IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, v. KISLING, NESTICO & REDICK, LLC, et al. Defendants.	Case No.: CV-2016-09-3928 Judge James Brogan **KNR DEFENDANTS' MOTION TO COMPEL DEPOSITION OF ROBERT HORTON, ESQ. AND RESPONSE TO PLAINTIFFS' MOTION FOR A PROTECTIVE ORDER**

Only one question remains for the Court to answer re: these depositions[1]: Is Plaintiffs' Attorney permitted to be the first attorney to ask questions at the discovery deposition of his own "star" witness, Robert Horton, even though the deposition was properly noticed by opposing counsel over a year ago? Plaintiffs' counsel claims entitlement because he issued a subpoena "last fall" and has been trying to schedule the deposition "for months." The reality is the Defendants have the true entitlement under the Ohio Rules of Civil Procedure because:

1. The Defendants have been attempting to obtain Mr. Horton's deposition not "for months", but for OVER A YEAR (15 months compared to Plaintiffs' 3 months);

2. The Defendants filed and served their first Notice of Deposition to Mr. Horton not "last fall" but TWO falls ago, on October 19, 2017;

3. The Defendants issued 2 more Notices of Deposition for Mr. Horton before Plaintiffs issued anything concerning his deposition;

4. This is the Plaintiffs' "key" witness, the individual who secretly met with Plaintiffs' counsel in excess of 10 times, providing him the confidential KNR documents and verbal information that are being misused to fuel this lawsuit; and

5. Defendants have a right to Horton's actual deposition testimony in this case, as opposed to Plaintiffs' counsel's various renditions of Horton's "expected" testimony.

[1]No other issues remain regarding the depositions of Attorneys Horton and Petti. Defendants, in the interests of narrowing the issues and moving forward, have conceded on all of Plaintiffs' counsel's other requests regarding scheduling, timing, and order of questioning, regardless of the unreasonable nature of the requests.

The Plaintiffs' request is tantamount to the KNR Defendants requesting to ask questions first of KNR's own 30(b) representative at a discovery deposition noticed by the Plaintiffs. The Court would never give in to such a request, and Defendants respectfully maintain the Court should not allow Plaintiffs' equally unreasonable request either.

The Defendants have provided great deference to Plaintiffs' counsel in the timing and order of witnesses. Defendants' counsel even offered an olive branch on the questioning of Mr. Horton, agreeing to turn over questioning to Plaintiffs' counsel after the first hour of deposition, regardless of whether Defendants' counsel was finished or not. Yet, Plaintiffs' Counsel still refuses to honor the Defendants' Notice of Deposition. This is yet another attempt by Plaintiffs' counsel to circumvent the Ohio Rules of Civil Procedure, which he does not believe apply to Plaintiffs.[2] Defendants respectfully maintain that it is time for the Court to say: Enough is enough, Mr. Pattakos, the rules apply to both sides.

Plaintiffs' counsel has repeatedly referred to Attorney Horton as the Plaintiffs' "key" or "star" witness. Plaintiffs' counsel has stated on multiple occasions that Plaintiffs' allegations are based primarily on confidential KNR documents and verbal information provided by Attorney Horton, the witness upon whom the Plaintiffs base their case. The Defendants have a right to avail themselves to Civil Rule 30 to depose this witness, and, in fact have been attempting to do exactly that for more than 15 months.

[2]For example, Plaintiffs previously: a) refused to comply with a Notice of Deposition Duces Tecum on the grounds the Notice "was not a thing" under Ohio law; b) refused to answer "contention interrogatories" on the grounds they are improper at this stage of litigation. Of course, the Ohio Civil Rules expressly allow both discovery vehicles (and even prohibit objecting based on a discovery request referencing a "contention" of the parties); c) misuses his subpoena power to schedule private interviews.

A chronology of the Defendants' formal attempts at deposing Mr. Horton is as follows (See Exhibits "A" through "E"):

1. October 19, 2017: KNR filed Notice of Deposition of Robert Horton
2. October 5, 2018: KNR filed Notice of Deposition of Robert Horton
2. October 11, 2018: KNR filed Amended Notice of Deposition of Horton
3. January 4, 2019: KNR filed a Notice of Deposition of Robert Horton
4. January 8, 2019: KNR filed Amended Notice of Deposition of Horton

While Plaintiffs' counsel has continuously stonewalled and delayed Mr. Horton's deposition, the parties have now agreed on February 25, 2019, for the deposition date. However, Plaintiffs' counsel STILL REFUSES to let the deposition go forward unless he is permitted to question the witness first, which is why court intervention has become necessary.

Even more perplexing than the deposition request is Plaintiffs' misrepresentation to this Court that Defendants' Notice of Deposition is an attempt to "silence" the witness. This argument is preposterous. A Notice of Deposition is the opposite of attempting to "silence" a witness; it's a proactive attempt to un-silence a witness. The Defendants' Notice of Deposition is an attempt to obtain Attorney Horton's ACTUAL TESTIMONY, as opposed to the "expected testimony" of Horton used by Plaintiffs' counsel in pleadings and oral argument.

Plaintiffs' accusation that Defendants' Notice of Deposition is an attempt to "silence" Attorney Horton is similar to the many defamatory and false witness tampering accusations he has leveled against Defendants' counsel for well over a year. Attorney Pattakos has made these false allegations to sitting judges on this case, to other Defendants' counsel, to court reporters, to the media, and to anyone and everyone who will listen. Even more troubling, Attorney Pattakos

continues to make these baseless accusations despite being advised multiple times by Attorney Horton's personal attorney that absolutely zero witness tampering occurred.

The Defendants have a right to defend themselves against the very serious and false allegations levied against them by the Plaintiffs. Obtaining the deposition of the Plaintiffs' primary fact witness is crucial to that defense, and the Defendants have a right to question Mr. Horton first pursuant to their validly issued Notice of Deposition.

Accordingly, the Defendants respectfully request an Order from this Honorable Court allowing the deposition to proceed as noticed by the Defendants, with Defendants' counsel asking questions of the witness first. This Motion is supported by the Ohio Rules of Civil Procedure, various affidavits and exhibits, and the attached Memorandum in Support, which are incorporated herein by reference.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. FACTS CONCERNING

Plaintiffs' counsel claims this class action lawsuit is supported by confidential KNR documents and other information provided to him by former KNR attorney, Robert Horton, Esq.[3] Accordingly, the Defendants have been attempting to obtain Mr. Horton's deposition for over a year in this case, issuing five Notices of Deposition in an attempt to procure the testimony. The current Motion was necessitated only because of Plaintiffs' counsel's refusal to abide by the Ohio Rules of Civil Procedure and refusal to honor valid Notices of Deposition.

A. Plaintiffs' Counsel Champions Attorney Horton as Plaintiffs' Key Witness

The Plaintiffs admit their claims are based primarily on information provided by ex-KNR attorney Robert Horton and therefore hold Attorney Horton out as their "key" witness:

1. November 11, 2016: Plaintiffs identified Horton as Plainitffs' "key" witness in Plaintiffs' Reply in Support of Motion for Protective Order;

[3]The documents themselves are not incriminating and do not support Plaintiffs' various claims. However, Plaintiffs' counsel distorts the meaning of these documents by making nefarious inference upon nefarious inference. Plaintiffs' counsel further claims his inferences will be supported by the testimony of Attorney Horton. For example, the Class C Plaintiffs claim Attorney Nestico had an ownership interest in Liberty Capital because:

1. An internal KNR email stated Liberty Capital should be used if a client wanted a cash advance or "loan." The email makes no mention of ownership interest. But Plaintiffs' counsel infers: Nestico wanted lawyers to use Liberty Capital, therefore Nestico had an ownership interest in Liberty Capital; and

2. According to Plaintiffs' counsel, Attorney Horton will testify as to rumors that "attorneys inside KNR who were very concerned about the relationship with Liberty Capital." (See Exhibit "I", transcript of hearing before Judge Cosgrove).

The above is absolutely insufficient to establish an ownership interest in Liberty Capital. It would be improper to even allow Plaintiffs' counsel to argue such inferences and innuendo to a jury. Moreover, Plaintiffs have refused to answer discovery on this issue, and thus have never identified these "attorneys inside KNR" or the purported concerns of these attorneys. This is one of the reasons the Defendants want to depose Attorney Horton, to flush out the rumors Attorney Pattakos has attributed to Attorney Horton on this topic. As the court may also be aware, the owner of Liberty Capital has testified via affidavit that Attorney Nestico has no ownership interest in the company. (See Exhibit "L").

2. April 5, 2017: At a hearing before Judge Alison Breaux, Attorney Pattakos represented in open court that it would take a "really long time" to review every document Mr. Horton took from KNR because it would be a "huge amount of documents". Plaintiffs' counsel further represented:

> What I understand, what I can represent on the record is that Mr. Horton has his hard drive from when he left KNR. He has his e-mails from when he left KNR, and I did not think that was a secret.
>
> And contained in these documents are evidence of what we believe is fraud; … (See Exhibit "F", page 22).

At that same hearing, Plaintiffs' counsel represented to the Court:

> The Second Amended Complaint is based on information gathered from witnesses and whistle blowers that came forward in response to the first complaint. And we are going to quote from these documents [taken from KNR by Horton] in that proposed Second Amended Complaint. We will attach the documents to the proposed Second Amended Complaint so that it is inescapable
>
> [W]hat we have learned from Rob Horton at the beginning was just the tip of the iceberg of the number of fraudulent, corrupt kickback schemes in which this firm is involved. (Id. at p. 69).

3. October 19, 2017: Attorney Pattakos stated he had "many conversations with Horton that support the claims in our lawsuit."

4. January 5, 2018: In a hearing before Judge Cosgrove, Plaintiffs' counsel admitted Plaintiffs' information relating to the Liberty Capital claims came from his interview of Mr. Horton (See Exhibit "G" at page 65):

> And we have reason to believe, based on what Mr. Horton has told us, that there were attorneys inside KNR who were very concerned about the relationship with Liberty Capital.

5. February 23, 2018: In the Plaintiffs' Motion for Protective Order and Opposition to Motion to Compel, Attorney Pattakos referenced Attorney Horton as "Plaintiffs' key witness Rob Horton". Attorney Pattakos went on to represent in that pleading:

> Plaintiffs have repeatedly represented to Defendants that the only responsive documents in their possession are a few hundred pages that were provided to Plaintiffs, as evidence of Defendants' fraudulent self-dealing, by former KNR attorneys Robert Horton and Gary Petti.

6. February 28, 2018: In the Plaintiffs' Motion to Compel Discovery, Attorney Pattakos further states that the allegations in the Complaint are **"based"** (emphasis added) on the "documents and other information" provided by former KNR Attorneys Horton and Petti (with Horton giving most of the information, per other representations).

7. April 11, 2018: In Plaintiffs' Reply in Support of Plaintiffs' Motion to Compel, Plaintiffs referred to KNR's Complaint against Attorney Horton as a "strike suit" and again identified him as "key witness Rob Horton".

The Defendants have every right to depose the "key" witness whom Plaintiffs' counsel concedes provided Plaintiffs most of their "evidence."

B. Defendants' Multiple Attempts to Depose Attorney Horton

1. October 19, 2017: Defendants' First Notice of Deposition of Horton

The deposition of Mr. Horton was first noticed on October 19, 2017 (See Notice of Deposition, attached hereto as Exhibit "A"). Counsel for KNR served Plaintiffs' counsel via the Court's electronic delivery system AND send a separate email that same day, attaching the Notice and advising as follows (Exhibit "H"):

> Attached please find a Notice of Deposition of Robert Horton, Esq., for Thursday, October 26, 2017, at 10 a.m. at the offices of Thomas Skidmore. We would ask Attorney Skidmore if he would produce Mr. Horton without need for a subpoena. In addition, we obviously do not know if this date works for Mr. Skidmore, Plaintiff's counsel, or Mr. Horton. Thus, the Notice is really for a mutually convenient time, and we will circulate dates for everyone to see which dates work. Thank you for your attention to this matter.

Attorney Pattakos essentially forced the deposition to be delayed, however, by telling Attorney Horton's counsel that he would only agree to the deposition if Horton agreed to be deposed later in the litigation as well:

> This is in response to Mr. Mannion's letter of yesterday regarding the notice and scheduling of Mr. Horton's deposition. If Mr. Mannion is in a hurry to take Mr. Horton's deposition before we have a fair chance to complete documentary discovery, we have no objection to that, provided that we'll be permitted to reopen the deposition once documentary discovery is substantially complete.

In response, counsel for KNR advised Plaintiffs' counsel and Attorney Horton's counsel that, while Defendants wanted the deposition to proceed, the Defendants will "continue to abide by our offer to have the deposition take place at a 'mutually convenient' date and time." (See Exhibit "H"). Rather than provide proposed dates, however Attorney Pattakos refused to take "any position as to exactly when" Mr. Horton's deposition could proceed.

While counsel for Defendants did not agree with the reasoning of Plaintiffs' counsel, counsel for Defendants agreed to schedule the deposition when it could be completed in one sitting (See Exhibit "I") and eventually also agreed to complete the deposition after Mr. Nestico's deposition:

> Out of consideration for Attorneys Skidmore and Horton, we have agreed to schedule the deposition at a time where hopefully it can be completed in one sitting. And, when the deposition was initially noticed, like you did with your Notice of Deposition, we indicated that the deposition would only go forward at a "mutually convenient" date and time. Of course, that was out of consideration for all involved, including yourself, and to comply with both the rules and the intent of the Civil Rules.
>
> We look forward to hearing your explanations and would suggest a date/time to discuss this next week to hopefully work out our differences amicably.

Again, in deference to Plaintiffs' requests, Defendants waited for nearly a year before re-noticing the deposition of Mr. Horton, because it took Attorney Pattakos that long to agree to go forward with the deposition.

2. Fall, 2018: Defendants' Additional Notices of Deposition of Horton

a. October 5, 2018: Defendants' Notice of Deposition of Horton

The Defendants filed and served another Notice of Deposition of Attorney Robert Horton on October 5, 2018 (See Exhibit "B"). The deposition was set for November 2, 2018. After the Notice was issued, Plaintiffs' counsel claimed he was no longer available on this date (despite previously stating he was available).

b. October 11, 2018: Defendants' Notice of Deposition of Horton

On October 11, 2018, Attorneys Mannion, Pattakos, and Skidmore (Horton's counsel) participated in a phone call and agreed upon November 26, 2018, as a mutually convenient date for Mr. Horton's deposition. Rather than simply rely on the prior Notice of Deposition, however, Defendants filed and served another Notice of Deposition that same day, noticing Mr. Horton for the date agreed upon. (See Exhibit "C").

c. Attorney Horton's Deposition Continued at Mutual Request

After a two-day deposition of KNR employee Brandy Gobrogge, which began October 16, 2018, Attorney Mannion and Attorney Pattakos met in person to discuss various discovery issues and the upcoming mediation in federal court. At that meeting, both counsel MUTUALLY AGREED to move depositions and discovery for one month (pending the Court's approval, of course). On November 1, 2018, shortly after this agreement on a 30-day continuance was formalized in a Joint Motion, Attorney Mannion sent correspondence to Attorney Horton's counsel (with a copy to Attorney Pattakos), advising him of the continuation and requesting additional dates for Attorney Horton's deposition (See Exhibit "J"):

> Peter and I agreed to 30-day extension and moving depositions. We had tentative, then it was off, now we've filed stipulated motion with Court. Peter wants to take Mr. Nestico before Mr. Horton. We might be looking at December/January for Mr. Horton now. I have trial 12/3 and 12/10, so it will have to be after that.

