

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

MEMBER WILLIAMS, et al.,	)	CASE NO. CV-2016-09-3928
	)	
Plaintiffs,	)	JUDGE JAMES BROGAN
	)	
vs.	)	
	)	<b><u>DEFENDANTS' RESPONSE TO</u></b>
KISLING, NESTICO & REDICK, LLC, et al.,	)	<b><u>PLAINTIFFS' MOTION FOR</u></b>
	)	<b><u>CLARIFICATION OF THE</u></b>
Defendants.	)	<b><u>COURT'S JANUARY 8, 2019 ORDER</u></b>
	)	<b><u>EXTENDING THE CLASS-DISCOVERY</u></b>
	)	<b><u>DEADLINE</u></b>
	)	

On July 24, 2018, this Court set a discovery deadline on class certification for November 1, 2018. On September 27, 2018, the Court conducted a telephone conference and expressed concern at the progress of depositions, and specifically referenced the deposition of Mr. Nestico which was already scheduled for October 29 and 30, 2018. Upon Plaintiffs' motion and over Defendants' objections, the Court extended the November 1, 2018 deadline to February 3, 2019. Subsequently, the parties mutually agreed to postpone all depositions for 30 days, reset Mr. Nestico's deposition for November 29 and 30, 2018, and extend the discovery deadline 30 days in order to participate in mediation ordered by a federal judge. After the mediation, the federal case was dismissed. Subsequently, the parties mutually agreed for an additional extension until March 3, 2019, which the Court approved. On November 6, 2018, this Court issued a scheduling order stating in part: "Deadline to Complete Discovery concerning the Class-Certification Issue – March 3, 2019;" and "Deadline for Plaintiffs' Motion for Class Certification - April 3, 2019."

On January 2, 2019, Plaintiffs filed a motion seeking yet another extension of the existing deadlines – beyond the additional 120 days that had already been granted. On January

8, 2019, this Court granted Plaintiff's motion,<sup>1</sup> stating "the Court extends the deadline for class certification to May 1, 2019." The order makes no reference to a discovery deadline and by its terms "extends the deadline for class certification" – not for discovery. Defendants interpreted the Order to effectively extend the existing deadlines set forth in Court's Order of November 6, 2018, by an additional four weeks; and set a deadline for filing of a class certification motion on May 1, 2019, four weeks after the prior deadline of April 3, 2019. Plaintiffs' instant motion asks the Court to permit discovery up to the existing deadline for filing Plaintiffs' motion to certify a class.

If Plaintiffs are permitted to take depositions up to the May 1 deadline for filing their class certification motion, it is inevitable that Plaintiffs will again seek more time – beyond May 1, 2019 – in order to prepare and file their brief. The Court's prior Order properly set a date certain for completion of discovery to allow 30 days for creation of transcripts and preparation of Plaintiffs' motion. To allow discovery up to the deadline invites yet another motion to extend the class certification deadline as Plaintiffs have demonstrated that they will seek extensions at every opportunity.

Defendants have consistently cooperated in scheduling depositions and providing discovery responses in this matter. The basis for Plaintiffs' January 2, 2019, motion for extension of time was a litany of false accusations that KNR Defendants engaged in obstructionist activity regarding scheduling of depositions. It is important that the KNR Defendants correct the false allegations made by Plaintiffs' counsel to excuse his own failure to complete the depositions ***necessary to file a motion for class certification.***

Defense counsel has consistently communicated the availability of counsel and witnesses controlled by KNR throughout the pendency of this litigation. Plaintiffs' counsel has expressed the desire to depose three KNR employees – one (Brandy Gobrogge) has been

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<sup>1</sup> The Order was issued before the ten days allotted for Defendants to respond under Local Rule 7.14. Defendants intended to object to any extension of time.

deposed. The other two – Rob Nestico and Rob Redick – have been scheduled for deposition on multiple occasions only to be unilaterally cancelled by Plaintiffs' counsel. The KNR Defendants do not control any other witnesses in the case and have made this clear to Plaintiffs counsel. (Ex. A, Popson email of September 14, 2018). Thus, any failure of Plaintiffs to complete discovery cannot be justified with conclusory and self-serving allegations of "obstruction" by the KNR Defendants.

Any delay in completing the depositions that Plaintiffs seek results from Plaintiffs' counsel's repeated insistence on a specific order for completing the depositions (see, e.g., Ex. B, email exchanges of September 18-19, 2018), and from his unilateral cancelations of multiple depositions that were noticed and/or agreed to by all counsel. Further complicating matters, Plaintiffs' counsel has been inconsistent in his representations regarding the specific order he desires to take depositions, and has been stalling the taking of depositions in this case since 2017. (Ex. C, email chain of November 27-30, 2017).

The deposition of Mr. Nestico has been scheduled on multiple occasions, and none of the postponements were the result of any "obstructionist" conduct by the Defendants. As discussed above, the deposition was originally set for October 29, 2018, and was continued by mutual agreement due to a pending mediation. Mr. Nestico cancelled a planned family Thanksgiving vacation in order to reschedule his deposition for November 29 and 30, 2018. (Ex. D, Pattakos' email of October 31, 2018, confirming deposition of Mr. Nestico). ***Plaintiffs' counsel cancelled the deposition at 3:55 p.m. the day before Thanksgiving.*** (Ex. E, Pattakos' email of November 21, 2018). Subsequently, Plaintiffs' counsel provided three alternative dates and defense counsel agreed to January 31 and February 1, 2019. Plaintiffs complained that the deposition should occur earlier – even though ***Plaintiffs' counsel proposed the date*** selected by Defendants. (Ex. F, email chain of November 29-30, 2018) In response, defense counsel regrouped, coordinated schedules, and agreed to again reschedule Mr. Nestico's deposition for December 18 and 19, 2018, to accommodate Plaintiffs - only to

**again** have the deposition **cancelled by Plaintiffs' counsel** just a few days prior. (Ex. G, email of Pattakos, December 13, 2018).

Plaintiffs' counsel has consistently claimed the unilateral right to schedule depositions in any order he chooses regardless of the availability of opposing counsel and the witnesses themselves. This includes refusing to provide deposition dates for his own clients as recently as December 28, 2018. (Ex. H, email of Pattakos, December 28, 2018). Even if Plaintiffs' counsel had this unilateral right (which he does not), he has been inconsistent in his representations regarding the specific order he desires to take depositions. For example, in late September, 2018, Plaintiffs' counsel was insisting that Mr. Nestico be deposed prior to any other depositions taking place in the case. Ex. I, email of Patakos, September 18, 2018). Less than two months later, in November, 2018, Plaintiffs' counsel was refusing to take the deposition of Mr. Nestico unless he could complete the deposition of Dr. Gunning first. (Ex. J, email of Pattakos, November 21, 2018). Defendants cannot accommodate a moving target.

By way of further example, on December 13, 2018, Plaintiffs' counsel informed defense counsel that the depositions of "Nestico, Steele, Philips, Petti and Horton" must be completed prior to proceeding with the deposition of Defendant, Dr. Flores. (Ex. K, email of Pattakos, December 13, 2018). To obtain depositions in any such precise manner will inevitably delay proceedings in this case indefinitely. Moreover, the depositions of Nestico, Steele, Philips, Petti and Horton **have all been previously scheduled and cancelled by Plaintiffs' counsel**. (Ex. L, email exchange of October 10-12, 2018). Likewise, the depositions of Dr. Fonner, Mr. Roby, and Ms. Lance have been scheduled and **unilaterally cancelled by Plaintiffs' counsel**. (Id.).

The elusive manner of Plaintiffs' counsel with regard to scheduling depositions is perhaps best summarized by his claim that counsel for Defendants was attempting to "force him" to take the deposition of Mr. Nestico, while at the same time arguing to the Court that Defendants are preventing him or obstructing him from taking that same deposition. (Ex. J). Defendants have made every effort to cooperate in scheduling these depositions. However,

completion of discovery at this juncture should prevail over an exacting and precise order of the testimony.

