hopefully no depositions will be needed.

Thoughts?

Tom

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2018-10-25 KNR mediation statement.pdf
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October 25, 2018

By email to lisa_salyers@ohnd.uscourts.gov

Magistrate Judge George J. Limbert
Thomas D. Lambros Federal Building
125 Market Street, Room 229
Youngstown, Ohio 44503-1787

Re: *Wesco Insurance Company v. Kisling, Nestico & Redick, LLC et al*, 5:18-cv-00248-SL

Your Honor:

I am lead counsel for the Plaintiffs in the underlying litigation, *Williams v. KNR*, Summit County Court of Common Pleas Case No. CV-2016-09-3928, and submit the following statement on their behalf with regard to the upcoming mediation. While Plaintiffs do not take a position on the coverage issues, we are of course willing to consider any reasonable proposal to settle the underlying claims. Regarding the prospects for imminent settlement, we are primarily concerned about two issues:

The participation of Defendants Sam Ghoubril, M.D. and Minas Floros, D.C.

Plaintiffs are concerned with the seeming difficulty in settling the underlying claims without the participation of Defendants Sam Ghoubril, M.D. and Minas Floros, D.C., who are liable to three of the five classes for which Plaintiffs will seek certification—Floros as to one of the classes, and Ghoubril as to the other two. Dr. Ghoubril only became a Defendant in the case this week upon the Court's granting Plaintiffs' leave to file a fourth amended complaint on October 23. The claims against Dr. Ghoubril alleged in this fourth amended complaint relate to the fraudulent sale of medical supplies to KNR clients at inflated prices. Additionally, today, Plaintiffs sought leave to file a fifth amended complaint adding a second Ghoubril-related class regarding the fraudulent administration of and billing for "trigger point" injections to KNR clients, and expect that the Court will grant leave to file these claims as well. These claims are alleged in detail, along with the currently pending claims, in the pleadings attached to Plaintiffs' motion for leave to file a Fifth Amended Complaint, which I am enclosing with this letter.

Incomplete information about the size of the proposed classes and the damages incurred

Plaintiffs' second main concern pertaining to settlement is that we have substantially incomplete information about the sizes of the proposed classes and the amount of damages incurred. While the damages for two of the five proposed classes are more or less fixed and easy to determine from the amount of class members—the investigation fees and the narrative fees classes, involving fees ranging from approximately \$50 to \$200—the damages per class-member on the other three classes vary considerably depending on 1) the size of the loan and interest payments for each class member in the Liberty Capital class (class C); and 2) the quantity, cost, and charges for the Tritec medical supplies distributed to each class member in the Tritec/TENS Unit class (class D); and 3) the quantity, cost, and charges for the injections administered by Dr. Ghoubril to members of

proposed class E. While these numbers should all be easily determinable from Defendants' records (the KNR Defendants have stated that they track everything about every case they have ever handled in their "Needles" computer system), these records have not yet been made available to Plaintiffs.

As any class-wide settlement would have to be approved by Judge Brogan, who is presiding over the underlying case, it would be impossible for Plaintiffs to agree to any settlement without credible information at least as to the above referenced numbers.

The only salient numbers of which Plaintiffs are aware to support a regarding settlement are based on Defendants' own undocumented representations in written discovery. Specifically: 1) the KNR Defendants have offered a stipulation that as of December 2017 they had "settled between 40,000 to 45,000 cases in which investigators were used and the investigation fee was charged" (it is believed that the investigation fee was charged on at least 95% of the firm's that have been settled over the period at issue); and, 2) the KNR Defendants have provided discovery responses stating that they exchanged 4,800 referrals with Defendant Floros's clinic Akron Square Chiropractic (800 per year) in the six years from 2012 to 2017. This number is significant in large part because KNR has also stipulated that they have charged a \$100-200 "narrative fee," subject to disgorgement to class B members, on every case involving ASC.

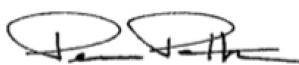
As to the status of settlement negotiations, Defendants have never made any offer of settlement, and only first approached the subject when the issue came up in the coverage litigation.