The following day, Attorney Pattakos acknowledged the continuance (See Exhibit "J"):

> Confirming Tom's message below but would add that we probably will not be ready to proceed with Mr. Horton until the second half of January at the earliest. Can you please send us some dates in that timeframe that would work?

3. January, 2019: Defendants' Additional Notices of Deposition

On January 4, 2019, the Defendants filed and served another Notice of Deposition of Robert Horton, for January 23, 2019. (See Exhibit "D"). This date was picked because it was the date Attorney Pattakos had indicated he was available, and Attorney Pattakos had mailed a subpoena to Horton's counsel listing this as the date of the deposition. After Defendants' issued the Notice, Attorney Pattakos stated he would no longer agree to this date.[4]

In an attempt to find a mutually convenient date, Attorney Mannion recommended February 8, 2019, as Attorneys Pattakos, Skidmore, and Horton had previously indicated they were available that day. Accordingly, Attorney Mannion inquired as to whether that date was still available. In response, Attorney Pattakos wrote to Attorney Skidmore advising he would file a Motion for Protective Order if the deposition went forward as indicated by Attorney Mannion. However, such a threat was absolutely uncalled for, as Attorney Mannion was attempting to obtain mutually convenient dates all along.

On January 8, 2019, Attorney Skidmore advised that Attorney Horton was available for deposition on February 25, 2019. That same day, Defendants filed and served an Amended Notice of Deposition of Mr. Horton, for February 25, 2019, which was a date agreed upon by the witness and all counsel. (See Exhibit "E"). While a subpoena is not necessary for this

[4]Attorney Pattakos' agreement did not matter, though, because counsel for Horton was not available anyway.

deposition, Defendants also issued a subpoena, served on Mr. Horton through his counsel, for the deposition to proceed on February 25, 2019.[5]

4. Plaintiffs have NEVER Filed a Notice of Deposition of Mr. Horton

First, it should be noted the Plaintiffs have NEVER filed or served a Notice of Deposition of Mr. Horton. The only filing by Plaintiff relating to procuring Mr. Horton's attendance at deposition was a subpoena issued in November, 2018, for a deposition on January 23, 2019. Attorney Pattakos never checked availability of the witness or any counsel for that subpoena, did not file or serve a Notice of Deposition, and the deposition never went forward that day. Even more importantly, Attorney Pattakos' subpoena was issued:

a. More than a year after the Defendants' requested Horton's deposition;

b. More than a year after Defendants' first Notice of Deposition of Horton;

c. More than a month after Defendants' second Notice of Deposition of Horton;

d. Nearly a month after Defendants' third Notice of Deposition of Horton.

B. Pattakos Withdrew Plaintiffs' Request to Question Horton First

Last fall, Attorney Pattakos began claiming the Plaintiffs had a right to question Attorney Horton first, despite Defendants' multiple Notices of Deposition. He later withdrew that request on October 22, 2018 (See Exhibit "M"):

[5]The subpoena was issued AND SERVED prior to the Plaintiffs' Motion for Protective Order. Yet, Plaintiffs' counsel represented to this Court that a subpoena had never been issued. This representation is blatantly inaccurate, but Defendants will give Plaintiffs' counsel a benefit of the doubt that he merely forgot about the subpoena being issued.

> If we are clear on the below,[6] I can withdraw my objection to Tom questioning Horton first at his deposition. Please advise.

Attorney Mannion made sure Attorney Pattakos was "clear" on the "below", after which Attorney Pattakos confirmed that Attorney Mannion's assurance was sufficient:

> I just wanted to be clear that relevant questions are fair game (the Rule 26 "reasonably calculated" standard). Thank you for confirming.

Based on the above, Defendants assumed the objection to Defendants asking questions of Attorney first was resolved. Despite withdrawing the objection, Plaintiffs' counsel again refuses to go forward with Attorney Horton's deposition unless he can ask questions first.[7]

II. FACTS REGARDING WITNESS TAMPERING ACCUSATIONS

A. Overview of Horton Affidavit and Accusations of Witness Tampering

On March, 2017, KNR instituted separate litigation to enforce Attorney Horton's Confidentiality Agreement with KNR and to prevent him from further disseminating confidential and privileged documents. The case was eventually resolved, and KNR and Attorney Horton

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[6]The "below" is referenced earlier in the email chain, wherein Attorney Pattakos stated:

> Before we proceed with Mr. Horton's deposition, I want everyone to be clear that he is free to testify without any fear of reprisal by way of a lawsuit for violating his confidentiality agreement with KNR.

Attorney Mannion replied immediately, stating:

> First, I am not sure how this issue impacts the order of questioning. Second, my client has zero intention of instilling a "fear of reprisal" in Mr. Horton. Third, regarding whether his testimony would violate any agreement, I think we generally agree with you on the issue. However, I certainly cannot anticipate every question you will ask. I have no intention of using the deposition to violate any agreement or to bait Mr. Horton into violating any agreement. That's the last thing we want. Any relevant questions regarding the issues at hand should be fair game, but I cannot anticipate every question you might ask. If there's a specific topic area you are concerned may violate any agreement, please let me know. Also, it is my understanding that Mr. Skidmore will represent Mr. Horton at the deposition, and I'm sure that he will not allow any testimony that he believes is improper. I'm not trying to be difficult with you on this, I just am a little bit unclear what you're asking. I am copying Mr. Skidmore since this involves his client.

[7]In order to avoid court intervention, Defendants offered to turn over questioning of Mr. Horton after one hour, even if not done with his questioning. Plaintiffs' counsel contemplated and then refused.

entered into a confidential settlement agreement. During the pendency of that case, Attorney Horton executed an affidavit, under oath, regarding his employment at KNR and regarding the various allegations in the Complaint.[8] A copy of the Affidavit was filed in the present case on October 16, 2017, and is attached hereto as Exhibit "K".

At the time he gave sworn testimony on August 8, 2017, Robert Horton was:

a. An attorney licensed by the State of Ohio and subject to Ohio's disciplinary rules;

b. Represented by counsel; and

c. Was under a solemn oath to tell the truth, under penalty of perjury.

Importantly, not only was Attorney Horton represented at all times, Attorney Horton also testified via affidavit that he was truthful and voluntarily provided the affidavit testimony after reviewing it with his attorney. Attorney Horton testified at Paragraph 45 of the Affidavit:

> 45. I have reviewed this affidavit with my attorney and voluntarily agree to provide this affidavit, which is truthful to the best of my knowledge.

Unfortunately for Plaintiffs, Attorney Horton's sworn testimony, under oath, directly contradicts Attorney Pattakos' representations as to the expected testimony from this "star witness" and "whistleblower". Since learning of the affidavit, Attorney Pattakos has systematically and repeatedly leveled untrue accusations against Attorney Mannion. Specifically, Attorney Pattakos has accused Attorney Mannion of intimidating, threatening, and coercing the witness into providing false testimony. This is a serious accusation without any

[8]Unlike Attorney Pattakos, KNR's counsel never once discussed this matter with Attorney Horton outside the presence of his counsel, Thomas Skidmore, Esq. Moreover, Attorney Horton was fully represented by Attorney Skidmore at all times during the KNR vs. Horton litigation, which was eventually resolved pursuant to a Confidential Settlement Agreement. As part of that litigation, Attorney Horton provided sworn testimony via an affidavit, which is attached hereto.

merit and is not taken lightly. Not only has Attorney Pattakos made these untrue accusations to sitting judges in this case, but he has made the witness tampering accusations to the public as well, via Cleveland.Com (the Plain Dealer) and presumably social media. Even more troubling is that Attorney Pattakos continues to make these accusations even though he knows they aren't true (Horton's counsel has told him this multiple times).

Let's make no mistake about these accusations. Attorney Pattakos is claiming Attorney Horton lied under oath and that undersigned counsel coerced, bullied, and intimidated Attorney Horton into providing the false testimony. Attorney Pattakos' accusations should be seen for what they are: an attempt to improperly influence the Court and future fact finders (jurors). These types of accusations should not be tolerated and needs to stop immediately.

B. Attorney Pattakos Accused Attorney Mannion of Witness Tampering before Pattakos even Read the Affidavit

On October 16, 2017, Attorney Mannion handed a copy of Attorney Robert Horton's affidavit to Plaintiffs' counsel during an in-person Status Conference with Judge Breaux. Immediately thereafter, without even reading one word of the affidavit, Attorney Pattakos began making untrue accusations. Attorney Pattakos told Judge Breaux, other court staff in the room, and all counsel that the affidavit was untrue **and** was obtained by intimidation and coercion of the witness. Attorney Pattakos made this accusation without reading the affidavit and without regard to the truth or falsity of the accusations. At the hearing of Judge Breaux even stated to Mr. Pattakos (see Exhibit "T").

> THE COURT: You haven't even reviewed the document. Don't jump to conclusions either.

C. Attorney Pattakos Made the Untrue Ethical Accusations Public via an Interview with Cleveland.Com

The day following the improper accusations made to Judge Breaux re: KNR's counsel, Attorney Pattakos took his improper conduct a step further and made the accusations public, including the very community from which a jury will be selected in this case. On October 17, 2017, Attorney Pattakos was interviewed by his friend, Cleveland.Com reporter Eric Heisig, regarding Attorney Horton's affidavit. As reported by Cleveland.Com (the Plain Dealer) in an article by Mr. Heisig (See Exhibit "S"):

> Pattakos said in an interview Tuesday that the lawsuit against Horton and the affidavit "is the product of KNR's effort to intimidate and bully him." He said the affidavit was "carefully worded" and that Horton will testify in court that the allegations described in the lawsuit are true.

According to its web site, Cleveland.Com has 9.9 million unique readers each month. And the Plain Dealer has the largest newspaper circulation in Ohio.

D. Attorney Pattakos Refuses to Retract the Untrue Ethical Violations

On October 18, 2017, the day after the Cleveland.com article and two days after the Status Conference with Judge Breaux, Attorney Mannion requested Attorney Pattakos retract his untrue ethical accusations (See Exhibit "M"):

> Please immediately retract the misrepresentations you made to Judge Breaux and Cleveland.com re: the Affidavit of Rob Horton. Not only are your allegations outright false, they were made recklessly. You made the false allegations to the Court even before you read the Affidavit. And you made the false allegations to Cleveland.com without any proof of the truth or falsity of the allegations. Please immediately retract the misrepresentations to the Court and to Cleveland.com.

Rather than retract the untrue public accusations, Attorney Pattakos dug his heels in and continued to make the same accusations. Incredibly, Attorney Pattakos admitted he did not even read the affidavit before throwing out his very serious accusations. Nor did he even attempt to

confirm his personal opinion by discussing the affidavit with Attorney Horton's counsel. Rather, he simply hid behind claimed "protected speech."

Attorney Pattakos' response included the following statements (See Exhibit "M):

> … I did not need to see Horton's affidavit to know that it was a product of your abusive tactics, intended to mislead the Court and deflect from your client's unlawful conduct. …
>
> And while I can only imagine what purpose you have in sending your email demanding that I retract protected speech, I can assure you that if it's to support a legal filing demanding the same, I will pursue and will surely be entitled to sanctions for that as well.

Despite Attorney Pattakos' attempt to hide behind his First Amendment Rights of freedom of speech, not all speech is "protected" in the professional context. Attorneys do not have *carte blanche* authority to make public accusations of ethical misconduct in order to gain an advantage with a Court or jury, especially without any proof that any ethical misconduct occurred. In this case, the accusations are even worse, because the witness and counsel for the witness both refute Attorney Pattakos' accusations of witness tampering. Even as an individual, despite any First Amendment rights, Attorney Pattakos false accusations to the media constitute slander and defamation. More importantly, as an attorney representing the Plaintiffs in this case, untrue accusations of ethical misconduct to the public are certainly not permitted under Ohio law controlling the conduct of attorneys in civil litigation.

E. Attorney Horton's Personal Counsel Refutes Pattakos' Accusations

Later that same day, October 18, 2017, Attorney Mannion learned that counsel for Attorney Horton advised Cleveland.com the affidavit was truthful and was not a result of either intimidation or coercion. Cleveland.Com contacted Attorney Skidmore for comment the day after the article was published. Attorney Skidmore told the reporter that "the affidavit was truthful" and was "not coerced or obtained through intimidation." (Cleveland.Com did not

report Attorney Skidmore's comments). Accordingly, Attorney Mannion advised Attorney Pattakos (See Exhibit "M"):

> He [Horton] stands by the entire affidavit. Because it is the truth. You had no basis to say I intimidated a witness. He was represented. He signed under oath. It was the truth. You should redact [sic, should be retract].

Attorney Pattakos, of course, simply responded with more accusations, claiming Attorney Mannion put "words into [Horton's] mouth" (See Exhibit "M"):

> If you're going to purport to speak for Horton and what he "stands by," you should notice an appearance on his behalf. You've already put enough words into his mouth with the affidavit so why stop now, right?

Of course, Attorney Pattakos forgets he purported to "speak for Horton" and what Horton "stands by" when he told Cleveland.com: "Horton will testify in court that the allegations described in the lawsuit are true." Attorney Mannion, on the other hand, was only advising Attorney Pattakos what Attorney Horton's personal counsel had told him (See Exhibit "M"):

> I am not talking for Horton. I am relaying what his counsel told the newspaper reporter. That's all.

The following day, October 19, 2017, Attorney Thomas Skidmore, counsel for Attorney Horton, advised Attorney Pattakos his accusations were untrue (See Exhibit "N"):

> I still represent Mr. Horton. He is an excellent lawyer. Mr. Horton was not intimidated or bullied by Attorney Mannion in the litigation that was filed against him. To say otherwise is untrue. His case was amicably resolved to Mr. Horton's satisfaction. Should it be determined that the parties would like to conduct his deposition or call him as a witness to testify in the Member Williams case, I am instructing you both that arrangements should be made through my office exclusively.