Plaintiffs have had ample time to schedule all depositions necessary for class certification. Plaintiffs' counsel has failed to articulate how the vast majority of the witnesses he wants to depose could possibly have any information relevant to the issue of class certification. Plaintiffs' counsel's decision to try to obtain discovery on the merits during the time allotted for taking discovery on the issue of class certification should not result in adverse consequences for the Defendants. The purpose of a deadline is to encourage counsel to do the work that is necessary at the appropriate stages of litigation. Further delays and unnecessary depositions unrelated to the issue of class certification impose significant costs on Defendants. Accordingly, Defendants request that the Court clarify its prior Order to specify that discovery on class certification ends on April 1, 2018. Further extensions of time will inevitably occur if Plaintiff is permitted to conduct discovery up to the class certification deadline.

Respectfully submitted,

/s/ James M. Popson

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Counsel for Defendants

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed electronically with the Court on this 25th day of January, 2019. The parties may access this document through the Court's electronic docket system.

/s/ James M. Popson

James M. Popson (0072773)

Counsel for Horton and Czetli are copied here as well, in addition to Floros's counsel. I presume Mr. Griffin will also be representing Mr. Simpson, but in any event I've attached a notice of service of subpoena on Simpson that we filed today.

Thank you.

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On Fri, Sep 14, 2018 at 10:10 AM, James M. Popson <[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)> wrote:

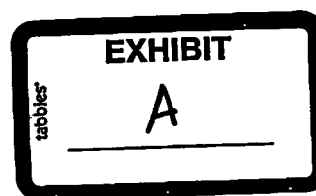
Peter,

KNR only has control, and the ability to produce, three of the witnesses listed below. We have been discussing dates for Nestico and Gobrogge. We will provide available dates for those witnesses and Redick sometime today. Those dates will be prior to the current discovery deadline. As it relates to the discovery responses, we have been providing you supplemental responses as they are completed. We have had to review and modify multiple sets of voluminous discovery requests. The order did not provide a specific date for us to comply, but I will make an effort to get the remaining responses to you today or over the weekend.

There is plenty of time to take the 2 depositions you requested prior to today. Although you referenced some additional depositions last week without naming deponents, today is the first time you have notified us that you intend to depose 7 of the 10 witnesses on this list. You have been aware of most of these witnesses since the time you filed case, and all of them for at least 10 months. You have had more than enough time to get these depositions completed. Your sudden desire to depose these people with a discovery deadline approaching (and your motion to file a fourth amended complaint) are transparent attempts to delay the denial of class certification. Moreover, none of the non-KNR employees can possibly provide evidence relevant to certification under Civ. R. 23. We will oppose any effort on your part to delay this matter any further.

Finally, please provide us with the dates you intend to depose the non-KNR employees before issuing subpoenas so we can make sure we are available.

Jim



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

**Sent:** Thursday, September 13, 2018 6:35 PM

**To:** James M. Popson

**Cc:** Joshua Cohen ([jcohen@crklaw.com](mailto:jcohen@crklaw.com)); [shaunkedir@kedirlaw.com](mailto:shaunkedir@kedirlaw.com); Nathan F. Studeny; Barb Day; Mannion, Tom ([Tom.Mannion@lewisbrisbois.com](mailto:Tom.Mannion@lewisbrisbois.com)); [Dmb@dmbestlaw.com](mailto:Dmb@dmbestlaw.com)

**Subject:** Re: Depositions

Jim,

It has now been three weeks since I asked you for dates for Nestico's and Gobrogge's depositions, and a week since I sent my email below to which you still have not responded. In addition to Nestico and Gobrogge, we will need to complete the following depositions prior to the class-discovery deadline:

1. Robert Redick (Defendant)
2. Minas Floros (Defendant)
3. Mike Simpson (primary investigator)
4. Aaron Czetli (primary investigator)
5. Rob Horton (former KNR attorney)
6. Gary Petti (former KNR attorney)
7. Paul Steele (former KNR attorney)
8. James E. Fonner (Columbus, OH chiropractor who was sued by KNR after refusing to accede to KNR's demands of their so-called "preferred chiropractors")
9. Philip Tassi (Akron, OH chiropractor who has received narrative-fee payments and who, along with Floros and Nestico, has received cash payments as kickbacks from Dr. Ghoubrial)
10. Ciro Cerrato (Liberty Capital representative)

We might also need to add Dr. Ghoubrial to this list depending on what the court decides about our pending motion to amend the complaint.



It is going to take a lot of coordination to get these depositions done before November 1, and much of the problem is due to the KNR Defendants' delay in providing us discovery responses pursuant to court orders and their continued delay in providing us dates for the Nestico and Gobrogge depositions.

We will proceed to issue the necessary subpoenas for the above depositions and intend to ask the Court for an extension of time to allow them to be completed by Feb 1. Please let me know if you will join in this request, or otherwise not oppose it, and please get back to me ASAP regarding dates for these depositions.

Thank you.

Peter Pattakos

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On Thu, Sep 6, 2018 at 4:46 PM, Peter Pattakos <[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)> wrote:

Jim, when I emailed you two weeks ago about deposition dates for Nestico and Gobrogge, I said that "the weeks of Sept. 17 and Sept. 24 are generally open for us," I did not just offer 9/17 as you suggest below. You also seem to suggest below that Nestico's and Gobrogge's are the only depositions we'll have to complete by November 1, but I expect there are about a dozen more witnesses we'll need to get on record by November 1. We need Nestico's and Gobrogge's depositions first and we need to get them done ASAP. Please let us know when they are available in the weeks of the 17th and 24th and I'll get back to you tomorrow or first thing next week with a list of the other depositions we'll need to complete.

If you agree that it makes sense to approach the Court about extending the discovery deadline, we should do that, but we can't have any further delay in any event.

Thank you.

Peter Pattakos

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On Thu, Sep 6, 2018 at 10:06 AM, James M. Popson <[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)> wrote:

Peter,

September 17 is not going to work for us. Please provide a few alternative dates in September and October so we can get the depositions done by November 1.

Jim

# SUTTER O'CONNELL ATTORNEYS

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**From:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>  
**Sent:** Friday, January 04, 2019 9:27 AM  
**To:** Rob A. Nestico; James M. Popson  
**Subject:** FW: RE: Deposition dates for KNR employees  
**Attachments:** image002.jpg

-----Original Message-----

From: Mannion, Tom [mailto:Tom.Mannion@lewisbrisbois.com]  
Sent: Wednesday, September 19, 2018 7:45 AM  
To: peter@pattakoslaw.com  
Subject: RE: Deposition dates for KNR employees

Peter:

Maybe I have not been privy to all of your conversations, but I'm concerned about what appears to be a blatant misrepresentation in your motion. I've not copied anyone on this email, and I'm not trying to start a back-and-forth email exchange. I would just like to address one of the statements you made in your motion. You indicated that you have been requesting Rob Nestico's deposition first. Other than a few days ago, I've never seen such a request. Can you please forward me any prior request in this regard?

Thank you,

Tom

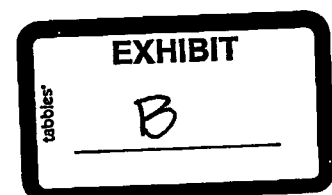
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From: Peter Pattakos [peter@pattakoslaw.com]  
Sent: Tuesday, September 18, 2018 1:04 PM  
To: James M. Popson  
Cc: Joshua Cohen (jcohen@crklaw.com); shaunkedir@kedirlaw.com; Mannion, Tom; Dmb@dmbestlaw.com



Subject: Re: Deposition dates for KNR employees

Jim,

Is there a reason why we can't proceed with Nestico's deposition on October 15? You do not identify any such reason below so I am again requesting that we proceed with his deposition on that date. If Ms. Gobrogge is out of the country for the second half of October, we can either proceed with her deposition on October 16, or find another date in the full month between now and then to proceed. Please advise.

Additionally, I am in fact available on all of the dates you identify below, as is, apparently, counsel for the KNR defendants. Thus, I request that you keep all of these dates open for additional depositions on the dates during which Nestico's, Gobrogge's, and Redick's depositions do not take place.

Thank you.