As to the merits of the underlying case, Plaintiffs believe that the detailed and well-documented allegations in the currently pending Fourth Amended Complaint and proposed Fifth Amended Complaint speak largely for themselves and establish a compelling case of self-dealing with doctors and chiropractors that entitle Plaintiffs to disgorgement under well established and well reasoned principles of law. The legal basis for Plaintiffs' class-action claims is set forth concisely in Plaintiffs' opposition to the KNR Defendants' motion to strike the class-action claims (see pages 10-15, 18-20), which essentially served as a premature motion to deny class certification that the Court denied last April. A copy of that opposition brief is attached with this letter as well.

While there may be much else about this case that might be discussed at next week's mediation, I believe the above addresses the most salient issues impacting the parties' ability to achieve an imminent settlement short of additional litigation. I would of course be glad to provide any additional information that you might find helpful upon request.

Thank you for assisting the parties in seeking a resolution of this matter.

Respectfully submitted,



Peter Pattakos



Peter Pattakos <peter@pattakoslaw.com>

Williams v KNR depositions

Peter Pattakos <peter@pattakoslaw.com>

Wed, Oct 31, 2018 at 4:43 PM

To: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>

Cc: Joshua Cohen <jcohen@crklaw.com>, "James M. Popson" <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, padkinson@poling-law.com

Counsel:

Given the agreement to amend the discovery schedule, we need to get new dates set for depositions.

1. Since we already have counsel's availability confirmed for 11/20, we will proceed on that day with Julie Ghoubril and Dr. Gunning, one in the morning and one in the afternoon. A notice of deposition is attached.
2. Mr. Nestico is confirmed for 11/29 and 11/30, also per the attached notice.
3. Mr. Czetli and Mr. Simpson are tentatively scheduled for 1/15 (we can do both of those in one day).
4. Please provide dates in December for Kelly Phillips and Paul Steele.
5. Please provide dates in the first half of January for Dr. Floros, Dr. Ghoubril, and Mr. Redick.
6. Please provide dates in the second half of January for Rob Horton and Gary Petti.
7. Please provide three dates in February to block off for any additional depositions that might be necessary as a result of the above.

Please advise as soon as possible regarding which depositions your client will need counsel to appear at as well as counsel's availability. Any delays in this regard will be grounds for postponement of the discovery deadline.

Thank you.

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On Fri, Oct 12, 2018 at 7:51 AM Peter Pattakos <peter@pattakoslaw.com> wrote:

1. Mr. Griffin has told us that he is not available on October 19, or any of the numerous dates we have provided to him for Czetli and Simpson's depositions. We are still waiting for him to get back to us with dates. He has not yet provided any despite our repeated requests that we have been making for nearly a month now.
2. Mr. Best says he needs to be there for Julie Ghoubril's deposition but cannot be there on 10/15, so that is out too. We will need to find another mutually convenient date.
3. As you know, we've confirmed 10/25 for Mr. Horton's deposition, as well as Ms. Gobrogge (10/16) and Mr. Nestico (10/29-10/30).
4. Count on Roby and Lantz on 11/20 and 11/21.

5. I am working to confirm the rest.

Thanks.

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On Wed, Oct 10, 2018 at 7:36 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Mr. Pattakos and Mr. Cohen:

I want to make sure we are on the same page with all depositions that are scheduled especially with the number of attorneys involved in this case. We have Brandy Gobrogge's deposition this coming Tuesday at 9 a.m. in Akron. In addition, my schedule shows the following deposition schedule:

1.	Michael Simpson	10/19/2018	9:00 a.m.	Cohen, Rosenthal & Kramer
2.	MRS Investigations	10/19/2018	9:00 a.m.	Cohen, Rosenthal & Kramer
3.	James Fonner, D.C.	10/23/2018	9:30 a.m.	Pattakos Law Firm
4.	Rob Nestico	10/29/2018	9:00 a.m.	Pattakos Law Firm
5.	Robert Horton	11/05/2018	1:00 p.m.	Thomas A. Skidmore Co. L.P.A.
6.	Gary Petti	11/13/2018	9:30 a.m.	Pattakos Law Firm
7.	Julie Ghoubril	11/15/2018	9:30 a.m.	Pattakos Law Firm
8.	Robert Roby	11/20/2018	9:30 a.m.	Pattakos Law Firm
9.	Amanda Lantz	11/21/2018	9:30 a.m.	Pattakos Law Firm
10.	Paul Steele	11/27/2018	9:30 a.m.	Pattakos Law Firm

Other than Mr. Horton, which Peter and I have corresponded separately regarding, have these dates and times been confirmed?