Based on Attorney Skidmore's confirmation that the affidavit was not obtained improperly and that "to say otherwise is untrue," Attorney Mannion again requested Attorney Pattakos to retract his untrue ethical accusations (See Exhibit "O"):

As you know, Mr. Skidmore was involved first-hand in the Affidavit process. You were not. Mr. Skidmore confirmed the following to you in writing:

I still represent Mr. Horton. He is an excellent lawyer. Mr. Horton was not intimidated or bullied by Attorney Mannion in the litigation that was filed against him. To say otherwise is untrue. His case was amicably resolved to Mr. Horton's satisfaction. Should it be determined that

Three attorneys were involved in the Affidavit, and three attorneys confirm that your statements re: the Affidavit are and were untrue:

1. Affiant Robert Horton, Esq.

   Attorney Horton raised his right hand, swore under oath to tell the truth, and then signed his Affidavit under penalty of perjury. He has sworn under oath to the statements in his Affidavit. Moreover, through counsel, he has stated that he stands by the testimony in the Affidavit.

2. Affiant's Counsel, Thomas Skidmore, Esq.

   Mr. Skidmore is an experienced, well-respected attorney who represents Mr. Horton now and who represented Mr. Horton throughout the Affidavit process. Mr. Skidmore confirmed to you, in writing that your statements to Cleveland.com were inaccurate. He expressly advised you: "Mr. Horton was not intimidated or bullied by Attorney Mannion in the litigation that was filed against him. To say otherwise is untrue."

3. KNR's counsel, Thomas P. Mannion, Esq.

   While you may be free to disagree with me, Attorneys Horton and Skidmore have spoken clearly and unequivocally on this issue. Your unsubstantiated "opinion" does not give you the right to lodge serious ethical allegations against me to Judge Breaux and to Cleveland.com (and thus, the public). I have been patiently waiting for a retraction, at which time I will let this go as a "heat of the moment" outburst. However, I again request that you immediately retract your statements to both Judge Breaux and Cleveland.com, especially in light of confirmation from Rob Horton's counsel.

Rather than retract, Attorney Pattakos continued with his rather bizarre accusations and even suggested Attorney Horton violated his settlement agreement with KNR: (See Exhibit "O"):

> I have had many conversations with Horton that support the claims in our lawsuit **as well as the notion that you intimidated him into executing the affidavit.** (Emphasis added).

Attorney Pattakos claimed he was told by Attorney Horton that KNR's counsel intimidated him into executing the affidavit. This claim, if true, could have serious repercussions to Attorney Horton, who would be admitting to lying under oath and would be potentially violating a settlement agreement. Again, though, the accusations made by Attorney Pattakos are not based on any actual evidence or any legitimate inference. To the contrary, the witness's own attorney told Attorney Pattakos that the witness was not intimidated.

Almost a year to the day later, on October 22, 2018, Attorney Pattakos again started with accusations of witness intimidation and tampering. Specifically, he alleged Attorney Mannion's Notice of Deposition, which would permit Attorney Mannion to question Attorney Horton first at deposition, somehow was another intimidation tactic. In Attorney Pattakos' mind, if KNR's counsel questions Attorney Horton first at deposition, it would only be an attempt to influence his testimony and essentially "silence" Attorney Horton. After hearing this false accusation, Attorney Skidmore confirmed again to Attorney Pattakos (See Exhibit "P"):

> … The deposition of Mr. Horton will be conducted in accordance with the Ohio Rules of Civil Procedure. **He has not been intimidated by anyone and any inference of such is without merit.** (Emphasis added).

Despite yet another confirmation by Horton's counsel that the affidavit was voluntary, Attorney Pattakos continues to make these baseless accusations.

F. Plaintiffs' Counsel's Intimidation Tactics

The true intimidation tactics and abuse of the Civil Rules rests with Attorney Pattakos, whose unclean hands should prevent him from leveling accusations against others.

1. Refusing to Allow a Pre-Planned Break for Pumping Breast Milk

Prior to the deposition of Brandy Gobrogge, Plaintiffs' counsel was advised she needed availability of a room to pump breast milk for her baby at home and that appropriate breaks would be needed during the deposition for Ms. Gobrogge to complete pumping. At approximately 10 a.m. on the second day of Ms. Gobrogge's deposition, counsel reminded Attorney Pattakos of the need for milk pumping breaks and indicated a break would be needed in about an hour (See Gobrogge deposition at page 183, lines 4 -14):

> Mr. Mannion: Before you ask the next question, just timing wise, I wanted to let you know as far as the personal issue, probably close to 11:00, if we can get that far before we take a break, is when she'll need a break for the personal issue –
>
> Mr. Pattakos: Okay.
>
> Mr. Mannion: --Just wanted to let you know timing wise.
>
> Mr. Pattakos: That's fine. Thanks.

At 11 a.m., BEFORE Mr. Pattakos had a question pending, Mr. Mannion reminded him:

> "By the way, before you ask another question, we have to take the break. No [to Peter shaking his head no to a break]. We have to. It's 11:00. I told you this 50 minutes ago.

Mr. Pattakos refused. He argued a question was pending when it was not. Nevertheless, Mr. Mannion volunteered he would not talk to the witness on the break. Mr. Pattakos still attempted to keep asking questions. Despite the prior notice of the need for a personal break and the lack of pending question, Defendants' counsel conceded and allowed Attorney Pattakos to ask another question. He did. Ms. Gobrogge answered. Rather than stop, Pattakos asked another question. Ms. Gobrogge answered. Rather than stop, Attorney Pattakos asked another question. Ms. Gobrogge answered. Then, Attorney Pattakos attempted to ask yet another question, and

undersigned counsel stopped him before the question was out so that Ms. Gobrogge could take her personal break.

Attorney Pattakos' behavior is replete with raised accusations, facial expressions of displeasure, and various other histrionics. Histrionics are one thing. But what he did to Ms. Gobrogge went far beyond such behavior. She is a fact witness who was in the second day of deposition and all counsel, including Attorney Pattakos, had agreed she could take a break to pump breast milk. Defendants even gave Attorney Pattakos ANOTHER hour notice before the break in question. And yet he continued to try to force Ms. Gobrogge to answer questions when she was told she would have a break for breast milk pumping – and he did it in a disruptive manner – while making belittling statements about Ms. Gobrogge to her and all in the conference room:

a. She doesn't need to stop right now. [As if Attorney Pattakos is the authority on when a woman needs a break to pump breast milk];

b. Accused the witness of potentially using the break to "look at her phone" or "She could do anything" to get answers to his questions elsewhere. [A question was not pending anyway].

c. Accusing her of needing a break so her attorney could "sort out [her] testimony."

d. Accused the witness of inconsistent testimony and, in essence, purposely pretending not to understand questions;

e. Accused the witness's attorney of "really not liking" her testimony.

All of these comments were made with everyone in the conference room and in just the few minutes between the time Ms. Gobrogge tried to leave at the pre-planned time to pump

breast milk until the time she was allowed to leave. These comments and refusing to allow a pre-planned break of a personal nature were all done as intimidation tactics.

2. Accusing the Witness of Perjury and the Court's Perjury "Concern"

Even worse than not allowing the breast milk pumping break, Attorney Pattakos then accused Ms. Gobrogge of "lying her ass off" to protect her employer. (See Gobrogge deposition, p. 430-432). He said this loud enough for all in the room and Ms. Gobrogge to hear. When asked what was said as the break ensued, Attorney Reagan confirmed on the record (and Attorney Pattakos never denied saying) the following:

> Mr. Pattakos telling someone in the room that the witness is lying her ass off where the witness could hear it and I could hear it.

Mr. Pattakos then, in front of the witness, essentially mocked Ms. Gobrogge's need to pump breast milk despite the prior agreement for the break, saying Attorney Mannion dragged her out of the room and that she didn't need a break. We reminded him she did need a break and told him 50 minutes beforehand the exact time of the break.

Attorney Pattakos made it worse by alleging in front of the witness, on the record, that Ms. Gobrogge was committing perjury, that perjury would be talked about with Your Honor, Judge Brogan, and that Judge Brogan already had a "concern" with perjury as it related to Mr. Nestico. These statements were pure harassment and intimidation. In fact, these were as close as it gets to, and may have even crossed over the border of, threating criminal charges against a witness in a civil case: (See page 432-433 of Brandy Gobrogge deposition).

> Mr. Mannion: Yeah, do not call my witnesses liars to anybody.
>
> Mr. Pattakos: Tom, my private conversations with my associate are between me and my associate. I'm sorry –
>
> Mr. Mannion: It's not a private conversation, when my witness can hear you.

> Mr. Pattakos: Well, if your witness would just tell the truth instead of trying to cover up for her employer, we wouldn't have these issues.
>
> Mr. Mannion [to the witness]: You can ignore that comment. Yeah, he's accusing you of perjury to cover up. Why? Because he's –
>
> Mr. Pattakos: We'll talk about it.
>
> Mr. Mannion: --trying to threaten you. He's trying to threaten you.
>
> Mr. Pattakos: We'll talk about – we'll talk about that later. We'll talk about perjury later. I know Judge Brogan said on the phone call – he mentioned the word, "Perjury," four times when it came to Mr. Nestico's testimony, so it's certainly a concern of the Court.

3. Reading Perjury Statute to Dr. Gunning

Dr. Gunning was represented by counsel and sworn under oath at the beginning of the deposition. However, after obtaining some testimony he didn't like, Attorney Pattakos then began essentially accusing Dr. Gunning of perjury and letting him know perjury was a felony. Then, after being told by Dr. Gunning's counsel that Dr. Gunning understood he was under oath, he continued by attempting to read the statute. See, for example, pages 37-39 of Dr. Gunning's deposition transcript:

> Q. Are you aware, Dr. Gunning, that perjury is a felony?
>
> Mr. Barmen: Objection.
>
> Mr. Mannion: Objection.
>
> A. Yes.
>
> Mr. Mannion: Peter, stop trying to intimidate the witness.
>
> Mr. Pattakos: I'm concerned…
>
> Mr. Mannion: You've raised your voice. You're threatening criminal action now.

> Mr. Pattakos: I'm just concerned at this point about the perjury –I'm concerned about knowingly false statements being entered into these proceedings.
>
> Q. I'm going to read the perjury statute: "No person in…"
>
> Mr. Barmen: .. Peter, can you ask your questions? He'll give you answers and we'll move on, but stop the grandstanding, stop the garbage, stop the intimidation. He understands he's under oath. Ask you questions.
>
> Q. Dr. Gunning, do you understand that Ohio Revised Code Section 2921.11…--provides that –-"No person, in any official" – proceeding… shall knowing make a false statement under oath or affirmation or knowingly sear or affirm the truth…"
> {interspersed with objections]

4. Misuse of Subpoena Power; Attempt to Induce Dr. Fonner to Breach a Confidentiality and Non-Disparagement Agreement

Dr. Fonner was subpoenaed by Attorney Pattakos to appear on October 23, 2018, for deposition, presumably to inquire into the lawsuit between KNR and Dr. Fonner. The deposition was set to take place at Attorney Pattakos' office, but was canceled. Rather than advise the witness the subpoena no longer compelled his attendance, Attorney Pattakos utilized the subpoena to essentially set up a private interview of Dr. Fonner without any other counsel present. (See Exhibit "U", Affidavit of James Fonner, D.C.). While Dr. Fonner has every right to voluntarily be interviewed by any counsel, counsel cannot use a subpoena to force such a private interview.

Attorney Pattakos did not advise defense counsel that he was unilaterally canceling the deposition until 8:29 a.m. the morning before the 9:00 a.m. deposition. Of course, this unilateral cancelation had the same impact as the priors, causing multiple attorneys to hold an entire day open at the whim of Peter Pattakos for no legitimate reason. Attorney Pattakos obviously knew

before that morning that he was not proceeding with the deposition. Canceling a deposition may be an inconvenience, but Attorney Pattakos' conduct towards the witness is outright egregious.

Attorney Pattakos believes he has no obligation to notify a witness when that witness's obligation to comply with a subpoena is lifted. Because of this, Attorney Pattakos failed to follow the common courtesy – or the requirement of the rules – to notify Dr. Fonner the deposition canceled. Not because Mr. Pattakos forgot. Not because it slipped through the cracks. But because Attorney Pattakos simply thinks the rules don't apply to him.

On November 19, 2018, Attorney Mannion asked Attorney Pattakos whether he notified the witnesses subpoenaed by him for the next several days were told the depositions were off. The corresponding exchange is telling into Attorney Pattakos' blatant disregard for the Civil Rules and his obligations when issuing a subpoena (see correspondence exchange in emails on November 19th and 20th, attached as Exhibit "V"):

> Mannion: Did you let the witnesses set for the next two days know the depositions are off?
>
> Pattakos: Is there a particular reason you are concerned about this? It should be clear to all who need to know that the next deposition Plaintiffs will be taking in this lawsuit is Dr. Gunning's.
>
> Popson: Because you cannot subpoena private interviews. Is there a reason you issued a subpoena, then told me not to attend and left a witness thinking they have a legal obligation to appear?
>
> Pattakos: That is ridiculous. All of the subpoenas I've issued specifically instruct the witness to contact me to confirm a specific date and time and I make all reasonable efforts to communicate with the witnesses. **It is not my responsibility when a witness fails to communicate with me about a subpoena and shows up for a deposition that was never confirmed.** (Emphasis added).

Mannion: If a subpoena is no longer valid because the deposition is off, then you have an absolute duty to notify the witness.

Mannion: Read the very subpoena you issued:

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

It is an obvious undue burden on a person subject to a subpoena for deposition to perform the following activities when the deposition has been canceled:

1) Cancel all activities for an entire day;

2) Lose money from not working that day;

3) Drive hours to the place you were subpoenaed; and

4) Drive hours back from the place you were subpoenaed.

You were responsible for issuance and service of the subpoena and therefore you were required to take reasonable steps to avoid imposing this undue burden on the doctor. While your subpoena indicated the deponent "may" contact you by phone or email, no reason existed for the deponent to do so. You provided a specific date and time for the deposition and the witness knew from the subpoena that sanctions were possible for not showing up at that date and time:

SANCTIONS:

1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

It's one thing to "forget" or have something "slip by." But you are justifying your actions in not notifying witnesses when the subpoena is off and still refuse to tell us whether you notified any of the witnesses for today and tomorrow that the subpoenas are off. This is highly improper conduct and we ask that you immediately cease and desist using your authority as an officer of the Court to issue subpoenas solely to direct witnesses to drive to your place of business so you can interview them. Moreover, if

> that wasn't your purpose, then we ask you immediately cease and desist your practice of failing to tell a witness YOU subpoenaed that his or her attendance is not required if the deposition is not going forward.
>
> Pattakos: I told you that the witnesses are on notice that the depositions are off. Please stop with the crazy emails.