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On Tue, Sep 18, 2018 at 12:18 PM, James M. Popson <jpopson@sutter-law.com<mailto:jpopson@sutter-law.com>> wrote:  
Peter,

It appears you are available on all the dates proposed. The local rules require you to consult with us on the availability of witnesses and counsel for taking depositions. Ms. Gobrogge will be out of the country for the latter half of October. So she is available and you are available on October 15 or 16. Redick's availability is limited due to a medical condition. He is available and you are available on October 22 or 23. Mr. Nestico and his counsel are available at the end of the month (October 29, 30, or 31). We also need to consider the availability of Mr. Kedir and his client, so we will need to wait to hear from him as well. You waited more than two years to request these depositions with full knowledge of the identity of the witnesses involved, with the first request coming just 60 days before the deadline. We are working to accommodate that schedule in good faith despite the approaching deadline. The order you to prefer to take depositions is not a valid basis to delay the deadline, and we will oppose any motion to extend deadlines.

Jim

From: Peter Pattakos [mailto:peter@pattakoslaw.com<mailto:peter@pattakoslaw.com>]  
Sent: Tuesday, September 18, 2018 10:27 AM  
To: James M. Popson  
Cc: Joshua Cohen (jcohen@crklaw.com<mailto:jcohen@crklaw.com>);  
shaunkedir@kedirlaw.com<mailto:shaunkedir@kedirlaw.com>; Mannion, Tom  
(Tom.Mannion@lewisbrisbois.com<mailto:Tom.Mannion@lewisbrisbois.com>);  
Dmb@dmbestlaw.com<mailto:Dmb@dmbestlaw.com>  
Subject: Re: Deposition dates for KNR employees

Jim,

As the owner of the KNR firm, Mr. Nestico is the most important witness here and we have told you repeatedly that we want to proceed with his deposition first so we can ask other witnesses about his testimony. We would like to proceed with Mr. Nestico's deposition on October 15 or 16. We can then proceed with either Grobrogge and Redick on the other dates. Assuming Mr. Nestico is planning to attend all of these depositions, as he has with the others, he should be available on October 15th or 16th. Please confirm or provide earlier dates for Mr. Nestico.

Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

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On Tue, Sep 18, 2018 at 9:40 AM, James M. Popson <[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)<<mailto:jpopson@sutter-law.com>>>>  
wrote:  
Peter,

We have the following dates available:

Brandy Grobrogge : October 15 or 16

Robert Redick: October 22 or 23

Rob Nestico: October 29, 30, or 31.

Jim

[cid:image002.jpg@01D44F43.B8F9AA80]<<http://sutter-law.com>>

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**From:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>  
**Sent:** Friday, January 04, 2019 9:02 AM  
**To:** Rob A. Nestico; James M. Popson  
**Subject:** FW: Re: Williams v. KNR -- Plaintiffs Depositions



**Thomas P. Mannion**  
Attorney | Cleveland Managing Partner  
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**From:** Peter Pattakos [mailto:peter@pattakoslaw.com]  
**Sent:** Thursday, November 30, 2017 6:05 PM  
**To:** jhill@bdblawn.com  
**Cc:** broof@sutter-law.com; EKennedy@weismanlaw.com; Tom.Mannion@lewisbrisbois.com; madornetto@sutter-law.com; jcohen@crklaw.com; dwilliams@pattakoslaw.com; dfrech@pattakoslaw.com; jpopson@sutter-law.com; mkinlow@bdblawn.com  
**Subject:** Re: Williams v. KNR -- Plaintiffs Depositions

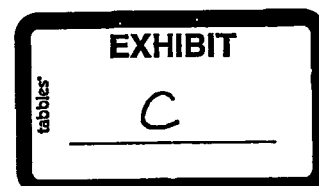
John,

I would agree that what you write below makes sense under certain circumstances. But not here, and not least because this case is one where Plaintiffs don't have any documents of any substantial relevance to the claims at issue. In any event, we are not "demanding the right to unilaterally decide that no important depositions will go forward until they feel they have completed all the document discovery they want." We are merely insisting that now is not a reasonable time for any such depositions to take place.

I do wholeheartedly agree with you that "the parties need to work together to select mutually agreeable dates for these (and all) depositions," but given the apparent lack of mutual agreement, it is probably something we should talk about with the Judge at the earliest opportunity.

Thanks.

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On Thu, Nov 30, 2017 at 5:58 PM, John Hill <[jhill@bdblaw.com](mailto:jhill@bdblaw.com)> wrote:

Peter, I'm not going to weigh in on all these issues. But I disagree that your clients can demand that their depositions (let alone that of a third party witness like Horton) wait until "documentary discovery is complete." I haven't seen any "compelling reasons" proffered for you getting to dictate this order of discovery. And it's not supported by the rules, by experience, or by fairness or common sense. The defense needs to get plaintiffs' deposition testimony early in the case. What is learned in deposition may in fact drive (or color) some of the "documentary discovery" that we want to do (or decline to do) afterwards. And what we learn in deposition may affect other discovery, motion practice, and many other matters.

I think the parties need to work together to select mutually agreeable dates for these (and all) depositions. But I strongly object to the Plaintiffs demanding the right to unilaterally decide that no important depositions will go forward until they feel they have completed all the document discovery they want.

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

**Sent:** Thursday, November 30, 2017 5:46 PM

**To:** Brian E. Roof

**Cc:** Eric Kennedy; Mannion, Tom; Michele Adornetto; John Hill; Joshua Cohen; Dean Williams; Daniel Frech; James M. Popson

**Subject:** Re: Williams v. KNR -- Plaintiffs Depositions

Brian,

1) As I've made clear below and in previous correspondence, absent a Court order we will not proceed with the depositions of the Plaintiffs or Mr. Horton until documentary discovery is complete, and we will not proceed with Mr. Horton's deposition until after we have taken the testimony of other key witnesses. We've explained to you our compelling reasons for this, while you've offered no explanation at all for your contrary positions. If you insist on maintaining them, we can talk about it with the Judge.

2) Thank you for confirming the 30(b)(5) deposition on 12/15, but please explain what the problem is with Mr. Whitaker logging into the email system and showing us how basic searches "crash the system," and explain

how privilege issues are implicated at all here. We're entitled to test the veracity of such obviously questionable contentions by which you're purporting to deny us discovery, and we should not have to convene more than once with Mr. Whitaker to get to the bottom of this.

3) As I have told you, we are in the process of responding to your November 15 letter in which you essentially make clear that it will be necessary for us to file a motion to compel. While we intend to make one last effort at resolving the pending disputes, there is a lot to process given the extent of Defendants' obstruction and the volume of information at issue in this case. Thus, we will wait to receive your proposed stipulations before finalizing our response. And we look forward to receiving the document production.

Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

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Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)

[www.pattakoslaw.com](http://www.pattakoslaw.com)

---

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On Thu, Nov 30, 2017 at 4:50 PM, Brian E. Roof <[broof@sutter-law.com](mailto:broof@sutter-law.com)> wrote:

Peter,

The email enclosing the initial deposition notices of Plaintiffs stated that you should call with any questions. Similarly, you noticed the Rule 30(B)(5) deposition without prior discussion with us regarding the deposition date, but stated that we should give you a call if the initial date did not work. Both correspondence

are essentially the same. Therefore, your initial complaint about not following Local Rule 17.02(b)(2) rings hollow. Nevertheless, in order to work with you, we proposed new dates for Plaintiffs' depositions. But you have unilaterally refused to produce Plaintiffs for their depositions until you decide the time is right. You believe that you control discovery and the sequence of depositions. That is not how it works. We get to decide when we want to depose Plaintiffs – not you. If December 11 and 12 do not work for you or your clients, please provide us with dates for the depositions of Plaintiffs Williams, Wright, and Reid. If the 11<sup>th</sup> and 12<sup>th</sup> are good, we will serve deposition notices for them.

Regarding Mr. Horton, he is a third-party witness who can be subpoenaed by any part at any time for any date. Again, you do not get to dictate when we subpoena Mr. Horton. We will issue a subpoena for Mr. Horton's deposition at an appropriate date and time.