Thank you,

Tom

Thomas P. Mannion
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2018-10-31 Notice of Deposition of J. Ghoubril, Gunning, Nestico.pdf

73K



Peter Pattakos <peter@pattakoslaw.com>

I am not available 11/21 for Julie Ghoubrial... plus, we agreed to 30-day stay on depositions. What exactly do you think you're doing?

Peter Pattakos <peter@pattakoslaw.com>

Fri, Nov 2, 2018 at 6:16 PM

To: David Best <dmb@dmbestlaw.com>

Cc: "Mannion, Tom" <tom.mannion@lewisbrisbois.com>, "James M. Popson" <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, padkinson@poling-law.com, Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

OK, so one attorney from one of the 5 firms that is representing the KNR Defendants in this case is going out of the country and that means we can't even have a phone call to schedule depositions until 11/12 or 11/13 or later? Gentlemen, please, this is getting very ridiculous.

Tom Mannion emailed me separately to say that he is available for a deposition on the morning of 11/21, with a hard stop at noon. I am waiting to hear back from Dr. Gunning on whether that works for him. If it does, we will proceed with him on that morning at 8AM, and will have Julie Ghoubrial's deposition at 1PM on 11/20. I know Mr. Mannion said he is unavailable on 11/20, but that is not a legitimate reason to postpone this date where we already have a witness confirmed and where Mr. Best—who represents the KNR Defendants in this case, who just a couple of weeks ago asked questions of Julie on Dr. Ghoubrial's behalf at Julie's deposition in the divorce case, and asked her questions about the allegations in our case—has already confirmed his availability. If Dr. Gunning is not available on 11/21, we will proceed with him on 11/20 as noticed and again I'm sure Mr. Best is fully competent to represent the KNR Defendants in that deposition as well given his extensive involvement with Dr. Ghoubrial and his practice over the years.

I will let everyone know if Dr. Gunning is available on 11/21 and will re-notice his deposition for that morning if so. I expect to hear back from his counsel first thing next week.

In the meantime, **all counsel please let me know if you are not available on either the morning or afternoon of 11/12 or 11/13 for a scheduling call.**

Thank you.

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On Thu, Nov 1, 2018 at 5:27 PM David Best <dmb@dmbestlaw.com> wrote:

As I have informed you for some time I am leaving the country early Saturday morning and other than a brief stop in Akron on the 12th and 13th of November I am out until the morning of November 19th. David Best

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From: Peter Pattakos <peter@pattakoslaw.com>

Sent: Thursday, November 1, 2018 4:12:08 PM

To: Mannion, Tom

Cc: James M. Popson; David Best; Shaun Kedir; padkinson@poling-law.com; Joshua Cohen; Rachel Hazelet

Subject: Re: [EXT] Re: I am not available 11/21 for Julie Ghoubrial... plus, we agreed to 30-day stay on depositions. What exactly do you think you're doing?

All:

I propose that we set up a call next week with counsel for all parties to get dates for these depositions nailed down. Plaintiffs need to proceed with depositions in the order and general timeframe set forth in my email of yesterday (attached here for your convenience), which is entirely reasonable under the circumstances. If one or more of you is unable to proceed in this manner to due scheduling conflicts or whatever, and that legitimately necessitates postponement, then we will have to ask for a commensurate extension of the deadline.

Please send me times next week when you are NOT available for such a call and I will try to find a time that works for everyone, including the witnesses whose counsel is not copied here.

Thank you.

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On Thu, Nov 1, 2018 at 3:22 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Tom, if your schedule is so packed and you really need to be at all of these depositions than your clients probably should not have insisted on such a tight discovery deadline. All other counsel is available on 11/20 and we intend to proceed with Julie and Dr. Gunning on that date. Your clients should also make arrangements for December as it is completely ridiculous for you to block off full weeks of unavailability when we are working with such a limited timeframe that your clients insisted on.