Well, perhaps Attorney Pattakos told the witnesses in November the depositions were off. But he certainly did not tell Dr. Fonner the deposition was off, nor did he think he had an obligation to do so. Rather, he used the subpoena to set up a private interview with Dr. Fonner. Dr. Fonner drove 120 miles from Pataskala, Ohio to Attorney Pattakos' office in Fairlawn, Ohio, because the subpoena threatened sanctions for failure to appear and he had never been told the deposition was off. Certainly defense counsel (who cannot release a witness from another attorneys' subpoena) could not have timely advised Dr. Fonner, as defense did not find out until 31 minutes before the deposition.

Upon arriving at the location and seeing few cars or activity in the law office, Dr. Fonner called Attorney Pattakos' office. An office assistant spoke with Dr. Fonner and then had Attorney Pattakos talk with him, at which time Attorney Pattakos told him to come into the office to talk. Attorney Pattakos then proceed to interview Dr. Fonner, without any other lawyers present, without telling him the subpoena was no longer valid, and in an attempt to obtain confidential information by deceptive means.

Attorney Pattakos inquired into Dr. Fonner's lawsuit with KNR. Dr. Fonner advised he could not talk about it because he was party to a Confidentiality and Non-Disparagement Agreement. Amazingly, Attorney Pattakos told him the confidentiality agreement "did not apply" and he could talk about. Attorney Pattakos was rendering ostensible legal advice in an

attempt to induce Dr. Fonner into breaching his confidential settlement agreement with KNR. (See Exhibit "U").

Attorney Pattakos also "made numerous derogatory comments concerning Rob Nestico."[9] While we cannot prevent Attorney Pattakos from trying to color a third party's opinion of Attorney Nestico, the use of subpoenas for private interviews, refusal to follow the rules, and attempts to induce a breach of a confidentiality agreement should not be tolerated.

5. Threat of Lawsuit to Obtain Information

Plaintiffs' counsel has wrongfully accused chiropractor Philip Tassi, D.C. of being involved in a "narrative fee" scheme, just as he has wrongfully accused the KNR Defendants, Dr. Floros, Dr. Fonner, and others. In an attempt to scare Dr. Tassi into providing information to him, Attorney Pattakos called and left the following voice mail message for Dr. Tassi on September 27, 2018:

> Hi Dr. Tassi, my name is Peter Pattakos, I'm an attorney. You probably know this, I have a lawsuit against KNR, Dr. Floros and now, Dr. Ghoubrial.
>
> I understand you are intimately involved with these guys. I have a client who was charged a narrative fee to you, that was paid to you.
>
> I am, in one respect, I am obliged to name you as a defendant in this lawsuit. On the other hand, I understand that you are less culpable than these other characters and to the extent you are willing to provide me information, I would appreciate the opportunity to hear that information from you and you know, maybe resolve these issues before you get named as a defendant in this lawsuit.
>
> Take a look at my website. Take a look at what's happened in this case. I assume you already know about it. If you'd like to talk my number is 330-285-2998.

[9]Dr. Fonner testified via affidavit: "He asked me about preferred clinics and any deals with KNR, and I told him I don't know anything about that issue and that I don't have any agreements with KNR." This is a witness who was sued by KNR and, if anything, should be adverse. Yet, Dr. Fonner told the truth: no quid pro quo.

> I just want you to know I am open minded about this and how you can provide information to us and get out of this unscathed relatively. So you know, take me at my word, understand I am a man of integrity or not, again, 330-285-2998
>
> Thanks

Undersigned counsel does not represent Dr. Fonner and takes no position as to whether the message above is on the edge of propriety or is actionable. However, it certainly goes to Attorney Pattakos' "unclean hands" when trying to argue Defendants are intimidating Attorney Horton. The only time Defendants' counsel spoke with Attorney Horton, his counsel was present. Plaintiffs' counsel talked with him "many times" without counsel. And yet, somehow Defendants' Notice of Deposition is a tactic to scare the witness into silence? Of course not. As stated above, that is preposterous. Unlike Attorney Pattakos' action, who is willing to threaten a lawsuit if a witness does not provide information.

III. ARGUMENT AND LAW

A. Defendants Properly Noticed Robert Horton's Deposition

1. Defendants Complied with Ohio Civil Rule 30(A) and the Local Rules

The Defendants certainly have the right to take Mr. Horton's deposition, pursuant to the plain language of Ohio Rule of Civil Procedure 30(A). Civil Rule 30(A) controls when depositions upon oral examination may be taken, stating:

> After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination.

The Defendants issued 5 Notices of Deposition, attached hereto as Exhibits "A" through "E". Thus, the Defendants provided proper Notice of the deposition under Rule 30(B)(1), which provides, in pertinent part, as follows:

> A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to

> the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs.

Summit County local rule 17.02 requires parties to confer on scheduling, which was done with respect to Attorney Horton's deposition. In fact, the date, time, and location for the deposition are all agreed upon.

2. A Subpoena was NOT REQUIRED to be Served on Attorney Horton

First, Attorney Horton is under subpoena.[10] Second, and more importantly, the witness is represented by counsel, Attorney Thomas Skidmore, who represented that Attorney Horton will appear at a mutually convenient time for his deposition without the need for a subpoena. Nothing in the Ohio Civil Rules requires a subpoena. Rather Civil Rule 30(A) states attendance of a witness deponent "may" be compelled by a subpoena. The words "may" and "shall" have specific meaning under Ohio law. "May" is permissible; "shall" is mandatory. The Civil Rules use the word "may", meaning the rules do not REQUIRE a subpoena. And, of course, such a requirement would upend civil discovery, as depositions are taken by agreement of the deponent's counsel every work day in Ohio, without the need for a subpoena.

The Plaintiff is unable to cite to a single case in Ohio for the proposition that any of the Defendants' five Notices of Deposition are not valid. Plaintiffs' counsel cites to no flaws in the deposition notices, because there were none. Plaintiffs' counsel cites to no scheduling conflicts, as all counsel in this case, the witness, and counsel for the witness have agreed upon date, time, and location for the deposition.

[10]Attorney Horton's personal counsel accepted service of a subpoena issued by the Defendants for the February 25, 2019, deposition. The subpoena was properly served and Notice of Service was properly filed and served. However, this does not change the fact that the rules do not require a subpoena (especially when the witness has agreed to attend voluntarily and is represented by counsel).

3. Plaintiffs' Counsel cannot Cite ANY Ohio Rules or Law in Support

Since Ohio law does not support him, Plaintiffs' counsel cites to *In re Oxbow Carbon LLC Unitholder Litigation, Ch.* 2017 Del. Ch. LEXIS 135, at ** (July 28, 2017). Plaintiffs' counsel claims this case supports his request to question Mr. Horton first because he has the burden of proof. Such is not the law in Ohio, or Defendants would never have an opportunity to notice a deposition and proceed with questioning first. Moreover, Plaintiffs' counsel reliance on *In re Oxbow* is completely misplaced, and the meaning of the case was completely misrepresented to this Court.

In re Oxbow is an unpublished Memorandum Opinion from a Chancery Court in Delaware regarding the Order of questioning at a hearing when both sides agree a witness will only be called once at trial. The case does not involve deposition testimony at all and has no applicability to Ohio law. If Plaintiffs' counsel wants the Court to adopt *In re Oxbow* as controlling procedural case law in this case, then counsel should consider the impact it would have at the trial of this matter. Under *In re Oxbow,* if Plaintiffs' counsel calls a current KNR owner such as Attorney Nestico as an adverse witness during his case-in-chief, the DEFENDANTS would have a right to complete their direct examination of Mr. Nestico before Plaintiffs' counsel cross-examines him. This has never been the law of Ohio.

The only other case relied upon by Plaintiffs is *In re Convergent Techs. Securities Litigation*, 108 F.R.D. 328 (N.D.Cal.1985). The Plaintiffs represent that this California case, which has never been cited by an Ohio state court ever, stands for the proposition that Defendants' Notice of Deposition "impose[s] an undue burden because Defendants have most of the evidence about their own behavior." To the contrary, the case had absolutely nothing whatsoever to do with the order of questioning witnesses at deposition. In fact, the case has

nothing to do with depositions whatsoever. The case concerns "contention" interrogatories and when they become appropriate during discovery.[11] This case should be absolutely disregarded as wholly inapplicable to the deposition of Attorney Robert Horton.

Moreover, Plaintiffs' counsel knows the above cases do not apply, consistent with numerous email correspondence between undersigned counsel and Attorney Pattakos. Defendants have even stated they would reconsider their position if Attorney Pattakos could provide any Ohio law at all supporting his position (See Exhibit "Q"):

> As expected, you cite no Ohio case law construing the Ohio Civil Rules consistent with your position. Not one. Not even in dicta. Instead, you cite to the Delaware Chancery court. Seriously? At least I can provide you some federal cases. See, for example: Schlien v Wyeth Farms 2012 U.S. Dist. LEXIS 189857 (S.D. Georgia) and *Dargis v. Wyeth, Inc.*, 2012 U.S. Dist. LEXIS 189881 (Dist. Court of Minnesota), which provide that "The first party to serve a valid notice of deposition is entitled to priority of questioning at that deposition." In *Dargis*, the Plaintiff argued it had the right to question Plaintiff's expert first, because the burden of proof belonged to the Plaintiff. However, the Dargis court did not accept that reasoning and stated, "It has long been the custom and practice in Minnesota that the party who first serves a valid notice of deposition 'controls' that deposition" which includes assuming priority in questioning. These are certainly more persuasive than your cases and consistent with the letter and the intent of the Ohio Civil Rules. When my partners doing research told me they found zero Ohio case law supporting your position, I told them you claimed legal support existed so look again. It's just simply so basic under the Ohio Civil Rules that the person noticing the deposition goes first that no one has raised your warped interpretation with Ohio courts. Now, if you have Ohio precedent, and not a Chancery Court in Delaware, please send to me and I will analyze.

[11]California case law is not required to examine "contention" interrogatories under Ohio law. Rather, the Ohio Rules of Civil Procedure expressly address AND ALLOW "contention" interrogatories, as does the case Ohio case law construing these rules. "Contention" interrogatories will be addressed in a separate Motion to Compel, as Plaintiffs continue to rely on this California case in refusing to answer Defendants' "contention" interrogatories despite the clear requirement to do so under the Ohio Rules of Civil Procedure.

> Also, please stop with the baseless allegations. You throw out accusations against me that fly in the face of what the witness and his attorney have told you - and then you ask me to talk in an attempt to resolve things. Perhaps if you refrained from unnecessary and untrue personal attacks, I would be more willing to hop on the phone with you rather than want to talk in person with another lawyer to witness the conversation. Mr. Horton and his attorney, Mr. Skidmore, will both tell you I never once threatened, harassed, or coerced them. Mr. Horton was represented. He was under oath. He told the truth. You wish the truth was different, but he says what he says. Some of his testimony is helpful for your case, and some is good for my case. That's often how it goes with witnesses, especially disgruntled ex-employees. More importantly for this conversation, though, is the fact that Mr. Horton's testimony was provided in a proper fashion and without any coercion. You again attempt to bait me into talking about the merits of the suit against Mr. Horton, but you know there is a confidentiality agreement in place. So, I will again not bite. And you should probably stop claiming Mr. Horton said or did things that could potentially violate that Confidentiality Agreement. For someone who purports to be Mr. Horton's friend, you have done him a huge disfavor by your continued attempts to attribute comments to him that are 180 degrees opposite of his sworn affidavit testimony. You have misled the Courts and the public with those baseless claims. I will assume that those misrepresentations were unintentional and that you were just getting caught up in zealous advocacy. If you are his friend, you will stop using Mr. Horton as a pawn for your own crusade.
>
> Now, can we leave the accusations aside and try to deal with just the discovery issue at hand? If you feel the need, I will let you have the last word. You can respond however you want to this email. You can accuse me of whatever ethical violation you want and call me whatever names you want. I won't respond. I will let you have the last accusation - as long as it means we can move on to the real issue - trying to resolve a discovery dispute without court intervention.

As also sent to Attorney Pattakos concerning this issue (See Exhibit "R"):

> *Anderson's Ohio Personal Injury Litigation Manual 2012 edition*, states that the party that notices the deposition controls the order of questioning, and the manual gives several examples such as:
>
> 1. If the plaintiff demands the examination of a defendant physician, the plaintiff's attorney begins the examination.
>
> 2. If the defendant demands an examination of the plaintiff, defendant's attorney begins the examination.

3. For cases in which the plaintiff notices a deposition of plaintiff's own expert to preserve the testimony for trial, plaintiff begins the questioning.

While not a case and not controlling, *Anderson's Ohio Personal Injury Litigation Manual 2012 edition*, is certainly more persuasive than a Delaware Chancery court case that does not even address the issue.

CONCLUSION

The Defendants have been accused of serious civil violations with an entire lack of evidence other than Plaintiffs' counsel's claim that the Plaintiffs' "key" witness, Robert Horton, will testify to certain substantive matters. The Defendants have a right to depose this witness, and the Defendants have issued 5 valid Notices of Deposition. The Defendants requested and noticed the deposition of Mr. Horton more than a year before Plaintiffs' counsel. The Ohio Rules of Civil Procedure permit Defendants to ask questions of Mr. Horton first at deposition, and Plaintiffs' Motion for a Protective Order should be denied (on substantive grounds regarding Mr. Horton's deposition and "as moot" regarding Mr. Petti's deposition).

Respectfully submitted,

/s/ Thomas P. Mannion
Thomas P. Mannion (0062551)
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Counsel for Defendants, Kisling, Nestico & Redick, LLC, Alberto Nestico, Esq., and Robert Redick, Esq.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was filed electronically with the Court and sent via email to counsel for all parties on this 25th day of January 2019. The parties, through counsel, may also access this document through the Court's electronic docket system.

Respectfully submitted,

/s/ Thomas P. Mannion
Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP

Counsel for Defendants, Kisling, Nestico & Redick, LLC, Alberto Nestico, Esq., and Robert Redick, Esq.

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, v. KISLING, NESTICO & REDICK, LLC, et al. Defendants.	Case No.: CV-2016-09-3928 Judge ALISON BREAUX **DEFENDANTS' NOTICE OF DEPOSITION OF DEFENDANT ROBERT PAUL HORTON, ESQ.**

Now come Defendants Kisling, Nestico & Redick, LLC, et al., by and through undersigned counsel, and hereby give notice, pursuant to the Ohio Rules of Civil Procedure, including but not limited to Civil Rule 30, that Defendants will take the deposition of Defendant, Robert Paul Horton, Esq., as follows:

Date: Thursday, October 26, 2017
Time: 10:00 a.m.
Location: Thomas A. Skidmore Co., L.P.A., One Cascade Plaza, 12th Floor, PNC Center Building, Akron, OH 44308

The deposition will be taken by an official stenographer, videographer, and/or other person authorized by law to administer oaths and will be continued until conclusion.