As for the deposition of KNR's Rule 30(B)(5) deposition, Mr. Whitaker is the witness, and we will produce him on December 15. However, as we will explain in more detail in Defendants' formal response to Plaintiffs' Request for Inspection, Defendants will not allow the inspection of KNR's document system. There is absolutely no need for the inspection, it raises ethical and privilege issues, and it is meant merely to harass Defendants. You can obtain the appropriate answers regarding KNR's document system from deposing Mr. Whitaker.

Finally, we will begin producing the documents that we indicated that we would produce next week. Despite repeated requests that you provide us with stipulations to avoid these discovery issues, you have failed to do so. Instead, we will provide you with proposed stipulations in the next several days.

Please contact me with any questions or comments.

Regards,

Brian

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

**Sent:** Wednesday, November 29, 2017 5:55 PM

**To:** Brian E. Roof

**Cc:** Eric Kennedy; Mannion, Tom; Michele Adornetto; John Hill; Joshua Cohen; Dean Williams; Daniel Frech

**Subject:** Re: Williams v. KNR -- Plaintiffs Depositions

Brian,

I don't understand why you're telling us that depositions are off when you never conferred with us about scheduling them in the first place. *See* Local Rule 17.02(b)(2). It's obvious that we have a lot of work to do on documentary discovery before it makes sense to proceed with depositions of substantive witnesses. Under different circumstances, we might be inclined to make an exception and make the Plaintiffs available for early depositions, but we are especially disinclined to do so here given the pendency of Defendants' counterclaims that accuse Plaintiffs of deliberately filing and maintaining their claims in bad faith and for ulterior purposes. Thus, we expect you to understand that our clients will testify only after Defendants have adequately responded to our written discovery requests, consistent with the normal process in most any litigation and especially litigation as contentious as this. If you have a good reason to take a different approach here, please advise so that we may consider it.

As for Mr. Horton, his attorney has told us he will only make his client available for deposition once, for all parties, and I have already written to you (by email on October 20) that we do not intend to proceed with this deposition until other depositions have been taken, including Mr. Nestico's. As I have explained to you before, Plaintiffs are the ones with the burden of proof and it is not Defendants' prerogative to manipulate the ordering in which we question witnesses in investigating and proving our claims. Again, if Defendants have nothing to hide, one would assume they would want to avoid insisting to the contrary, but if that is what you intend to do we'll have to take the issue up with the Court. At this point, consistent with Judge Breaux's pending order of Oct. 16, we ask that any such issues be raised with the Court in conference first so that we may determine whether motion practice may be avoided.

In the meantime, we hope Defendants will work on searching the categories of documents that you have identified containing responsive search terms, and produce responsive documents to our requests as required by the Civil Rules. In doing so, please understand that we find your November 15 letter wholly insufficient in addressing Defendants' failure to respond to our document requests, as outlined in my letters to you of October 26, November 7, and November 10. We're currently working on a formal response to you on that in final hopes of avoiding a motion to compel, and will get that to you as soon as possible.

Finally, I assume you meant to communicate below that Ethan Whitaker will be Defendants' 30(b)(5) designee. If that's the case, we can proceed on December 15th. Please confirm, and confirm that our request for inspection will take place at the same time. Assuming Defendants' email systems can be accessed and searched remotely, the deposition can take place at Mr. Cohen's office. Otherwise, we'll defer to you on the location.

Thank you.

Peter Pattakos

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On Mon, Nov 27, 2017 at 3:02 PM, Brian E. Roof <[broof@sutter-law.com](mailto:broof@sutter-law.com)> wrote:

Peter,

Plaintiffs' depositions are off for December 4 and 5. We propose the following rescheduling of all of the depositions that have been noticed to date (these dates and times work for Defendants' counsel):

1. December 11 – Deposition of Naomi Wright (morning at Sutter O'Connell);
2. December 12 – Deposition of Thera Reid (morning at Sutter O'Connell) and Member Williams (afternoon at Sutter O'Connell); and
3. December 15 – Deposition of Ethan Whitaker (morning at Plaintiff counsel's office) and Horton (afternoon at Tom Mannion's office).

Again, these depositions will be contingent on a judge be assigned to the case at the time of the depositions. Please let us know if they work for you.

Thanks,

Brian

**SUTTER  
O'CONNELL**  
ATTORNEYS

**Brian E. Roof**

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Cleveland, OH 44114

Direct: 216.928.4527

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Brian E. Roof

**Sutter O'Connell Co.**

Direct: 216.928.4527

Mobile: 440.413.5919

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**John F. Hill**

**Chair of Litigation Practice Group**

**Buckingham, Doolittle & Burroughs, LLC**  
**3800 Embassy Parkway, Suite 300**  
**Akron, OH 44333-8398**

**d: 330.258.6404**

**f: 330.252.5414**

**jhill@bdblawn.com**  
**bdblawn.com**



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**BUCKINGHAM**

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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:

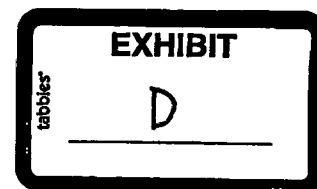
Given the agreement to amend the discovery schedule, we need to get new dates set for depositions.

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.



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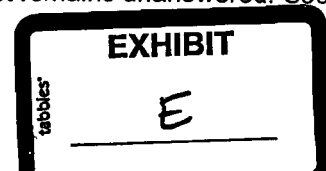
**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Sent:** Wednesday, November 21, 2018 3:55 PM  
**To:** dmb@dmbestlaw.com  
**Cc:** jpopson@sutter-law.com; Tom.Mannion@lewisbrisbois.com;  
Brad.Barmen@lewisbrisbois.com; bday@sutter-law.com; nstudeney@sutter-law.com;  
shaunkedir@kedirlaw.com; johnmyerscolpa@gmail.com;  
Helen.Szucs@lewisbrisbois.com  
**Subject:** [EXT] Re: Depos  
**Attachments:** 2018-11-20 Second Amended Notice of Deposition of Richard Gunning.pdf; 2018-11-06  
Pattakos email to Barmen and Myers.pdf

Counsel:

Thank you for confirming that we will proceed with Dr. Gunning's deposition on November 29 at 10AM at my office, per Mr. Barmen's email below. Yesterday, I filed the attached second amended notice of deposition reflecting the new date and time.

As for Mr. Nestico, this is to advise you again that we will not proceed with his deposition next week as you propose below. As I've informed you, we need to complete Dr. Gunning's deposition first. Not only do we need at least two full consecutive days for Mr. Nestico, as well as some time to incorporate Dr. Gunning's testimony into our questions for Mr. Nestico, we need to be sure that there is no obstruction of Dr. Gunning's testimony and that we receive the information we need from him before proceeding with Mr. Nestico. We are aware, as I'm sure at least most of you are, that Dr. Ghoubrial and his attorneys, including those representing the Defendants in this case, have been repeatedly sanctioned by Ohio courts for their obstructive conduct at depositions, and ordered by courts to return to depositions for Ghoubrial to respond to questions that he wrongly refused to answer. *E.g.*, *State ex rel. Ghoubrial v. Herbert*, 10th Dist. Franklin No. 15AP-470, 2016-Ohio-1085, ¶ 4 ("The court finds that the attorney for [Ghoubrial] obstructed the process to such degree that the discovery rules were violated."); *Bowers v. Herron*, 5th Dist. Fairfield No. 15 CA 34, 2016-Ohio-766, ¶ 5, 11 ("[T]he trial court specifically ordered that Attorney Best compensate Defendants' reasonable attorneys' fees, costs, and expenses arising from a follow-up deposition of Dr. Ghoubrial upon the nine unanswered questions ... and Defendants' reasonable attorneys' fees for time spent preparing the Motion to Compel, Motion for Attorneys' Fees and Costs, and the Reply in Support of the Motions."). Some of you are also surely aware of numerous other cases where Ghoubrial and his attorneys (again, including those copied here) engaged in similar obstruction that did not end up leading to a published court order. Thus, we're simply not going to put ourselves in a position where we're left without a remedy if the same thing happens next week and we're not going to tentatively schedule a deposition as important as Mr. Nestico's.