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On Thu, Nov 1, 2018 at 3:02 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

As I said - I'm not available the 20th or 21st. We must reschedule those. We confirmed dates and then agreed to postpone the depositions. My 10/22 trial was then moved to 11/5, and I have trials 12/3 and 12/10 which have depositions scheduled.

If you intend to proceed with Gunning and Ghoubril without regard to our schedule, then we will do the same with you re: all other depositions. Is that how you want to proceed?

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Thursday, November 01, 2018 2:56 PM
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Cc: James M. Popson <jpopson@sutter-law.com>; David Best <dmb@dmbestlaw.com>; Shaun Kadir

<shaunkedir@kedirlaw.com>; padkinson@poling-law.com; Joshua Cohen <jcohen@crklaw.com>; Rachel Hazelet <rhazelet@pattakoslaw.com>

Subject: [EXT] Re: I am not available 11/21 for Julie Ghoubril... plus, we agreed to 30-day stay on depositions. What exactly do you think you're doing?

External Email

Tom,

We did not notice Julie's deposition for 11/21, we noticed it for 11/20, as well as Dr. Gunning's. You have long been on notice of this date and confirmed your availability (see your 10/10 email attached). Attorney Best has also confirmed his availability on this date (see Best 10/11 email attached), and counsel for Floros and Ghoubril have long been on notice as well (see Best 10/11 email and my 10/12 email attached). The witnesses have confirmed their availability on 11/20 and we intend to proceed unless there is good reason not to and all will consent to a commensurate extension of the discovery deadline.

Also, of course we did not agree to postpone all depositions in this case for 30 days. We merely agreed to postpone Mr. Nestico's deposition for 30 days, and the rest of the depositions until today, November 1, so that we could engage in today's mediation in the coverage action (our involvement in which, as an aside, was apparently a sham all along on your clients' part given that they were unwilling to share any information that would allow us to make a reasonable settlement demand and sent us home after only an hour). Please refer to our joint motion to postpone deadlines (excerpt attached) which expressly states that "the parties to the present action would like to stay depositions in the present case until after the November 1, 2018, mediation in the Declaratory Judgment Action." Please also refer to your email to me of October 18 (also attached) where you acknowledge that we would proceed with other depositions prior to Nestico's even after postponing his for a month ("Just let me know who is okay to be deposed before Rob, if anyone."). There is simply no indication that we ever agreed to postpone *all* depositions by one month and all evidence is clearly to the contrary.

With this, following up on today's mediation where your client did not show the slightest interest in resolving this matter with us despite your repeated statements to the contrary to induce us to postpone Mr. Nestico's deposition, I must respectfully ask you to please stop jerking us around. You can not on one hand insist on tight discovery deadlines, and then obstruct and delay every time we try to get any depositions scheduled, including by saying that any one of the dozens of attorneys who represent the Defendants in this case is unavailable, even when we already had dates confirmed. We have had November 20 blocked off for nearly a month now. Enough is enough. We need to get these done. If an earlier date in November would work for these depositions, and we can confirm with the witnesses, that would be fine. Otherwise, again, we will need another extension of the discovery deadline.

As things stand, the Defendants should plan to make whatever arrangements they need for Julie and Dr. Gunning's depositions on Nov. 20. Otherwise, if they need to speak with these witnesses on the record they can issue their own subpoenas and proceed that way.

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On Thu, Nov 1, 2018 at 11:23 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

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Peter Pattakos <peter@pattakoslaw.com>

Williams v KNR depositions

Mannion, Tom <Tom.Mannion@lewisbrisbois.com>

Wed, Dec 5, 2018 at 6:16 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: "James M. Popson" <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>, Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

Not sure what you don't understand about this. We are obtaining some dates for people and will forward you proposed dates for them. Please do the same for your clients

From: Peter Pattakos <peter@pattakoslaw.com>**Date:** December 5, 2018 at 5:39:43 PM EST**To:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>**Cc:** James M. Popson <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, Barmen, Brad <Brad.Barmen@lewisbrisbois.com>, Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>**Subject:** Re: [EXT] Williams v KNR depositions

It makes more sense to first get available dates for all of these depositions and then see where we can fit the plaintiffs in since they are the most flexible. Please advise as to your availability ASAP so we can get these scheduled. I have been asking for these dates for months now. Thank you.