Respectfully submitted,

/s/ Thomas P. Mannion

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EXHIBIT A

/s/ *James M. Popson*

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2017, a true and correct copy of the foregoing has been electronically filed using the CM/ECF System, and that notice of this filing will be sent to all of the following parties by operation of the Court's electronic filing system. In Parties may access this filing through the Court's system. In addition this Notice of Deposition has been sent electronically to the following:

Thomas A. Skidmore, Esq.
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Akron, OH 44308
thomasskidmore@rrbiznet.com
Counsel for Robert Horton, Esq.

Peter Pattakos, Esq.
Daniel Frech, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.com
dfrech@pattakolaw.com
Counsel for Plaintiffs

Joshua R. Cohen, Esq.
Cohen Rosenthal & Kramer, LLP
The Hoyt Block Building, Suite 400
Cleveland, OH 44113
jcohen@crklaw.com
Counsel for Plaintiffs

/s/ Thomas P. Mannion
Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT A

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, v. KISLING, NESTICO & REDICK, LLC, et al. Defendants.	Case No.: CV-2016-09-3928 Judge James Brogan **DEFENDANTS' NOTICE OF VIDEOTAPED DEPOSITION *DUCES TECUM* OF DEFENDANT ROBERT PAUL HORTON, ESQ.**

Now comes Defendant Kisling, Nestico & Redick, LLC, by and through undersigned counsel, and hereby gives notice, pursuant to Ohio Rules of Civil Procedure, including but not limited to Civil Rule 30, that Defendant will take the videotaped deposition *duces tecum* of Robert Paul Horton, Esq. as follows:

Date:	Friday, November 2, 2018
Time:	9:00 a.m.
Location:	Thomas A. Skidmore Co., L.P.A. One Cascade Plaza, 12th Floor PNC Center Building, Akron, OH 44308

The deposition will be taken by an official stenographer, videographer, and/or other person authorized by law to administer oaths and will be continued until conclusion. The deponent, Robert Paul Horton, Esq., is commanded to bring with him to the deposition the documents and items listed in attached Exhibit "A".

Respectfully Submitted,

/s/ Thomas P. Mannion

Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Tel. 216.344.9422, Fax 216.344.9421
Tom.Mannion@lewisbrisbois.com

Counsel for Defendant Kisling Nestico & Redick, LLC

EXHIBIT B

CERTIFICATE OF SERVICE

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *Notice of Videotaped Deposition Duces Tecum of Robert Horton, Esq.* was filed and served electronically through the Court's electronic docket system. A copy of the foregoing was also served via email correspondence to Thomas Skidmore as counsel for Mr. Horton and to the following counsel for Plaintiffs:

Peter Pattakos, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.com
Counsel for Plaintiffs

Joshua R. Cohen, Esq.
Cohen Rosenthal & Kramer, LLP
The Hoyt Block Building, Suite 400
Cleveland, OH 44113
jcohen@crklaw.com
Counsel for Plaintiffs

/s Thomas P. Mannion
Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT B

EXHIBIT "A"

1. Any and all documents, writings, photographs, screen shots, computer files, electronic correspondence, tape recordings, emails, letters, notes, or any other tangible items relating to any communications Mr. Horton has had with Peter Pattakos, Josh Cohen, or any counsel for Plaintiffs in this matter.

2. Any and all documents, writings, photographs, screen shots, computer files, electronic correspondence, tape recordings, emails, letters, notes, or any other tangible items relating to any communications Mr. Horton has had with Thera Reid, Member Williams, Matthew Johnson, Monique Norris, or Richard Harbour.

3. Any and all documents, writings, photographs, screen shots, computer files, electronic correspondence, tape recordings, emails, letters, notes, or any other tangible items relating to any communications Mr. Horton has had with Gary Petti or any current or former attorney or other employee of KNR relating to Liberty Capital or loans to KNR clients, alleged "kickbacks" from chiropractors or loan companies, investigator's fees, or any of the other allegations against the Defendants in this lawsuit. (A copy of the most current Amended Complaint, which outlines these claims, is being provided to Mr. Horton's counsel, Thomas Skidmore).

4. Any and all documents or other items provided by Mr. Horton to Attorney Peter Pattakos or any other attorney for the Plaintiffs relating to Mr. Horton's employment with KNR, former or current clients of KNR. (Plaintiffs have produced a copy of records claimed to have been provided by Mr. Horton. A copy of those records will be forwarded to Mr. Horton's counsel, as this request does not require Mr. Horton to re-produce those documents. This request only applies to copies of any additional documents or items provided to Plaintiffs' counsel.)

EXHIBIT B

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, v. KISLING, NESTICO & REDICK, LLC, et al. Defendants.	Case No.: CV-2016-09-3928 Judge James Brogan **DEFENDANTS' AMENDED NOTICE OF VIDEOTAPED DEPOSITION DUCES TECUM OF DEFENDANT ROBERT PAUL HORTON**

Now come Defendants Kisling, Nestico & Redick, LLC, by and through undersigned counsel, and hereby gives notice, pursuant to Ohio Rules of Civil Procedure, including but not limited to Civil Rule 30, that Plaintiff will take the videotaped deposition duces tecum of Defendant, Robert Paul Horton, as follows:

Date:	Monday, November 26, 2018
Time:	10:00 a.m.
Location:	Thomas A. Skidmore Co., L.P.A. One Cascade Plaza, 12th Floor PNC Center Building, Akron, OH 44308

The deposition will be taken by an official stenographer, videographer, and/or other person authorized by law to administer oaths and will be continued until conclusion. The deponent, Robert Paul Horton, Esq., is commanded to bring with him to the deposition the documents and items listed in attached Exhibit "A".

Respectfully Submitted,

/s/ Thomas P. Mannion

Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Tel. 216.344.9422
Fax 216.344.9421
Tom.Mannion@lewisbrisbois.com

EXHIBIT C

/s/ James M. Popson
James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

Counsel for Defendants Kisling Nestico & Redick, LLC,
Alberto R. Nestico, and Robert Redick

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *Notice of Deposition Duces Tecum of Robert Horton* was filed electronically and sent via email to the below parties on this 11th day of October 2018. The parties, through counsel, may also access this document through the Court's electronic docket system:

Thomas A. Skidmore, Esq.
Thomas A. Skidmore Co., L.P.A.
One Cascade Plaza, 12th Floor
PNC Center Building
Akron, OH 44308
thomasskidmore@rrbiznet.com
Counsel for Plaintiff

Peter Pattakos, Esq.
Daniel Frech, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.com
dfrech@pattakoslaw.com
Counsel for Plaintiff

Joshua R. Cohen, Esq.
Cohen Rosenthal & Kramer, LLP
The Hoyt Block Building, Suite 400
Cleveland, OH 44113
jcohen@crklaw.com
Counsel for Plaintiff

/s Thomas P. Mannion
Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT C

EXHIBIT "A"

1. Any and all documents, writings, photographs, screen shots, computer files, electronic correspondence, tape recordings, emails, letters, notes, or any other tangible items relating to any communications Mr. Horton has had with Peter Pattakos, Esq., Dean Williams, Joshua R. Cohen, Ellen M. Kramer or Subodh Chandra.

2. Any and all documents, writings, photographs, screen shots, computer files, electronic correspondence, tape recordings, emails, letters, notes, or any other tangible items relating to any communications Mr. Horton has had with Thera Reid, Member Williams, Matthew Johnson, Monique Norris, Naomi Wright, or Richard Harbour.

3. Any and all documents, writings, photographs, screen shots, computer files, electronic correspondence, tape recordings, emails, letters, notes, or any other tangible items relating to any communications Mr. Horton has had with Thera Reid, Member Williams, Matthew Johnson, Monique Norris, Naomi Wright, or Richard Harbour.

4. Any and all documents or other items provided by Mr. Horton to Attorney Peter Pattakos or any other attorney for the Plaintiffs relating to Mr. Horton's employment with KNR, former or current clients of KNR, Mr. Horton's affidavit in KNR v. Horton, the present lawsuit, or the KNR v Horton lawsuit from the date of Mr. Horton's affidavit to the present.

EXHIBIT C

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, v. KISLING, NESTICO & REDICK, LLC, et al. Defendants.	Case No.: CV-2016-09-3928 Judge James Brogan **DEFENDANTS' NOTICE OF VIDEOTAPED DEPOSITION OF DEFENDANT ROBERT PAUL HORTON**

Now come Defendants Kisling, Nestico & Redick, LLC, by and through undersigned counsel, and hereby gives notice, pursuant to Ohio Rules of Civil Procedure, including but not limited to Civil Rule 30, that Plaintiff will take the videotaped deposition of Defendant, Robert Paul Horton, as follows:

Date:	Wednesday, January 23, 2019
Time:	9:00 a.m.
Location:	Thomas A. Skidmore Co., L.P.A. One Cascade Plaza, 12th Floor PNC Center Building, Akron, OH 44308

The deposition will be taken by an official stenographer, videographer, and/or other person authorized by law to administer oaths and will be continued until conclusion.

Respectfully Submitted,

/s/ Thomas P. Mannion
/s/ Thomas P. Mannion
Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Tel. 216.344.9422
Fax 216.344.9421
Tom.Mannion@lewisbrisbois.com

EXHIBIT D

/s/ James M. Popson
James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

Counsel for Defendants Kisling Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick

EXHIBIT D

CERTIFICATE OF SERVICE

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *Notice of Deposition of Robert Horton* was filed electronically and sent via email to the below parties on this 4th day of January, 2019. The parties, through counsel, may also access this document through the Court's electronic docket system:

Thomas A. Skidmore, Esq.
Thomas A. Skidmore Co., L.P.A.
One Cascade Plaza, 12th Floor
PNC Center Building
Akron, OH 44308
thomasskidmore@rrbiznet.com
Counsel for Plaintiff

Peter Pattakos, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.com
dfrech@pattakolaw.com
Counsel for Plaintiff

Joshua R. Cohen, Esq.
Cohen Rosenthal & Kramer, LLP
The Hoyt Block Building, Suite 400
Cleveland, OH 44113
jcohen@crklaw.com
Counsel for Plaintiff

/s Thomas P. Mannion
Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT D

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, v. KISLING, NESTICO & REDICK, LLC, et al. Defendants.	Case No.: CV-2016-09-3928 Judge James Brogan **DEFENDANTS' AMENDED NOTICE OF VIDEOTAPED DEPOSITION OF DEFENDANT ROBERT PAUL HORTON**

Now come Defendants Kisling, Nestico & Redick, LLC, by and through undersigned counsel, and hereby gives notice, pursuant to Ohio Rules of Civil Procedure, including but not limited to Civil Rule 30, that Plaintiff will take the videotaped deposition of Defendant, Robert Paul Horton, as follows:

Date:	Monday, February 25, 2019
Time:	9:00 a.m.
Location:	Thomas A. Skidmore Co., L.P.A. One Cascade Plaza, 12th Floor PNC Center Building, Akron, OH 44308

The deposition will be taken by an official stenographer, videographer, and/or other person authorized by law to administer oaths and will be continued until conclusion.

Respectfully Submitted,

/s/ Thomas P. Mannion
/s/ Thomas P. Mannion
Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Tel. 216.344.9422
Fax 216.344.9421
Tom.Mannion@lewisbrisbois.com

EXHIBIT E

/s/ James M. Popson
James M. Popson (0072773)
Brian E. Roof (0071451)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
Cleveland, OH 44114
(216) 928-2200 phone
(216) 928-4400 facsimile
jpopson@sutter-law.com
broof@sutter-law.com

Counsel for Defendants Kisling Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick

EXHIBIT E

CERTIFICATE OF SERVICE

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *Amended Notice of Deposition of Robert Horton* was filed electronically and sent via email to the below parties on this 8th day of January, 2019. The parties, through counsel, may also access this document through the Court's electronic docket system:

Thomas A. Skidmore, Esq.
Thomas A. Skidmore Co., L.P.A.
One Cascade Plaza, 12th Floor
PNC Center Building
Akron, OH 44308
thomasskidmore@rrbiznet.com
Counsel for Plaintiff

Peter Pattakos, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.com
Counsel for Plaintiff

Joshua R. Cohen, Esq.
Cohen Rosenthal & Kramer, LLP
The Hoyt Block Building, Suite 400
Cleveland, OH 44113
jcohen@crklaw.com
Counsel for Plaintiff

/s Thomas P. Mannion
Thomas P. Mannion (0062551)
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT E

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS,	)	CASE NO. 2016-09-3928
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF PROCEEDINGS
	)	
KISLING, NESTICO & REDICK, LLC.	)	
	)	
Defendant.	)	VOLUME 1 (Of 1 Volume)

- - -

APPEARANCES:

SUBODH CHANDRA, Attorney at Law,
PETER PATTAKOS, Attorney at Law,
DONALD P. SCREEN, Attorney at Law,
on behalf of the Plaintiff.

JAMES M. POPSON, Attorney at Law,
BRIAN E. ROOF, Attorney at Law,
on behalf of the Defendant.

PRESENT:
R. ERIC KENNEDY, Attorney at Law.
THOMAS P. MANNION Attorney at Law.

- - -

BE IT REMEMBERED that upon the hearing of the above-entitled matter in the Court of Common Pleas, Summit County, Ohio, before THE HONORABLE ALISON BREAUX, Judge Presiding, commencing on April 5, 2017, the following proceedings were had being a Transcript of Proceedings:

Maryann Ruby, RPR
Official Court Reporter
Summit County Courthouse
209 South High Street
Akron, OH 44308

EXHIBIT F

And then every other document, to resolve Defendants' concerns, can be destroyed, otherwise turned over, back to KN&R once this process is complete.

MR. ROOF: I would think that you would have to turn over all documents, Your Honor. He can't be the one deciding which ones are relevant and which ones aren't relevant.

THE COURT: You know, he has to turn over anything that he intends to use.

But, you know, this is not a criminal matter. He doesn't have to turn over things that may or may not be exculpatory as far as I know. But if he intends to use anything, then that certainly has to be provided.

And, you know, I actually -- I want to lay eyes on this before I can actually rule on the protective order.

MR. ROOF: That's fine, Your Honor.

MR. PATTAKOS: Your Honor, I would just like to add that if Mr. Roof's

requests were granted, this Court would be presented with just a huge amount of documents that this Court would have to review, that would take a really long time to go through if Mr. Horton were required to turn everything over.

MR. ROOF: Can I ask, are those all documents that he took from KN&R?

MR. PATTAKOS: What I understand, what I can represent on the record is that Mr. Horton has his hard drive from when he left KN&R. He has his e-mails from when he left KN&R, and I did not think that was a secret.