Our concerns here are amplified by the fact that Ghoubrial has apparently already exercised an undue influence on Dr. Gunning, including by forcing him to be represented by the same attorney as he is, Mr. Barmen, when Dr. Gunning had already retained his own counsel, Mr. Myers, who introduced himself to me as Gunning's counsel in this matter weeks before Mr. Barmen claimed to be representing Gunning (apparently without Gunning's knowledge or consent). To date, it remains unclear as to who is currently representing Dr. Gunning in this lawsuit and in what capacity and I am again requesting clarification on this from Mr. Barmen and Mr. Myers, as my first request remains unanswered. See my Nov. 6 email to Barmen and Myers, attached.



Finally, again, please provide new dates for Mr. Nestico's deposition as I have been requesting since last week. I can make any day between 12/6 and 12/21 work. This should not be hard and again would not be necessary if not for Mr. Barmen's last-minute postponement of Dr. Gunning's deposition that was originally scheduled for today.

Thank you.

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On Tue, Nov 20, 2018 at 10:43 AM David Best <[dmb@dmbestlaw.com](mailto:dmb@dmbestlaw.com)> wrote:

agreed

**From:** James M. Popson <[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)>  
**Sent:** Tuesday, November 20, 2018 10:42 AM  
**To:** Mannion, Tom <[Tom.Mannion@lewisbrisbois.com](mailto:Tom.Mannion@lewisbrisbois.com)>; Barmen, Brad <[Brad.Barmen@lewisbrisbois.com](mailto:Brad.Barmen@lewisbrisbois.com)>; 'Peter Pattakos' <[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)>  
**Cc:** Barb Day <[bday@sutter-law.com](mailto:bday@sutter-law.com)>; David Best <[dmb@dmbestlaw.com](mailto:dmb@dmbestlaw.com)>; Nathan F. Studeny <[nstudeny@sutter-law.com](mailto:nstudeny@sutter-law.com)>; Shaun Kadir <[shaunkedir@kadirlaw.com](mailto:shaunkedir@kadirlaw.com)>; John Myers <[johnmyerscolpa@gmail.com](mailto:johnmyerscolpa@gmail.com)>; Szucs, Helen <[Helen.Szucs@lewisbrisbois.com](mailto:Helen.Szucs@lewisbrisbois.com)>  
**Subject:** RE: [EXT] Re: Depos

Agreed.

---

**From:** Mannion, Tom [<mailto:Tom.Mannion@lewisbrisbois.com>]  
**Sent:** Tuesday, November 20, 2018 10:38 AM  
**To:** Barmen, Brad; 'Peter Pattakos'; James M. Popson  
**Cc:** Barb Day; David Best; Nathan F. Studeny; Shaun Kadir; John Myers; Szucs, Helen  
**Subject:** RE: [EXT] Re: Depos

Re: [EXT] Re: Williams v KNR

**Mannion, Tom** <Tom.Mannion@lewisbrisbois.com>  
11/30/2018 at 11:30 AM

**From:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>  
**Sent:** 11/30/2018 at 11:30 AM  
**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>, David Best <dmb@dmbestlaw.com>

1 Attachment(s) Total 31.9 KB View ^

LB-Logo\_7c9c5bd0-0a1e-47b8-a3b1-a4b5cdfed8fa.png (31.9 KB)

What? You gave us three windows. The first window (week of Jan 7) doesn't work. And we told you in the next two windows - the first two consecutive dates that work are the 31st and 1st. This is smack dab in middle of those two windows.

**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Date:** November 30, 2018 at 9:42:54 AM 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>, David Best <dmb@dmbestlaw.com>  
**Subject:** Re: [EXT] Re: Williams v KNR

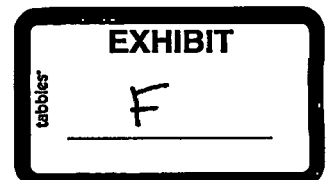
Tom, what you are saying below makes no sense. If there are dates prior to Jan 31 and Feb 1 that will work for you (apart from Dec. 13 and 14) then please tell me what they are. Thank you.

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On Fri, Nov 30, 2018 at 9:37 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:



The answer is not yes, As we offered dates prior to January 31 and February 1, but you refused the dates, even though you are available. The answer is exactly what I told you. I have no idea what you're trying to do, but I will not participate in another one of your misrepresentations. You gave us some specific time frames in which you were available. You told us that you needed two consecutive dates within those time frames. We gave you two dates essentially within the middle of the dates you requested. We have offered multiple other dates for Mr. Nestico, some of which you had already stated you were available, but you refused. Given the limitations you put on your availability, we provided you the two earliest consecutive dates, within your stated availability. Are you going to proceed on those two dates or not? Also, please provide proposed dates for your clients' depositions.

Tom

**From:** Peter Pattakos <peter@pattakoslaw.com>

**Date:** November 30, 2018 at 9:31:48 AM 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>, David Best <dmb@dmbestlaw.com>

**Subject:** Re: [EXT] Re: Williams v KNR

So the answer is yes, then, as of today, the earliest you can make Nestico available apart from Dec. 13 and 14 is Jan. 31 and Feb. 1? That is all I asked. It surely does not warrant such a longwinded response.

Peter Pattakos  
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On Fri, Nov 30, 2018 at 9:27 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Mr. Pattakos:

You are wildly mistaken. We offered multiple other dates. You have canceled Mr. Nestico's deposition multiple times. You then offered a few windows of time and demanded we provide two consecutive dates within those windows. You stated any two consecutive dates in those windows would work for you.

You offered 4 windows, only the latter 3 of which were even reasonable time periods (because you were already a notice we're not available for the first time period). And, Well I have to check emails again, I am 95% confident we also told you the second window you offered was an available before you offered it. We offered you several windows of time as well, and you refuse them, even though you are available on some of those dates.

Your available windows offered are discussed below. Please recall, You told us that any two consecutive dates during these windows of time work for you. Also, you have refused to provide a single proposed dates for your clients' depositions, not even dates for Norris or Harbour, who have not yet been deposed, until we agreed on dates for Mr. Nestico on your timetable, and yet you still will not provide us dates for your clients' depositions.

#### 1. Dec 17-21

When you offered the Dec 17-21 window, you did so knowing that window of time did not work for the Defendants. I have a 2-day mediation in a huge construction case on the 17th and 18th. This was scheduled prior to your request, has a large pre-payment to a mediator from JAMS, involves lawyers, experts who will attend mediation to present power points, and claims examiners from multiple states, literally from the West coast to the East coast, AND flights, hotels, , hotels, etc have all been made already. The mediation cannot be rescheduled. I then leave for family vacation, with all five of my kids, on December 19th. And that is just my schedule. Rob Nestico is also is not available these dates, and other lawyers had scheduling issues due to the time of year. The few days before Christmas, regardless of the religious beliefs of any of the lawyers, is an extremely difficult time to schedule 2 consecutive days of all day availability. Under normal circumstances, we certainly would not criticize you for at least offering these for dates, but you did so AFTER we had already told you those dates did not work. You offering these for dates was meaningless, because you know they did not work.

#### 2. Week of January 7th

We advised you these dates do not work. Trial and other schedules prevent this.

### 3. Week of January 28th. WORKS

Earlier in the week, my client is being deposed and co-Defendants are being deposed in another case, and they have been set for a long time, which prevents two days in a row earlier that week. Another codefendant in a case is being deposed January 31, and he is an extremely important witness in that matter, and my client directed me to handle that deposition personally. However, I worked with my client and obtained the client's consent to have one of my partners handle the deposition on the 31st. This will include at least 10 hours of preparation that we will not be able to bill for, because of having someone else involved, but we were willing to do that so we could get you two consecutive dates. In addition, other attorneys on the side had to rearrange schedules, which impacted other counsel, to make these two dates available. January 31 and February 1 or to of the dates that you indicated we're available. Moreover, they are a full week before the last two dates you said would work.

### 4. Week of February 4-8

We could probably make two dates were during this week as well, but since we were able to attend earlier date and which were available, we offer those. I assume you do not want to move the deposition of this week, since you earlier dates. Please advise if my understanding is wrong.

I have absolutely no idea why we are having this back-and-forth correspondence when we provided you two dates during the time frame you said you were available. You actually stated that you were available for any two dates during those time periods, as long as the days were consecutive.