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On Tue, Dec 4, 2018 at 10:02 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Well, please provide some of those "any of a number of dates" so we can check our schedules.

From: Peter Pattakos <peter@pattakoslaw.com>**Date:** December 4, 2018 at 9:52:25 PM EST**To:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>**Cc:** James M. Popson <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, Barmen, Brad <Brad.Barmen@lewisbrisbois.com>, Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>**Subject:** Re: [EXT] Williams v KNR depositions

We could be available on any of a number of dates. You and your clients are the ones who are always unavailable so it makes sense for you to provide us dates and we're likely to be able to make them work. We need to get all of these dates nailed down. I have been asking for months. Please get us dates for all of these depositions ASAP.

Peter Pattakos
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Sonia Kurt, Summit County Clerk of Courts

Exhibit 5

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On Tue, Dec 4, 2018 at 9:44 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

We have been asking for dates for Norris and Harbour. Please give us some dates you and they are available.

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From: Peter Pattakos <peter@pattakoslaw.com>

Date: December 4, 2018 at 9:41:37 PM EST

To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>, James M. Popson <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, Barmen, Brad <Brad.Barmen@lewisbrisbois.com>

Cc: Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

Subject: [EXT] Williams v KNR depositions

External Email

Counsel:

Please provide dates on which you are available for the following depositions:

Early to mid January for Paul Steele and Kelly Phillips, in that order;

Mid to late January for Rob Horton and Gary Petti, in that order, and Julie Ghoubrial;

Mid to late February for Dr. Floros, Dr. Ghoubrial, and Redick, in that order.

Also please provide dates when you would like to take Ms. Norris and Mr. Harbour's deposition.

Please get me as many open dates as you can so that we can do our best to accommodate the witnesses. We are of course agreeable to extending the class discovery deadline if that's what it takes to get these scheduled in this order and within this general timeframe.

Please advise ASAP.

Thank you.

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Peter Pattakos <peter@pattakoslaw.com>

Depositions

Mannion, Tom <Tom.Mannion@lewisbrisbois.com>

Fri, Dec 28, 2018 at 4:11 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: "James M. Popson" <jpopson@sutter-law.com>, "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>, Shaun Kedir <shaunkedir@kedirlaw.com>

If you are not refusing to provide dates for depositions, then please provide proposed dates for your clients

Sent from my iPhone

On Dec 28, 2018, at 3:57 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Tom, again, I'm not refusing to provide dates for Harbour and Norris, I'm only insisting that we work to schedule all of the necessary depositions at once, which will be a lot easier to do if you all provide dates on which you are available for the depositions that Plaintiffs need to take as well as dates for the depositions you need to take. From there we can work with the witnesses to finalize all the dates.

As for Phillips and Steele, you are surely aware they are former KNR attorneys who have information relevant to Plaintiffs' claims.

As for your allegations regarding "misstatements" in the complaint, of course you're entitled to argue about what the evidence shows in your class cert briefing. What other need for motion practice could there possibly be here?

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On Fri, Dec 28, 2018 at 1:47 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter:

Just to clarify - you are refusing to provide any dates for your clients' depositions? We have attempted to work these out with you in good faith. I see Jim Popson noticed Harbour and Norris. Do you intend to produce your clients on these dates or work out other mutually convenient dates? What date to you propose for Member Williams and Thera Reid?

Also, as we have asked multiple times, can you please explain the legitimate purpose for which are you requesting the deposition of Phillips and Steele? You dropped Johnson as a Plaintiff, and Phillips and Steele did not represent any of the remaining class reps. So, what is the purpose of their depositions? Their depositions, even if allowed, certainly do not need to go forward before your clients' depositions.