MR. ROOF: But that's in violation of his confidentiality agreement.

MR. PATTAKOS: That is between Defendants and Mr. Horton.

And contained in these documents are evidence of what we believe is fraud; and, therefore, a confidentiality agreement -- and these are arguments that can be presented to this Court in the

that you were concerned about.

And that when we prepared this proposed second amended compliant, which was underway, based on the information we had gathered from witnesses and whistle blowers that came forward in response to the first time we publicized the first complaint, and we gathered that new information and those new documents through our own investigation, through no discovery help whatsoever from the Defendants.

When we gathered that information, we then said: Judge Breaux has said that there is a problem with the first amended compliant. We disagree with her. But now we really have to go the extra mile to show her.

And we are going to quote from these documents in that proposed second amended compliant. We will attach the documents to the proposed second amended complaint so that it is inescapable. That was our primary objective.

The second objective was, again, to

EXHIBIT F

be able to reach out to witnesses and other potential whistle blowers to gather even more. Because what we have learned involving KN&R is what we learned from Rob Horton at the beginning was just the tip of the iceberg of the number of fraudulent, corrupt kickback schemes in which this firm is involved.

We are as certain of that as we can be now based on what we have learned from witnesses, whistle blowers, insiders, former employees, former lawyers who worked there, other former clients and from other lawyers who compete and are victims as a result of the corrupt efforts by KN&R to corner the market.

So, last few points, Your Honor, those were our objectives. Not the things they are accusing us of.

And we respectfully and humbly submit that it was unfair for the Court to react to their accusation without giving us due process as was promised in the telephone hearing, without giving us a chance to respond. But that is done now.

EXHIBIT F

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.,	)	CASE NO. CV-2016-09-3928
Plaintiffs,	)	
	)	
vs.	)	TRANSCRIPT OF PROCEEDINGS
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	
Defendants.	)	VOLUME 1 (Of 1 Volume)

- - -

APPEARANCES:

PETER PATTAKOS,	Attorney at Law,
DEAN WILLIAMS,	Attorney at Law,
JOSH COHEN,	Attorney at Law,
	on behalf of the Plaintiffs.
JAMES M. POPSON,	Attorney at Law,
BRIAN E. ROOF,	Attorney at Law,
THOMAS P. MANNION,	Attorney at Law,
R. ERIC KENNEDY,	Attorney at Law,
	on behalf of the Defendants.
John F. Hill,	Attorney at Law,
Meleah M. Kinlow,	Attorney at Law,
	on behalf of Defendant Minas Floros, D.C.

- - -

BE IT REMEMBERED that upon the hearing of the above-entitled matter in the Court of Common Pleas, Summit County, Ohio, before THE HONORABLE PATRICIA A. COSGROVE, Judge Presiding, commencing on January 5, 2018, the following proceedings were had being a Transcript of Proceedings:

Maryann Ruby, RPR
Official Court Reporter
Summit County Courthouse
209 South High Street
Akron, OH 44308

EXHIBIT G

interest or kickbacks.

And we ran searches of their documents for, "Liberty Capital," "Ciro Cerrato," and we have produced those documents. So on our end, we have limited and tried to limit the scope of the document production.

We have produced those documents. Those are part of the 3,800 documents. And those documents show no ownership interest or kickbacks going on with Ciro Cerrato or Liberty Capital.

MR. PATTAKOS: Your Honor, if I may respond.

They are, of course, picking very selective things that they have done without a complete picture that it's impossible to address the meaning of that.

What I can tell you is that we have identified terms, essential terms: "Investigation fee," "signup fee," "SU fee," "investigator," "narrative fee," "narrative report," "referrals," "Liberty Capital," "Ciro," "Cerrato."

These search terms, they have told

us if running a universal search, not just a few key witnesses that they have identified, if there are other KNR attorneys talking about Liberty Capital, we are entitled to discovery that.

And we have reason to believe, based on what Mr. Horton has told us, that there were attorneys inside KNR who were very concerned about the relationship with Liberty Capital.

If those e-mails exist, we are entitled to those. And they have shown us the number of documents that these basic terms have turned up: 3,685 for "investigation fee," 95 for "signup fee," 71 for "SU fee," 49,000 for "investigator," 3,121 for "narrative fee," 16,000 for "narrative report," and et cetera.

We simply can't say that they don't have to search these and that we are going to proceed with their handpicked, cherry-picked selection of documents.

THE COURT: Okay. Look. Sit down. I don't want to hear any more.

EXHIBIT G

LEWIS BRISBOIS
LEWIS BRISBOIS BISGAARD & SMITH LLP

Thomas P. Mannion
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Tom.Mannion@lewisbrisbois.com
Direct: 216.344.9467

October 19, 2017

File No. 39942.02

VIA E-MAIL AND U.S. MAIL

Thomas A. Skidmore, Esq.
Thomas A. Skidmore Co., L.P.A.
One Cascade Plaza, 12th Floor
PNC Center Building
Akron, OH 44308
thomasskidmore@rrbiznet.com

Peter Pattakos, Esq.
Daniel Frech, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.com
dfrech@pattakolaw.com

Joshua R. Cohen, Esq.
Cohen Rosenthal & Kramer, LLP
The Hoyt Block Building, Suite 400
Cleveland, OH 44113
jcohen@crklaw.com

Re: Member Williams, et al. v. Kisling, Nestico & Redick, LLC, et al.
Case No. CV-2016-09-3928

Dear Counsel:

Attached please find a Notice of Deposition of Robert Horton, Esq., for Thursday, October 26, 2017, at 10 a.m. at the offices of Thomas Skidmore. We would ask Attorney Skidmore if he would produce Mr. Horton without need for a subpoena. In addition, we obviously do not know if this date works for Mr. Skidmore, Plaintiff's counsel, or Mr. Horton. Thus, the Notice is really for a mutually convenient time, and we will circulate dates for everyone to see which dates work. Thank you for your attention to this matter.

EXHIBIT H

Best regards,

Thomas P. Mannion

Thomas P. Mannion of
LEWIS BRISBOIS BISGAARD & SMITH LLP

TPM:os
Enclosure.

EXHIBIT H

Subject: RE: Williams v KNR: Rob Horton's deposition
Date: 10/20/2017 5:43 PM
From: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>
To: "Peter Pattakos" <peter@pattakoslaw.com>
Cc: "thomasskidmore@rrbiznet.com" <thomasskidmore@rrbiznet.com>, "dfrech@pattakoslaw.com" <dfrech@pattakoslaw.com>, "Joshua Cohen" <jcohen@crklaw.com>

Mr. Pattakos:

Please allow me to address two statements you made in the email below and to address the timing of Mr. Horton's deposition.

Pattakos' Statement: "...it's not the Defendants' prerogative to dictate the order in which we take depositions in our case."

We truly do not understand your assertion that we are attempting to dictate the order of depositions in your case. This is our case as much as it is your case. We are both pursuing and defending against certain claims. In pursuant to our duty to represent our clients, we properly noticed the deposition of a fact witness, Rob Horton. We did not notice Mr. Horton's deposition in **your** case. We noticed his deposition as part of our representation of our clients. You will certainly have the right to ask questions at the deposition as well, though.

While Rob Horton might be a law school classmate and friend of yours, he's not "your" witness any more than he is "our" witness. Rather, Rob Horton is an independent fact witness. Importantly, he is an independent fact witness who is represented by counsel. Yet, you have contacted him and attempted to talk to him about his testimony despite knowing he is represented by counsel. We would ask that you please refrain from attempting to talk to Mr. Horton re: the matters on which he is represented unless his counsel is present. Moreover, Mr. Horton's counsel has specifically requested this as well.

Pattakos' Statement: "...we do not intend to proceed with Mr. Horton's deposition until after we've had the chance to depose Mr. Nestico."

Under the Ohio Rules of Civil Procedure, my client has a right to notice the deposition of any witness in this case. Nothing requires us to wait until after Rob Nestico's deposition before we take Rob Horton's deposition. While we can certainly discuss the order and timing of witnesses, we are under no obligation to agree that Rob Horton's deposition takes place after Rob Nestico's deposition. In fact, it seems to me that logic would be the opposite. It makes more sense to take Rob Horton's deposition before Rob Nestico's deposition.

Regardless of whether we agree on that or not, you will have to show us where in the Civil Rule it permits the Plaintiff to dictate the order and timing of witnesses. If you can show us where in the Civil Rules such a right exists, we would gladly reconsider. If we can't work it out amicably amongst us, either side also has the right petition the Court to intervene in discovery. In over 20 years of practice, though, I've never seen a Court have to decide a Motion on the order of facts witnesses because one side or the other thinks they get to decide the order. We will abide by the Ohio Rules of Civil Procedure and all Orders of Judge Breaux. We will also attempt to work things out amicably before approaching the Court on any discovery issues.

Rob Horton's Deposition

Out of consideration for Attorneys Skidmore and Horton, we have agreed to schedule the deposition at a time where hopefully it can be completed in one sitting. And, when the deposition was initially noticed, like you did with your Notice of Deposition, we indicated that the deposition would only go forward at a "mutually

convenient" date and time. Of course, that was out of consideration for all involved, including yourself, and to comply with both the rules and the intent of the Civil Rules.

We look forward to hearing your explanations and would suggest a date/time to discuss this next week to hopefully work out our differences amicably.

Tom

LEWIS BRISBOIS

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

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

1375 E. 9th Street, Suite 2250, Cleveland, OH 44114 | **LewisBrisbois.com**

Representing clients from coast to coast. View our locations nationwide.

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Friday, November 02, 2018 4:12 PM
To: Tom.Mannion@lewisbrisbois.com
Cc: thomasskidmore@akrontruthandjustice.com; jpopson@sutter-law.com
Subject: Horton's deposition

External Email

Mr. Skidmore,

Confirming Tom's message below but would add that we probably will not be ready to proceed with Mr. Horton until the second half of January at the earliest. Can you please send us some dates in that timeframe that would work?

Thanks.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

On Thu, Nov 1, 2018 at 9:43 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

> Tom:
>
> Peter and I agreed to 30-day extension and moving depositions. We had tentative, then it was off, now we've filed stipulated motion with Court. Peter want to take Mr. Nestico before Mr. Horton. We might be looking at December/January for Mr. Horton now. I have trial 12/3 and 12/10, so it will have to be after that.
>
> Thanks,
>
> Tom

EXHIBIT J

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

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

1375 E. 9th Street, Suite 2250, Cleveland, OH 44114 | **LewisBrisbois.com**

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

KISLING, NESTICO & REDICK, LLC	)	Case No. CV-2017-03-1236
	)	
Plaintiff,	)	Judge Alison Breaux
	)	
vs.	)	
	)	**Affidavit of Robert Paul Horton, Esq.**
ROBERT PAUL HORTON	)	
	)	
Defendant.	)	
	)	
	)	

Now comes affiant, Robert Paul Horton, Esq., after first being duly sworn according to law, and states the following to be true:

1. I am over 18 years old, of sound mind, a Defendant in the above-captioned action, and a licensed attorney in good standing with the State of Ohio, registration number 0084321.

2. I have personal knowledge of the statements made in this Affidavit, and all statements are made to the best of my knowledge.

3. Kisling Legal Group, LLC dba Kisling, Nestico & Redick, LLC, hired me as an employee on February 20, 2012. My position was as an "associate attorney" in the pre-litigation group, where I primarily represented claimants in personal injury actions prior to the filing of a lawsuit (hereinafter referred to as "claimants" or "clients").

4. At the time of my hire, I signed a Confidentiality Agreement, a true and accurate copy of which is attached as Exhibit "A".

5. My employment with Kisling Legal Group, LLC dba Kisling, Nestico & Redick, LLC terminated on March 17, 2015.

RPH

EXHIBIT K

6. Prior to the termination of my employment, I did not report or threaten to report Kisling Legal Group, LLC, dba Kisling, Nestico & Redick, LLC or any of its owners, stockholders, partners, associates, employees, or other agents or representatives (hereinafter collectively referred to as "KNR") to any governmental, professional, or other authority for any reason, including but not limited to any violations of law, violations of the Ohio Rules of Professional Conduct, ethical violations, fraud, or other legal wrongdoing.

7. During my employment with KNR, I did not violate the Ohio Rules of Professional Conduct.

8. During my employment with KNR, I did not personally observe any violations of the Ohio Rules of Professional Conduct, including in the Member Williams case.

9. During my employment with KNR, I did not report or threaten to report KNR to any governmental, professional, or other authority for any reason, including violations of the Ohio Rules of Professional Conduct, ethical violations, or fraud.

10. The pleadings in the case of Member Williams, et al. v. Kisling, Nestico & Redick, LLC action, Case No. CV-2016-09-3928, refer to me as a "whistleblower." I do not consider myself a "whistleblower" under Ohio law or federal law.

11. On September 13, 2013, Member Williams was involved in a motor vehicle accident (hereinafter referred to as the "Accident").

12. I represented Member Williams through my employment with KNR to obtain compensation for her for the injuries she suffered in the Accident.

13. I contacted Chuck DeRemar, who I understood to work for third-party vendor MRS Investigations. When I contacted this Chuck DeRemar, and I knew that Kisling, Nestico & Redick, LLC would pay MRS Investigations.

RPH

EXHIBIT K

14. On September 17, 2013, Member Williams signed a Contingency Fee Agreement for her representation by me and Kisling, Nestico & Redick, LLC.

15. I represented Member Williams under the terms and conditions of this Williams Contingency Fee Agreement and pursuant to my duties and responsibilities under the Ohio Rules of Professional Conduct.

16. I believe the Williams Contingency Fee Agreement was proper under the Ohio Rules of Professional Conduct.

17. I represented Member Williams until my departure from KNR on March 17, 2015, performing legal services on her behalf.

18. During my representation of Member Williams, and to the best of my knowledge:

a. Neither KNR nor I requested Member Williams treat with any chiropractor as a result of the Accident;

b. Neither KNR nor I requested or obtained a medical report on Member Williams' behalf from any chiropractor as a result of the Accident;

c. I was not aware of KNR fronting any expenses for a chiropractor report for Member Williams;

d. I complied with the Ohio Rules of Professional Conduct in my representation of Member Williams;

e. I was not aware of payments made by any medical providers to KNR as a result of their treatment of Member Williams or as a result of their payment for reports related to Member Williams' case;

f. I was not aware of any payments made by MRS Investigations, Inc. or any person associated with MRS Investigations, Inc. to KNR as a result of Member Williams' case;

g. I did not take, witness, or become aware of any "kickbacks" by any individual or entity to KNR, Robert Nestico, Robert Redick, or any other person or entity as a result of the Accident, KNR's representation of Member Williams, or the settlement of Member Williams' claim;

KPH

EXHIBIT K

h. Member Williams was not advised by me to take any loan, including any loan with Liberty Capital or any other loan company in which the loan would be guaranteed by the prospective proceeds of the settlement of her claim;

i. I was not aware of anyone at KNR advising Member Williams to take any such loan;

j. I was not aware of any loan that Member Williams entered into guaranteed by the prospective proceeds of the settlement of her claim.

