

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James Brogan</p> <p>Reply in Support of Plaintiffs' Second Motion to Compel Discovery from the KNR Defendants and Motion for Sanctions under Civ.R. 37</p>
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By their second motion to compel discovery from the KNR Defendants, Plaintiffs primarily seek an order compelling the Defendants to confirm that they have made a comprehensive search for documents responsive to Plaintiffs discovery requests to which the Court has overruled Defendants' objections.

Defendants' opposition brief only confirms the need for such an order, as it contains various admissions that Defendants have made at most a partial search for responsive documents on their own haphazard and self-serving terms. For example:

1. Regarding Plaintiffs' requests for highly relevant documents "reflecting efforts to direct intake attorneys to steer clients to health care providers, as well as documents reflecting policies and procedures on referrals between KNR and health-care providers," Defendants claim that they have satisfied their obligations by merely performing a single search for a single term found only in the subject line of a single employee's email box. KNR Opp. at 2. This is not a comprehensive search, it is an extremely limited one undertaken on Defendants' own self-serving terms.
2. Regarding Plaintiffs' request for highly relevant documents "reflecting policies and procedures regarding when a narrative fee should be charged and how to determine whether a charge is reasonable," Defendants state that "KNR certainly does not have any such documents," and that there is "no factual dispute" as to whether KNR charges the fee pursuant to its own self-serving description of what it purports to be its policy in doing so. KNR Opp. at 3. Both statements by KNR here are plainly false. Indeed, the essence of Plaintiffs' claims regarding the narrative fee is that it was selectively paid to only a select group of high-referring chiropractors as a kickback, a contention that the KNR Defendants

sharply dispute. The documents attached as **Exhibit 6** to Plaintiffs' motion show that KNR regularly dictated to its attorneys that these fees were only paid to certain chiropractors at certain times for no apparent legitimate reason. More such emails are undoubtedly in KNR's possession and KNR is flouting its obligation to locate and produce them.

3. Regarding Plaintiffs' request for documents reflecting KNR's basis for believing that narrative reports are beneficial to their clients, Defendants state (Opp. at 2) that "it should not be surprising that KNR does not keep a file of documents" relating to this subject, and "it is for KNR to determine what documents form a basis for KNR's belief that medical reports are beneficial to clients." This simply does not address KNR's responsibility to identify, locate, and produce such documents, and KNR cannot satisfy this obligation by merely "supplementing its prior responses with letters from multiple insurance carriers directing KNR to provide such reports." *Id.* A comprehensive search is required.
4. Defendants also advance the self-serving and unsupported claim (Opp. at 4) that a 2013 email exchange between KNR attorneys (including Defendant Nestico) showing KNR's awareness that insurance companies were tightening the screws on cases involving Plambeck-owned chiropractic clinics somehow has nothing to do with the fraud lawsuits by insurance companies against these very clinics of which Defendant Nestico admits he was aware in early 2012. *See Ex. 9* to Plaintiffs' motion; See also Defs' Answer to Interrogatory No. 2-17 ("Defendants likely found out about these [lawsuits against Plambeck] in or around the beginning of 2012."). Other documents reflecting KNR's practice of continuing to refer its clients to these Plambeck-owned clinics despite the negative treatment of such cases by insurance companies are highly relevant to and probative of Plaintiffs' claims of self-dealing and must be searched for and produced.
5. And Defendants make the similarly incredible claim that documents reflecting Liberty Capital's write-offs of amounts owed to it by KNR clients in settling the clients' legal matters somehow did not result in any financial benefit to the KNR Defendants. Defs' Opp. at 4. These write-offs, and their quantity, quality, and frequency are again highly relevant to Plaintiffs' claims of self-dealing, can be located by the Defendants by reasonable means, and must be produced.

A search for documents is not complete, nor is it conducted in "good faith," merely because the Defendants say it is, and Defendants' own statements, as briefly summarized above, show that their searches for responsive documents in this case are neither. Rather, Defendants have set forth their own narrow and shifting terms on which they will search for documents, based on self-serving misinterpretations regarding whether information is or is not responsive. If this approach is permitted there is hardly a point in having discovery rules at all.

Thus, and as explained fully in Plaintiffs' second motion to compel discovery from the KNR Defendants, the Court should require Defendants to comprehensively identify and locate documents

responsive to Plaintiffs' requests, and produce them (including all documents reflecting write-offs by Liberty Capital and all documents relating to referrals to Plambeck clinics from 2012 on), as well as to fully answer the interrogatories to which Defendants have failed to provide complete responses as identified in Plaintiffs' motion.

Respectfully submitted,

/s/ Peter Pattakos

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Certificate of Service

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

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