Also - you continue to claim in your Amended Complaints multiple facts that your own clients refuted at their depositions. For example, you allege that only 2 types of class members exist with respect to Class A: 1) those in which the investigators did NO work whatsoever; or 2) those in which the investigators only signed the client to the Contingency Fee Agreement and picked up documents from the client. Your own class rep, Member Williams, testified under oath that she fits neither of these classes, as the investigator in her case obtained the police report. Moreover, you continue to claim that KNR never told Member Williams the purpose of the investigator, even though she stated multiple times in her deposition that she was told the investigator was utilized to obtain, at a minimum, the police report. Many more examples exist. Please correct these misstatements so we don't need to engage in motion practice.

Thank you,

Tom

From: Peter Pattakos [mailto:peter@pattakoslaw.com]

Sent: Friday, December 28, 2018 9:59 AM

To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>

Cc: James M. Popson <jpopson@sutter-law.com>; Barmen, Brad <Brad.Barmen@lewisbrisbois.com>; Shaun Kedir <shaunkedir@kedirlaw.com>

Subject: Re: [EXT] Re: Depositions

Tom, I am not saying that my clients won't be deposed until after fact witnesses are deposed. I am only insisting that we schedule these depositions all at once, in a cooperative manner. I've been asking for the below deposition dates for months, probably a dozen times by now, and my requests have continually been ignored. It's not legitimate for you to ignore my requests to schedule depositions and then demand that I provide you dates for depositions that you want to take. At this point it seems clear that the Defendants are not agreeable to scheduling depositions in a reasonable manner so unless I hear anything to the contrary soon I will seek another court order requiring the same.

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On Fri, Dec 21, 2018 at 5:31 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

That is what you said the last time, but not what you have been saying. What you were saying is for me to give you dates, and you would check schedules, rather than you provide me dates. I have asked for dates for them. We have more than satisfied our obligation to work with you cooperatively and have no choice left but to notice them unilaterally, unless you provide some proposed convenient dates.. I don't want to do that. I would like proposed dates. You have no right to tell us your clients don't get deposed until after fact witnesses are deposed. That's not how it works. The rules by Peter Pattakos have yet to be adopted by the Supreme Court. Moreover, you have failed to state a reason as to why you need Phillips and Steele, since Johnson was dropped.

Sent from my iPhone

On Dec 21, 2018, at 5:22 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Tom, I've probably written to you a dozen times by now that we'll be glad to schedule Norris and Harbour's depositions once we have dates nailed down for the depositions that I've been requesting for months, in this order: Paul Steele and Kelly Phillips; Rob Horton and Gary Petti; Dr. Floros, Dr. Ghoubril, and Mr. Redick; As well as Julie Ghoubril which can take place at any time. At this point it's clear that the class discovery deadline will have to be extended. I hope you will agree to a reasonable proposal for that during which we can get these depositions done. Otherwise we will move next week to extend the deadline. Please advise ASAP.

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On Thu, Dec 20, 2018 at 11:09 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

We still need dates for your clients. We've asked quite a bit. Norris and Harbour first. We can schedule it for one full day each for now.

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From: Peter Pattakos [<mailto:peter@pattakoslaw.com>]
Sent: Wednesday, December 19, 2018 9:37 AM
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Cc: James M. Popson <jpopson@sutter-law.com>
Subject: [EXT] Re: Depositions

External Email

Feb. 7 and 8 are fine for Nestico. We still need Steele and Phillips and I have no idea why you'd suggest otherwise.

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On Mon, Dec 17, 2018 at 6:51 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter:

We should be open Feb 7th and 8th for Rob. Do those dates work? Have one more lawyer to check with but looks they will work. Have trial starting the following week.

Also, we wanted to confirm that you obviously no longer need depositions of Paul Steele or Kelly Phillips with Johnson officially withdrawn.

Tom

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32K



Peter Pattakos <peter@pattakoslaw.com>

Depos Norris Harbour

Mannion, Tom <Tom.Mannion@lewisbrisbois.com>

Tue, Jan 1, 2019 at 12:28 PM

To: "peter@pattakoslaw.com" <peter@pattakoslaw.com>, "jpopson@sutter-law.com" <jpopson@sutter-law.com>, "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>

Jim:

Have you heard a single word from Mr. Pattakos as to whether or not he is presenting his clients for deposition duces tecum as properly noticed? I've asked him numerous times, and he refuses to answer.

Thomas P. Mannion
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