19. I believe that the intake department at KNR sent me a copy of the accident report / police report from the Stow Police Department in Member Williams' case. I do not know how the intake department obtained the accident report / police report.

20. Following my departure from KNR, I sent a text message to Brandy Gobrogge at KNR recommending that KNR call Member Williams.

21. Before I texted with Brandy Gobrogge, I talked with Member Williams. During my conversation with Member Williams, I did not advise her that any fraud or ethical violations had occurred with her case and I was not aware of any fraud or ethical violations that had occurred with her case.

22. During my employment with KNR, I repesented over 1000 other claimants for which I negotiated settlements for personal injuries.

23. In representing the claimants mentioned in the preceding paragraph, claimants were not always treated by a chiropractor. I did not force a claimant to ever use a specific chiropractor.

24. When discussing the distribution of settlement proceeds with my and KNR's clients, I obtained client approval before deducting those fees or costs from the settlement proceeds.

25. I only asked my and KNR's clients to sign the Settlement Memorandum if I believed the fees, expenses, and payments to the client were fair and reasonable and the client agreed to them.

RPH

EXHIBIT K

26. During my representation of claimants as an attorney with KNR, I was not aware of any payments made by MRS Investigations, Inc. or any other third party vendor or individual to KNR, Robert Nestico, or Robert Redick that could be considered a "kickback." I am not aware of payments of any kind made by MRS Investigations, Inc. or any other third party vendor or individual to KNR, Robert Nestico, or Robert Redick.

27. During my representation of claimants as an attorney with KNR, I was never aware of KNR requesting reimbursement from a client for a case-related expense that was not paid by KNR.

28. Third party vendors, such as MRS Investigations, Inc. and other independent contractors, would at times perform the following functions: obtaining the accident report, periodically taking photographs of the vehicles involved in the accident, periodically taking photographs of injured claimants, or other activities. The amount of work performed by the investigator, investigative firm, or third party vendor depended on the individual case.

29. On the cases that I handled and all cases of which I am aware during my employment with KNR, third party vendors were paid by KNR, and then listed as an expense to the client, but the client was not immediately responsible for repaying the expense.

30. I was never aware of an "upcharge" or "surcharge" on any expenses charged to clients. All expenses were simply pass-through expenses that KNR had incurred, and only the actual cost was charged to the client, to the best of my knowledge.

31. If the client did not recover on the client's personal injury claim, KNR did not seek reimbursement of the investigator expense or any other fees or expenses.

32. I never became aware of any case in which the client did not agree to the fee but KNR charged the investigator fee anyway. I am not aware of a circumstance in which a claimant objected to the investigator fee.

RPH

EXHIBIT K

33. To the best of my memory, KNR voluntarily discounted their fees in the vast majority of cases that I settled while working at KNR.

34. I am not aware of any "quid pro quo" relationship between Liberty Capital Funding, LLC and KNR, its owners, or its employees. I discouraged KNR clients to obtain such loans.

35. I never demanded any clients borrow from Liberty Capital Funding, LLC (hereinafter "Liberty Capital"). While some of my clients borrowed from Liberty Capital, such transaction was only completed after I counseled the client against entering into the loan agreement.

36. I am not aware of any "kickback" or other payments made by Liberty Capital to KNR or any of its owners or employees in return for KNR directing clients to borrow from Liberty Capital. In fact, I am not aware of any payments of any kind being made by Liberty Capital Funding to KNR or any of its owners or employees.

37. I am not aware of the ownership structure of Liberty Capital nor do I have information to suggest that Rob Nestico, Robert Redick, or anyone at KNR had any financial or ownership interest in Liberty Capital Funding, LLC.

38. During my time with KNR, I did not observe KNR ever forcing or requiring a client to take a loan with Liberty Capital or any other lender.

39. The reports prepared by chiropractors or other health care providers served the purpose of documenting the injury. I sometimes used these reports to support the clients' claims during settlement negotiations with insurance companies.

40. I am not aware of any chiropractor, medical doctor, or other health care provider sending any payments to KNR, its employees, or its owners, for referral of any claimant to the chiropractor, medical doctor, or other health care provider.

KPH

EXHIBIT K

41. I am not aware of Akron Square Chiropractics or any other chiropractor, medical doctor, or other health care provider making a payment or "kickback" to KNR, its employees, or its owners.

42. I will return to KNR all documents, electronic mails (emails), electronic information, downloaded information, and all other information obtained from KNR by August 8, 2017.

43. I will provide copies of the items mentioned in the preceding paragraph to the Court and will thereafter destroy all such information in my possession and agree not to disseminate such information in any manner, unless otherwise ordered to do so by a Court of competent jurisdiction.

44. I am not aware of any attorney, owner, or other employee of KNR conspiring with any chiropractors or any other third party vendors to inflate billings.

45. I have reviewed this affidavit with my attorney and voluntarily agree to provide this affidavit, which is truthful to the best of my knowledge.

Further affiant sayeth naught.

Robert Paul Horton

8-8-17
Date

STATE OF OHIO)
)
COUNTY OF SUMMIT)

Sworn to before me and subscribed in my presence this 8th day of August 2017.

Notary Public – Thomas A. Skidmore, Esq. (0038744)
My Commission Has No Expiration

RPH

EXHIBIT K

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
	)	
Plaintiffs,	)	JUDGE ALISON BREAUX
	)	
v.	)	
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	
	)	**AFFIDAVIT OF CIRO M. CERRATO**
	)	
Defendants.	)	

State of Florida)
) ss:
County of Palm Beach)

I, Ciro M. Cerrato, being first duly sworn, depose and state that the following is based upon my firsthand knowledge and is true and accurate to the best of my belief and recollection:

1. I formed Liberty Capital Funding, LLC ("Liberty Capital") in or around April of 2012. A true and accurate copy of Liberty Capital's Electronic Articles of Organization is attached as Ex. A.

2. Kisling, Nestico & Redick, LLC, ("KNR"), Rob Nestico, and Robert Redick did not have any ownership or financial interest in Liberty Capital. KNR, Rob Nestico, and Robert Redick did not form, or assist in forming, Liberty Capital.

3. KNR, Rob Nestico, and Robert Redick did not receive any financial, economic, or any kind of benefit or alleged kickback when KNR clients used Liberty Capital to secure an advance on a potential future recovery.

4. KNR, Rob Nestico, and Robert Redick did not receive any financial, economic, or any kind of benefit from Liberty Capital for any loan transaction between Liberty Capital and any of KNR's clients.

EXHIBIT L

Affiant Further Sayeth Naught.

CIRO M. CERRATO

Sworn to before me and subscribed in my presence this 24 day of August, 2017.

Notary Public

JAVIER VAZQUEZ
MY COMMISSION # GG 072830
EXPIRES: August 28, 2020
Bonded Thru Budget Notary Services

STATE OF FLORIDA
COUNTY OF Broward
Sworn to (or affirm) and subscribed before
me this 24 day of August, 2017
by Ciro M Cerrato

Personally Known ____ OR Produced Identification ✓
Type of Identification Produced Florida Drivers License

EXHIBIT L

FROM: MANNION, TOM
SENT: WEDNESDAY, OCTOBER 18, 2017 10:36 PM
TO: PETER@PATTAKOSLAW.COM
SUBJECT: KNR V HORTON RETRACTION

I AM NOT TALKING FOR HORTON. I AM RELAYING WHAT HIS COUNSEL TOLD THE NEWSPAPER REPORTER. THAT'S ALL. CONGRATS ON THE 6 MONTHS.

SENT FROM MY IPHONE

ON OCT 18, 2017, AT 9:40 PM, PETER PATTAKOS <PETER@PATTAKOSLAW.COM> WROTE:

TOM,

IF YOU'RE GOING TO PURPORT TO SPEAK FOR HORTON AND WHAT HE "STANDS BY," YOU SHOULD NOTICE AN APPEARANCE ON HIS BEHALF. YOU'VE ALREADY PUT ENOUGH WORDS INTO HIS MOUTH WITH THE AFFIDAVIT SO WHY STOP NOW, RIGHT?

IN ALL SERIOUSNESS, YOUR ENTIRE LAWSUIT AGAINST HORTON WAS AN ACT OF WITNESS INTIMIDATION, AS ARE YOUR COUNTERCLAIMS AGAINST MY CLIENTS. I'M SURE YOU UNDERSTAND THIS, AND THE JURY WILL TOO. PLEASE STOP WITH THE HISTRIONICS.

ON A BETTER SUBJECT, MY SON TURNED SIX MONTHS OLD TODAY AND IS DOING GREAT (PHOTO ATTACHED). IT WAS ONLY THAT LONG AGO THAT YOU SENT ME A COUPLE OF KIND AND HEARTWARMING EMAILS CONGRATULATING ME ON HIS BIRTH AND ADVISING ME AS TO THE CONTINUED JOYS OF FATHERHOOD. I WILL ALWAYS APPRECIATE THAT. THEY SAY NO ACT OF KINDNESS IS EVER WASTED, NO MATTER HOW SMALL, AND I'M SURE THAT'S TRUE.

BEST,

EXHIBIT M

PETER

PETER PATTAKOS

THE PATTAKOS LAW FIRM LLC

101 GHENT ROAD

FAIRLAWN, OH 44333

330.836.8533 OFFICE; 330.285.2998 MOBILE

PETER@PATTAKOSLAW.COM

WWW.PATTAKOSLAW.COM

ON WED, OCT 18, 2017 AT 7:02 PM, MANNION, TOM <TOM.MANNION@LEWISBRISBOIS.COM> WROTE:

HE STANDS BY THE ENTIRE AFFIDAVIT. BECAUSE IT IS THE TRUTH. YOU HAD NO BASIS TO SAY I INTIMIDATED A WITNESS. HE WAS REPRESENTED. HE SIGNED UNDER OATH. IT WAS THE TRUTH. YOU SHOULD REDACT.

SENT FROM MY IPHONE

ON OCT 18, 2017, AT 6:58 PM, PETER PATTAKOS <PETER@PATTAKOSLAW.COM> WROTE:

TOM,

I MIGHT HAVE BEEN BORN IN THE AFTERNOON BUT IT WASN'T YESTERDAY AFTERNOON. I STAND BY MY OPINION THAT YOU AND YOUR CLIENTS ENGAGED IN ABUSIVE LITIGATION TACTICS BY SUING MR. HORTON AFTER HE CAME FORWARD WITH EVIDENCE OF KNR'S FRAUD. YOU KNEW THAT THE LAWSUIT WAS BASELESS AND THAT IT WOULD THREATEN MR. HORTON'S ABILITY TO PROVIDE FOR HIS FAMILY,

EXHIBIT M

BUT YOU FILED AND MAINTAINED IT ANYWAY, TO BULLY AND INTIMIDATE HIM INTO SILENCE AND COMPLIANCE, KNOWING FULL WELL THAT KNR'S CONFIDENTIALITY AGREEMENT WITH HORTON COULD NOT LAWFULLY BAR HIS DISCLOSURE OF EVIDENCE OF FRAUD. I DID NOT NEED TO SEE HORTON'S AFFIDAVIT TO KNOW THAT IT WAS A PRODUCT OF YOUR ABUSIVE TACTICS, INTENDED TO MISLEAD THE COURT AND DEFLECT FROM YOUR CLIENT'S UNLAWFUL CONDUCT. NOTHING IN THE AFFIDAVIT ITSELF SERVES TO CHANGE MY OPINION, AS ANYONE WHO IS HONEST ABOUT THE DOCUMENTS QUOTED IN THE COMPLAINT WOULD UNDERSTAND.

YOU'VE ENGAGED IN SIMILARLY ABUSIVE LITIGATION TACTICS BY FILING YOUR FRIVOLOUS COUNTERCLAIMS AGAINST MY CLIENTS, TO BULLY AND INTIMIDATE THEM AND OTHER POTENTIAL WITNESSES INTO SILENCE. WE FULLY INTEND TO PURSUE SANCTIONS FOR THIS, TO WHICH WE WILL SURELY BE ENTITLED.

AND WHILE I CAN ONLY IMAGINE WHAT PURPOSE YOU HAVE IN SENDING YOUR EMAIL DEMANDING THAT I RETRACT PROTECTED SPEECH, I CAN ASSURE YOU THAT IF IT'S TO SUPPORT A LEGAL FILING DEMANDING THE SAME, I WILL PURSUE AND WILL SURELY BE ENTITLED TO SANCTIONS FOR THAT AS WELL.

I UNDERSTAND THAT YOU HAVE A TOUGH JOB TO DO IN THIS CASE, AND I DON'T TAKE IT PERSONALLY. I DO, HOWEVER, QUESTION WHETHER YOUR TACTICS ARE PRODUCTIVE, AND ASK THAT YOU PLEASE CONSIDER THE SAME.

FEEL FREE TO CALL ME ANYTIME TO DISCUSS.

BEST REGARDS,

PETER

PETER PATTAKOS

EXHIBIT M

THE PATTAKOS LAW FIRM LLC

101 GHENT ROAD

FAIRLAWN, OH 44333

330.836.8533 OFFICE; 330.285.2998 MOBILE

PETER@PATTAKOSLAW.COM

WWW.PATTAKOSLAW.COM

ON WED, OCT 18, 2017 AT 6:17 PM, MANNION, TOM <TOM.MANNION@LEWISBRISBOIS.COM> WROTE:

MR. PATTAKOS:

PLEASE IMMEDIATELY RETRACT THE MISREPRESENTATIONS YOU MADE TO JUDGE BREAUX AND CLEVELAND.COM RE: THE AFFIDAVIT OF ROB HORTON. NOT ONLY ARE YOUR ALLEGATIONS OUTRIGHT FALSE, THEY WERE MADE RECKLESSLY. YOU MADE THE FALSE ALLEGATIONS TO THE COURT EVEN BEFORE YOU READ THE AFFIDAVIT. AND YOU MADE THE FALSE ALLEGATIONS TO CLEVELAND.COM WITHOUT ANY PROOF OF THE TRUTH OR FALSITY OF THE ALLEGATIONS. PLEASE IMMEDIATELY RETRACT THE MISREPRESENTATIONS TO THE COURT AND TO CLEVELAND.COM.