We also had this scheduled on previous dates, but you decided to cancel the deposition. You have continually pushed attorney Nestico's deposition date back, but then accuse us of delay. Even more confusing, now you claim we are trying to "rush" Mr. Nestico's deposition by offering December 13 and 14th. I am not thrilled with the games you are playing. Despite that, however, we complied with your request for two consecutive dates during the time frames you offered.

Please also provide potential dates for your clients. We have asked numerous times for the deposition dates of your clients. If we do not hear from you by the end of the day, given the fact that we've asked for these so often and for so long, we will have to notice them. If the dates we notice do not work for you, then we will agree to reschedule if we can come up with mutually convenient dates. We've attempted every step of the way to have depositions on mutually convenient dates. You simply refuse to cooperate.

In addition, I will ask you again to stop making blatant representations in your pleadings.

We have agreed on January 31st and February 1st, two dates you offered. Feel free to re-notice the deposition. Or, as we told you previously, we agree that the prior notice of deposition applies, just with the change of dates.

Tom

**From:** Peter Pattakos <peter@pattakoslaw.com>

**Date:** November 30, 2018 at 8:27:01 AM 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>, David Best <dmb@dmbestlaw.com>

**Subject:** Re: [EXT] Re: Williams v KNR

Just to be clear, apart from Dec. 13 and 14 (the two dates that you belatedly offered a couple of days ago after Gunning's deposition was rescheduled for 12/12), you are saying that the earliest you can make Nestico available for deposition are January 31 and Feb 1? I want to be sure I am understanding you correctly here.

Peter Pattakos  
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peter@pattakoslaw.com  
www.pattakoslaw.com

---

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On Thu, Nov 29, 2018 at 5:59 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Pattakos:

Depends on the context of your question. If you are asking if these are the earliest dates we can make work, the answer is "No." We have earlier dates available and have offered those dates. You declined several dates in November, despite your prior notice for the very dates you later declined. You also declined the consecutive days we offered for December.

However, if you are asking if these are the earliest two consecutive days we are available during the dates you offered, the answer is "Yes" (even though it took schedules being rearranged). January 31st and February 1st are the earliest two consecutive days available based on the time frames you stated you are available. We have already rearranged schedules on this end, based on your representation that any two days that week work.

Please confirm these dates. You don't need to re-issue a Notice, as we will recognize the previous Notice being applicable to these dates. However, feel free to re-issue if you want.

Tom

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

**Sent:** Thursday, November 29, 2018 5:41 PM

**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>; David Best <dmb@dmbestlaw.com>

**Subject:** Re: [EXT] Re: Williams v KNR

Are these the earliest dates that you can make work?

Peter Pattakos

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On Thu, Nov 29, 2018 at 5:36 PM Mannion, Tom  
<Tom.Mannion@lewisbrisbois.com> wrote:

Pattakos:

You state below that "any two consecutive days" the week of January 7th, January 28th, or the first week of February will work for you for Rob Nestico's deposition. We have not been able to arrange two consecutive days the week of January 7th. However, we have successfully been able to rearrange schedules so that we have two consecutive days available for the week of January 28th. Attorney Nestico and counsel are available January 31st and February 1st for the deposition.

Please confirm these dates.

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

**Sent:** Thursday, November 29, 2018 11:52 AM

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

**Cc:** James M. Popson <jpopson@sutter-law.com>; Shaun Kediri <shaunkedir@kedirlaw.com>; Barmen, Brad <Brad.Barmen@lewisbrisbois.com>; David Best <dmb@dmbestlaw.com>

**Subject:** Re: [EXT] Re: Williams v KNR

Tom,

I believe this is the third time now that I have had to tell you that I am not available for Rob's deposition on Dec. 13th and 14th. Any two days in the fourth week of January or the first week of February would work for me, as would any two consecutive days in the weeks of Jan. 7 or Jan. 28, and, as I have already advised you, any two consecutive days between Dec. 17-21, or Jan 3-10. Please provide me with dates so we can get this finalized.

Once we have Nestico's deposition firmed up then I can get you dates for the Plaintiffs. I am not going to bother them until then. Also, if I need to file a motion for a protective order regarding Member Williams's deposition I will. You have still not provided any legitimate explanation as to why you need to reopen it.

Peter Pattakos

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---

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On Thu, Nov 29, 2018 at 7:27 AM Mannion, Tom  
<Tom.Mannion@lewisbrisbois.com> wrote:

Re: Nestico

**Peter Pattakos** <peter@pattakoslaw.com>  
12/13/2018 at 12:33 PM

**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Sent:** 12/13/2018 at 12:33 PM  
**To:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>  
**Cc:** James M. Popson <jpopson@sutter-law.com>, <Brad.Barmen@lewisbrisbois.com>, David Best <dmb@dmbestlaw.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

Tom,

We are not proceeding with Mr. Nestico's deposition next week.

First, the motion for a protective order that the KNR Defendants filed yesterday broadly seeks 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.'" Even if you weren't going to object and instruct your client not to answer every time we try to ask about the quid pro quo relationships that are at the heart of this lawsuit (consistent with Mr. Barmen's conduct at Dr. Gunning's deposition yesterday in repeatedly instructing the witness not to answer questions about highly and unquestionably relevant subject matter), you further have no right to burden us by insisting that we break up our deposition outline to isolate questions about the ethical rules that are implicated in this case.

Additionally, after defense counsel's conduct at Dr. Gunning's deposition yesterday, we need to seek a protective order barring any further speaking objections at depositions. Between you, Mr. Barmen, and Mr. Best, you must have violated Local Rule 17.02(b)(4) a hundred times, not to mention the outrageous insults you repeatedly leveled at us, including on the transcript. See Local Rule 17.02(b)(2). Under these circumstances, I can't imagine that any decent lawyer would proceed with another deposition, not least one as important as Nestico's is in this case, without seeking court intervention first.

If the January 31 and February 1 dates that you gave us before for Nestico's deposition are still good, we should nail those down, which should give the Court enough time to rule on the pending and necessary motions. Also, as I have been requesting for months to no response, we still need deposition dates for the following, 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.

Please advise ASAP.

Thank you.



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peter@pattakoslaw.com  
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---

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On Thu, Dec 13, 2018 at 9:58 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter:

Is Rob's Depo on or off. We need to know. Why not take his deposition now. Finish everything but questions on ethical rules. And then if court sides with you, we reconvene on those issues. We can even come up with a proposed date now in the event the Court so rules. You asked for multiple days anyway. Please let us know as soon as possible. This impacts a lot of schedules.

Tom

Thomas P. Mannion  
Attorney | Cleveland Managing Partner  
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**From:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>  
**Sent:** Friday, January 04, 2019 10:27 AM  
**To:** James M. Popson; Rob A. Nestico  
**Subject:** FW: RE: [EXT] Re: Depositions

**From:** Mannion, Tom [mailto:Tom.Mannion@lewisbrisbois.com]  
**Sent:** Friday, December 28, 2018 10:08 AM  
**To:** peter@pattakoslaw.com  
**Cc:** jpopson@sutter-law.com; Brad.Barmen@lewisbrisbois.com; shaunkedir@kedirlaw.com  
**Subject:** RE: [EXT] Re: Depositions

Peter:

What are you not understanding? We have asked dozens of times for dates for your clients' depositions, and you have refused to provide a single date for Norris or Harbour. You have also failed to provide a single date for the continuation deposition of Thera Reid or Member Williams (although we know you object to Member Williams' continued deposition, we still need a date on the books and then we can address with Court). None. Zero dates. On the other hand, we have provided you multiple dates for our clients, many of which you unilaterally cancel at great expense to us. You have not provided a SINGLE deposition date for the most recent Plaintiffs. None. Not even a suggested week.

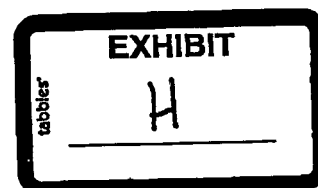
Tom

---

**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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[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)  
[www.pattakoslaw.com](http://www.pattakoslaw.com)



---

**From:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>  
**Sent:** Friday, January 04, 2019 9:20 AM  
**To:** James M. Popson; Rob A. Nestico  
**Subject:** FW: Re: Deposition dates for KNR employees



Thomas P. Mannion  
Attorney | Cleveland Managing Partner  
Tom.Mannion@lewisbrisbois.com

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

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**From:** Peter Pattakos [<mailto:peter@pattakoslaw.com>]  
**Sent:** Tuesday, September 18, 2018 10:27 AM  
**To:** [jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)  
**Cc:** [jcohen@crklaw.com](mailto:jcohen@crklaw.com); [shaunkedir@kedirlaw.com](mailto:shaunkedir@kedirlaw.com); Tom.Mannion@lewisbrisbois.com; [Dmb@dmbestlaw.com](mailto:Dmb@dmbestlaw.com)  
**Subject:** Re: Deposition dates for KNR employees

Jim,

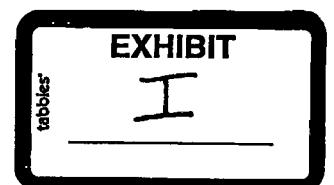
As the owner of the KNR firm, Mr. Nestico is the most important witness here and we have told you repeatedly that we want to proceed with his deposition first so we can ask other witnesses about his testimony. We would like to proceed with Mr. Nestico's deposition on October 15 or 16. We can then proceed with either Gobrogge and Redick on the other dates. Assuming Mr. Nestico is planning to attend all of these depositions, as he has with the others, he should be available on October 15th or 16th. Please confirm or provide earlier dates for Mr. Nestico.

Thank you.

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On Tue, Sep 18, 2018 at 9:40 AM, James M. Popson <[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)> wrote:

Peter,

We have the following dates available:

Brandy Grobrogge : October 15 or 16

Robert Redick: October 22 or 23

Rob Nestico: October 29, 30, or 31.

Jim

**SUTTER  
O'CONNELL**  
ATTORNEYS

**James M. Popson**  
3600 Erieview Tower  
1301 E. 9th Street  
Cleveland, OH 44114

Direct: 216.928.4504  
Mobile: 216.570.7356  
Fax: 216.928.4400  
[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)  
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**From:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>  
**Sent:** Friday, January 04, 2019 9:35 AM  
**To:** James M. Popson; Rob A. Nestico  
**Subject:** FW: Re: [EXT] Re: Depos

"You are not going to force me to proceed on 11/29. Please provide new dates."

**From:** Peter Pattakos [mailto:peter@pattakoslaw.com]  
**Sent:** Wednesday, November 21, 2018 5:26 PM  
**To:** Tom.Mannion@lewisbrisbois.com  
**Cc:** dmb@dmbestlaw.com; jpopson@sutter-law.com; Brad.Barmen@lewisbrisbois.com; nstudy@nstudy.com; shaunkedir@kedirlaw.com; johnmyerscolpa@gmail.com  
**Subject:** Re: [EXT] Re: Depos

If you are not going to put Nestico up twice for a deposition then you can forgo with your charade of having your partner Mr. Barmen take his deposition on behalf of Ghoubril when he could just obtain an affidavit instead. You are not going to force me to proceed on 11/29. Please provide new dates.

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[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)  
[www.pattakoslaw.com](http://www.pattakoslaw.com)

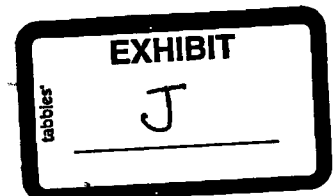
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On Wed, Nov 21, 2018 at 5:23 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

I am not putting Nestico up twice for deposition. We offered you two days. You can still have 8 hours the 29th and 8 hours the 30th, if necessary. You've had him noticed for a long time. He's available. All counsel are available. You are available.

**From:** Mannion, Tom  
**Sent:** Wednesday, November 21, 2018 4:40 PM  
**To:** Peter Pattakos <peter@pattakoslaw.com>; David Best <dmb@dmbestlaw.com>  
**Cc:** James M. Popson <jpopson@sutter-law.com>; Barmen, Brad <Brad.Barmen@lewisbrisbois.com>; Barb Day <bday@sutter-law.com>; Nathan F. Study <nstudy@nstudy.com>; Shaun Kedir <shaunkedir@kedirlaw.com>; John Myers <johnmyerscolpa@gmail.com>; Szucs, Helen <Helen.Szucs@lewisbrisbois.com>  
**Subject:** Re: [EXT] Re: Depos



Nestico is set for 11/29.

I am not available in From December 3 - 21 anyway, given trials in WV and Ohio that are going. And we are not forcing him to be deposed Christmas week.

---

**From:** Peter Pattakos <[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)>

**Date:** November 21, 2018 at 3:58:09 PM EST

**To:** David Best <[dmb@dmbestlaw.com](mailto:dmb@dmbestlaw.com)>

**Cc:** James M. Popson <[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)>, Mannion, Tom <[Tom.Mannion@lewisbrisbois.com](mailto:Tom.Mannion@lewisbrisbois.com)>, Barmen, Brad <[Brad.Barmen@lewisbrisbois.com](mailto:Brad.Barmen@lewisbrisbois.com)>, Barb Day <[bday@sutter-law.com](mailto:bday@sutter-law.com)>, Nathan F. Studeny <[nstudeny@sutter-law.com](mailto:nstudeny@sutter-law.com)>, Shaun Kedir <[shaunkedir@kedirlaw.com](mailto:shaunkedir@kedirlaw.com)>, John Myers <[johnmyerscolpa@gmail.com](mailto:johnmyerscolpa@gmail.com)>, Szucs, Helen <[Helen.Szucs@lewisbrisbois.com](mailto:Helen.Szucs@lewisbrisbois.com)>

**Subject:** Re: [EXT] Re: Depos

Counsel:

Thank you for confirming that we will proceed with Dr. Gunning's deposition on November 29 at 10AM at my office, per Mr. Barmen's email below. Yesterday, I filed the attached second amended notice of deposition reflecting the new date and time.

As for Mr. Nestico, this is to advise you again that we will not proceed with his deposition next week as you propose below. As I've informed you, we need to complete Dr. Gunning's deposition first. Not only do we need at least two full consecutive days for Mr. Nestico, as well as some time to incorporate Dr. Gunning's testimony into our questions for Mr. Nestico, we need to be sure that there is no obstruction of Dr. Gunning's testimony and that we receive the information we need from him before proceeding with Mr. Nestico. We are aware, as I'm sure at least most of you are, that Dr. Ghoubril and his attorneys, including those representing the Defendants in this case, have been repeatedly sanctioned by Ohio courts for their obstructive conduct at depositions, and ordered by courts to return to depositions for Ghoubril to respond to questions that he wrongly refused to answer. *E.g.*, *State ex rel. Ghoubril v. Herbert*, 10th Dist. Franklin No. 15AP-470, 2016-Ohio-1085, ¶ 4 ("The court finds that the attorney for [Ghoubril] obstructed the process to such degree that the discovery rules were violated."); *Bowers v. Herron*, 5th Dist. Fairfield No. 15 CA 34, 2016-Ohio-766, ¶ 5, 11 ("[T]he trial court specifically ordered that Attorney Best compensate Defendants' reasonable attorneys' fees, costs, and expenses arising from a follow-up deposition of Dr. Ghoubril upon the nine unanswered questions ... and Defendants' reasonable attorneys' fees for time spent preparing the Motion to Compel, Motion for Attorneys' Fees and Costs, and the Reply in Support of the Motions."). Some of you are also surely aware of numerous other cases where Ghoubril and his attorneys (again, including those copied here) engaged in similar obstruction that did not end up leading to a published court order. Thus, we're simply not going to put ourselves in a position where we're left without a remedy if the same thing happens next week and we're not going to tentatively schedule a deposition as important as Mr. Nestico's.

Our concerns here are amplified by the fact that Ghoubril has apparently already exercised an undue influence on Dr. Gunning, including by forcing him to be represented by the same attorney as he is, Mr. Barmen, when Dr. Gunning had already retained his own counsel, Mr. Myers, who introduced himself to me as Gunning's counsel in this matter weeks before Mr. Barmen claimed to be representing Gunning (apparently without Gunning's knowledge or consent). To date, it remains unclear as to who is currently representing Dr. Gunning in this lawsuit and in what capacity and I am again requesting clarification on this from Mr. Barmen and Mr. Myers, as my first request remains unanswered. See my Nov. 6 email to Barmen and Myers, attached.

Finally, again, please provide new dates for Mr. Nestico's deposition as I have been requesting since last week. I can make any day between 12/6 and 12/21 work. This should not be hard and again would not be necessary if not for Mr. Barmen's last-minute postponement of Dr. Gunning's deposition that was originally scheduled for today.

Thank you.

Peter Pattakos

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On Tue, Nov 20, 2018 at 10:43 AM David Best <[dmb@dmbestlaw.com](mailto:dmb@dmbestlaw.com)> wrote:

agreed

**From:** James M. Popson <[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)>  
**Sent:** Tuesday, November 20, 2018 10:42 AM  
**To:** Mannion, Tom <[Tom.Mannion@lewisbrisbois.com](mailto:Tom.Mannion@lewisbrisbois.com)>; Barmen, Brad <[Brad.Barmen@lewisbrisbois.com](mailto:Brad.Barmen@lewisbrisbois.com)>; 'Peter Pattakos' <[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)>  
**Cc:** Barb Day <[bday@sutter-law.com](mailto:bday@sutter-law.com)>; David Best <[dmb@dmbestlaw.com](mailto:dmb@dmbestlaw.com)>; Nathan F. Studeny <[nstudeny@sutter-law.com](mailto:nstudeny@sutter-law.com)>; Shaun Kadir <[shaunkedir@kedirlaw.com](mailto:shaunkedir@kedirlaw.com)>; John Myers <[johnmyerscolpa@gmail.com](mailto:johnmyerscolpa@gmail.com)>; Szucs, Helen <[Helen.Szucs@lewisbrisbois.com](mailto:Helen.Szucs@lewisbrisbois.com)>  
**Subject:** RE: [EXT] Re: Depos

Agreed.

---

**From:** Mannion, Tom [<mailto:Tom.Mannion@lewisbrisbois.com>]  
**Sent:** Tuesday, November 20, 2018 10:38 AM  
**To:** Barmen, Brad; 'Peter Pattakos'; James M. Popson  
**Cc:** Barb Day; David Best; Nathan F. Studeny; Shaun Kadir; John Myers; Szucs, Helen  
**Subject:** RE: [EXT] Re: Depos

My position: We can just start Rob shortly after, and still provide ample time over the 29th and 30th for Rob's deposition. I will await hearing from Jim, David, et al.

**Thomas P. Mannion**  
Attorney | Cleveland Managing Partner  
[Tom.Mannion@lewisbrisbois.com](mailto:Tom.Mannion@lewisbrisbois.com)

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**From:** Barmen, Brad  
**Sent:** Tuesday, November 20, 2018 10:36 AM  
**To:** 'Peter Pattakos' <[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)>; James M. Popson <[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)>  
**Cc:** Barb Day <[bday@sutter-law.com](mailto:bday@sutter-law.com)>; David Best <[dmb@dmbestlaw.com](mailto:dmb@dmbestlaw.com)>; Nathan F. Studeny <[nstudeny@sutter-law.com](mailto:nstudeny@sutter-law.com)>; Shaun Kadir <[shaunkedir@kedirlaw.com](mailto:shaunkedir@kedirlaw.com)>; Mannion, Tom <[Tom.Mannion@lewisbrisbois.com](mailto:Tom.Mannion@lewisbrisbois.com)>; John Myers

<[johnmyerscolpa@gmail.com](mailto:johnmyerscolpa@gmail.com)>; Szucs, Helen <[Helen.Szucs@lewisbrisbois.com](mailto:Helen.Szucs@lewisbrisbois.com)>

**Subject:** RE: [EXT] Re: Depos

Counsel:

Allow this to confirm that Dr. Gunning is currently available to appear for deposition on 11/29 at 10:00 am. No new subpoena is necessary. We will appear at the location listed on the subpoena already served on 11/29 at 10:00am. Peter, if you feel the need to send a revised subpoena you can send it to me and I will accept service.

As for the deposition of Mr. Nestico, I have spoken to his counsel and they will be prepared to start his deposition within an hour of the conclusion of Dr. Gunning's deposition on 11/29. Mr. Nestico will be available for a full 8 hours on 11/29 and he will also be available as previously scheduled on 11/30 so there will be no issue getting his deposition concluded by the end of the day on 11/30.

Any questions do not hesitate to contact me.

Your attention to this matter is appreciated.

Regards

Brad

---

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

**Sent:** Friday, November 16, 2018 3:20 PM

**To:** James M. Popson

**Cc:** Barmen, Brad; Barb Day; David Best; Nathan F. Studeny; Shaun Kedir; Mannion, Tom; John Myers; Szucs, Helen

**Subject:** Re: [EXT] Re: Depos

I need to take Dr. Gunning's deposition before Mr. Nestico's. It is not my fault that Dr. Gunning's counsel has requested the last-minute postponement and Dr. Gunning is not available on any workable date before the 11/29 or 11/30, so we will proceed with his deposition on one of those dates because counsel already has them confirmed. Please provide new dates for Mr. Nestico's deposition ASAP. As I said in my last email to Mr. Barmen, if we can get Mr. Nestico done early enough in December we will not seek postponement of the discovery deadline.

Thank you.

Peter Pattakos

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Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)

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On Fri, Nov 16, 2018 at 2:01 PM James M. Popson <[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)> wrote:

I am opposed to extending the deadline or moving Nestico's deposition. Why can't we just get another date for Gunning and keep the deadline as is?

Jim

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

**Sent:** Friday, November 16, 2018 11:36 AM

**To:** [Brad.Barmen@lewisbrisbois.com](mailto:Brad.Barmen@lewisbrisbois.com)

**Cc:** Barb Day; David Best; James M. Popson; Nathan F. Studeny; Shaun Kediri; Mannion, Tom; John Myers; [Helen.Szucs@lewisbrisbois.com](mailto:Helen.Szucs@lewisbrisbois.com)

**Subject:** Re: [EXT] Re: Depos

Re: Nestico

**Peter Pattakos** <peter@pattakoslaw.com>  
12/13/2018 at 04:24 PM

**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Sent:** 12/13/2018 at 04:24 PM  
**To:** Shaun Kedir <shaunkedir@kedirlaw.com>  
**Cc:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>, James M. Popson <jpopson@sutter-law.com>, <Brad.Barmen@lewisbrisbois.com>, David Best <dmb@dmbestlaw.com>, Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

Shaun,

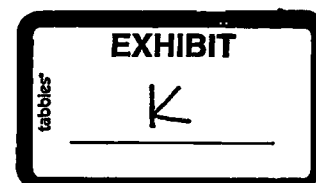
I'm sorry if my multiple messages on this have been unclear, but, as noted again below, we need to complete the depositions of Nestico, Steele, Phillips, Petti, and Horton before we can proceed with Floros. Once we have those dates nailed down then we can talk about dates for Floros.

Thanks.

Peter Pattakos  
The Pattakos Law Firm LLC  
101 Ghent Road  
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www.pattakoslaw.com

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On Thu, Dec 13, 2018 at 4:04 PM Shaun Kedir <shaunkedir@kedirlaw.com> wrote:



## Re: Williams v KNR depositions

**Peter Pattakos** <peter@pattakoslaw.com>  
10/12/2018 at 07:52 AM

**From:** Peter Pattakos <peter@pattakoslaw.com>  
**Sent:** 10/12/2018 at 07:52 AM  
**To:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>, Stephen P. Griffin <sgriffin@griff-law.com>  
**Cc:** Joshua Cohen <jcohen@crklaw.com>, James M. Popson <jpopson@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, <jcasey@dlcfirm.com>

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.

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

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**

**Attorney | Cleveland Managing Partner**

**Tom.Mannion@lewisbrisbois.com**

**T: 216.344.9467 F: 216.344.9421 M: 216.870.3780**

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