TOM

<LB-Logo_7c9c5bd0-0a1e-47b8-a3b1-a4b5cdfed8fa.png>

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

EXHIBIT M

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

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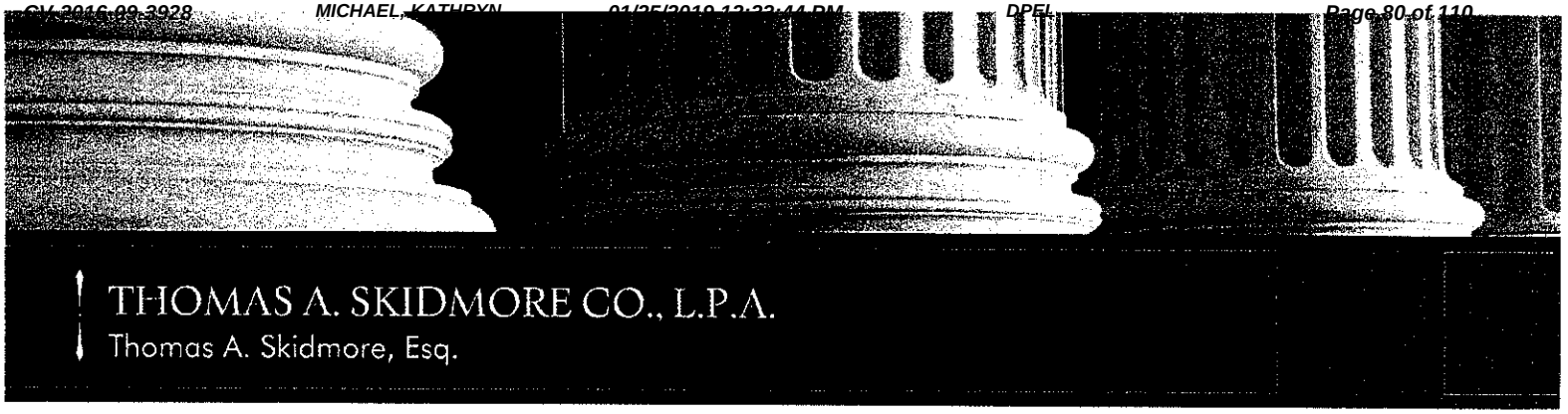
<22498968_10159405810290623_6181153399690543996_o.jpg>

EXHIBIT M



THOMAS A. SKIDMORE CO., L.P.A.
Thomas A. Skidmore, Esq.

October 19, 2017

Sent Via E-Mail: peter@pattakoslaw.com
ORDINARY MAIL WILL FOLLOW

Peter Pattakos, Esq.
PATTAKOS LAW FIRM, LLC
101 Ghent Road
Fairlawn, Ohio 44333

Sent Via E-Mail: Tom.Mannion@lewisbrisbois.com
ORDINARY MAIL WILL FOLLOW

Thomas P. Mannion
LEWIS BRISBOIS
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114

Re: My Client: Robert Horton

Dear Attorney's Pattakos and Mannion,

I appreciate the significance of the pending litigation in the Member Williams matter to both of your clients. Mr. Horton has resolved his differences with KNR and his case has been dismissed. I understand that Mr. Horton remains as a potential witness in the Member Williams matter.

I still represent Mr. Horton. He is an excellent lawyer. Mr. Horton was not intimidated or bullied by Attorney Mannion in the litigation that was filed against him. To say otherwise is untrue. His case was amicably resolved to Mr. Horton's satisfaction. Should it be determined that the parties would like to conduct his deposition or call him as a witness to testify in the Member Williams case, I am instructing you both that arrangements should be made through my office exclusively.

Mr. Horton's involvement in the Member Williams case is simply as a fact witness. He is not a party to the Member Williams litigation and his involvement will be only in that capacity. Should you have any further questions, please do not hesitate to contact me. I remain,

Very truly yours,

Thomas A. Skidmore

TAS;jaw

Thomas A. Skidmore, Esq.
One Cascade Plaza, 12th Floor
PNC Centre Building
Akron, Ohio 44308

Website: akronpersonalinjuryfirm.com
E-Mail: thomasskidmore@rrbiznet.com
Phone: (330) 379-2745
Facsimile: (330) 253-9657

EXHIBIT N

Subject: Re: Robert Horton
Date: 10/20/2017 11:25 AM
From: "Peter Pattakos" <peter@pattakoslaw.com>
To: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>

Tom,

I don't know how many different ways I can say this, but Horton never would have executed that affidavit had you not sued him. That lawsuit was abusive, and an act of intimidation. I have had many conversations with Horton that support the claims in our lawsuit as well as the notion that you intimidated him into executing the affidavit.

Abusive litigation tactics are recognized as abusive, and prohibited by law, precisely because they are generally effective in intimidating and silencing witnesses. I am grateful to be well trained and experienced in countering these tactics and recognize them for what they are. They will not work on me and it should only take you a little bit of research to confirm that.

I have asked you once to please stop with your histrionics. If you attempt to take action against me or my clients for my protected expression of opinion, you will be sanctioned for it absent a substantial miscarriage of justice. Please note that I say this knowing full well that your clients are not bothered by the prospect of having to pay sanctions if that's the price of deflecting from their conduct at issue in our lawsuit. Que sera sera.

Thank you.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

—

On Fri, Oct 20, 2017 at 11:02 AM, Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Mr. Pattakos:

As you know, Mr. Skidmore was involved first-hand in the Affidavit process. You were not. Mr. Skidmore confirmed the following to you in writing:

> I still represent Mr. Horton. He is an excellent lawyer. Mr. Horton was not intimidated or bullied by Attorney Mannion in the litigation that was filed against him. To say otherwise is untrue. His case was amicably resolved to Mr. Horton's satisfaction. Should it be determined that

Three attorneys were involved in the Affidavit, and three attorneys confirm that your statements re: the Affidavit are and were untrue:

1. Affiant Robert Horton, Esq.

Attorney Horton raised his right hand, swore under oath to tell the truth, and then signed his Affidavit under penalty of perjury. He has sworn under oath to the statements in his Affidavit. Moreover, through counsel, he has stated that he stands by the testimony in the Affidavit.

2. Affiant's Counsel, Thomas Skidmore, Esq.

Mr. Skidmore is an experienced, well-respected attorney who represents Mr. Horton now and who represented Mr. Horton throughout the Affidavit process. Mr. Skidmore confirmed to you, in writing that your statements to Cleveland.com were inaccurate. He expressly advised you: "Mr. Horton was not intimidated or bullied by Attorney Mannion in the litigation that was filed against him. To say otherwise is untrue."

3. KNR's counsel, Thomas P. Mannion, Esq.

While you may be free to disagree with me, Attorneys Horton and Skidmore have spoken clearly and unequivocally on this issue. Your unsubstantiated "opinion" does not give you the right to lodge serious ethical allegations against me to Judge Breaux and to Cleveland.com (and thus, the public). I have been patiently waiting for a retraction, at which time I will let this go as a "heat of the moment" outburst. However, I again request that you immediately retract your statements to both Judge Breaux and Cleveland.com, especially in light of confirmation from Rob Horton's counsel.

Sincerely,

Tom Mannion

LEWIS BRISBOIS

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

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

1375 E. 9th Street, Suite 2250, Cleveland, OH 44114 | **LewisBrisbois.com**

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From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Friday, October 20, 2017 10:44 AM
To: thomasskidmore@rrbiznet.com
Cc: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Subject: Re: Robert Horton

Tom,

You are certainly entitled to your opinion regarding why Mr. Horton executed his affidavit. Please understand that I disagree with it, though I do agree with you that Horton is an excellent lawyer, as evidenced by his integrity in having come forward with evidence of KNR's fraudulent business practices in the first place.

I'll follow-up shortly in response to Mr. Mannion's letter about scheduling his deposition.

Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

On Thu, Oct 19, 2017 at 11:28 AM, <thomasskidmore@rrbiznet.com> wrote:

Attorney Pattakos and Attorney Mannion,

Please find attached correspondence.

Thanks,

Tom

Thomas A. Skidmore, Esq.
THOMAS A. SKIDMORE CO., L.P.A.
One Cascade Plaza, 12th Floor
PNC Center Building
Akron, Ohio 44308
Phone: (330) 379-2745
Fax: (330) 253-9657
E-Mail: thomasskidmore@rrbiznet.com

Subject: RE: Williams v. KNR: Rob Horton testimony
Date: 10/22/2018 11:52 AM
From: "Thomas Skidmore" <thomasskidmore@akrontruthandjustice.com>
To: "Peter Pattakos" <peter@pattakoslaw.com>, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>
Cc: "James M. Popson" <jpopson@sutter-law.com>

Counsel,

I'm not one for speculation. The deposition of Mr. Horton will be conducted in accordance with the Ohio Rules of Civil Procedure. He has not been intimidated by anyone and any inference of such is without merit. Mr. Horton and KNR entered into a Confidential Settlement Agreement. Mr. Horton will not violate the terms of that Agreement. Besides that I do not wish to weigh in on speculation as to what might be asked at his deposition. I can only address those specific issues when they arise.

I expect that the questioning attorneys at Mr. Horton's deposition will act with the utmost professionalism.

Thanks,

Tom

Thomas A. Skidmore, Esq.
THOMAS A. SKIDMORE CO., L.P.A.
One Cascade Plaza, 12th Floor
PNC Center Building
Akron, Ohio 44308
Phone: (330) 379-2745
Fax: (330) 253-9657
E-Mail: thomasskidmore@akrontruthandjustice.com

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Monday, October 22, 2018 11:48 AM
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Cc: James M. Popson <jpopson@sutter-law.com>; Thomas Skidmore <thomasskidmore@akrontruthandjustice.com>
Subject: Re: Williams v. KNR: Rob Horton testimony

I just wanted to be clear that relevant questions are fair game (the Rule 26 "reasonably calculated" standard). Thank you for confirming.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

—

On Mon, Oct 22, 2018 at 11:36 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter:

First, I am not sure how this issue impacts the order of questioning. Second, my client has zero intention of instilling a "fear of reprisal" in Mr. Horton. Third, regarding whether his testimony would violate any agreement, I think we generally agree with you on the issue. However, I certainly cannot anticipate every question you will ask. I have no intention of using the deposition to violate any agreement or to bait Mr. Horton into violating any agreement. That's the last thing we want. Any relevant questions regarding the issues at hand should be fair game, but I cannot anticipate every question you might ask. If there's a specific topic area you are concerned may violate any agreement, please let me know. Also, it is my understanding that Mr. Skidmore will represent Mr. Horton at the deposition, and I'm sure that he will not allow any testimony that he believes is improper. I'm not trying to be difficult with you on this, I just am a little bit unclear what you're asking. I am copying Mr. Skidmore since this involves his client.

Thanks,

Tom

LEWIS BRISBOIS

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 <peter@pattakoslaw.com>
Date: October 22, 2018 at 11:24:09 AM EDT
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>, James M. Popson <jpopson@sutter-law.com>
Subject: Re: Williams v. KNR: Rob Horton testimony

Tom and Jim,

Below is another email to which I still have received no response. If we are clear on the below, I can withdraw my objection to Tom questioning Horton first at his deposition. Please advise.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

On Mon, Oct 15, 2018 at 8:55 AM Peter Pattakos <peter@pattakoslaw.com> wrote:

Tom and Jim:

Before we proceed with Mr. Horton's deposition, I want everyone to be clear that he is free to testify without any fear of reprisal by way of a lawsuit for violating his confidentiality agreement with KNR.

I acknowledge that his testimony will be made subject to the protective order, and that if you wish to designate any of his testimony "attorneys eyes only" you are free to do so.

But none of his sworn testimony, either at deposition or at trial, could be construed as violating the confidentiality agreement.

Please confirm that we are clear on this.

Thank you.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

Subject: Re: Williams v KNR
Date: 10/13/2018 10:01 AM
From: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>
To: "Peter Pattakos" <peter@pattakoslaw.com>

Mr. Pattakos:

As expected, you cite no Ohio case law construing the Ohio Civil Rules consistent with your position. Not one. Not even in dicta. Instead, you cite to the Delaware Chancery court. Seriously? At least I can provide you some federal cases. See, for example: Schlien v Wyeth Farms 2012 U.S. Dist. LEXIS 189857 (S.D. Georgia) and *Dargis v. Wyeth, Inc.*, 2012 U.S. Dist. LEXIS 189881 (Dist. Court of Minnesota), which provide that "The first party to serve a valid notice of deposition is entitled to priority of questioning at that deposition." In *Dargis*, the Plaintiff argued it had the right to question Plaintiff's expert first, because the burden of proof belonged to the Plaintiff. However, the Dargis court did not accept that reasoning and stated, "It has long been the custom and practice in Minnesota that the party who first serves a valid notice of deposition 'controls' that deposition" which includes assuming priority in questioning. These are certainly more persuasive than your cases and consistent with the letter and the intent of the Ohio Civil Rules. When my partners doing research told me they found zero Ohio case law supporting your position, I told them you claimed legal support existed so look again. It's just simply so basic under the Ohio Civil Rules that the person noticing the deposition goes first that no one has raised your warped interpretation with Ohio courts. Now, if you have Ohio precedent, and not a Chancery Court in Delaware, please send to me and I will analyze.

Also, please stop with the baseless allegations. You throw out accusations against me that fly in the face of what the witness and his attorney have told you - and then you ask me to talk in an attempt to resolve things. Perhaps if you refrained from unnecessary and untrue personal attacks, I would be more willing to hop on the phone with you rather than want to talk in person with another lawyer to witness the conversation. Mr. Horton and his attorney, Mr. Skidmore, will both tell you I never once threatened, harassed, or coerced them. Mr. Horton was represented. He was under oath. He told the truth. You wish the truth was different, but he says what he says. Some of his testimony is helpful for your case, and some is good for my case. That's often how it goes with witnesses, especially disgruntled ex-employees. More importantly for this conversation, though, is the fact that Mr. Horton's testimony was provided in a proper fashion and without any coercion. You again attempt to bait me into talking about the merits of the suit against Mr. Horton, but you know there is a confidentiality agreement in place. So, I will again not bite. And you should probably stop claiming Mr. Horton said or did things that could potentially violate that Confidentiality Agreement. For someone who purports to be Mr. Horton's friend, you have done him a huge disfavor by your continued attempts to attribute comments to him that are 180 degrees opposite of his sworn affidavit testimony. You have misled the Courts and the public with those baseless claims. I will assume that those misrepresentations were unintentional and that you were just getting caught up in zealous advocacy. If you are his friend, you will stop using Mr. Horton as a pawn for your own crusade.

Now, can we leave the accusations aside and try to deal with just the discovery issue at hand? If you feel the need, I will let you have the last word. You can respond however you want to this email. You can accuse me of whatever ethical violation you want and call me whatever names you want. I won't respond. I will let you have the last accusation - as long as it means we can move on to the real issue - trying to resolve a discovery dispute without court intervention.

Thank you,

Tom

From: Peter Pattakos <peter@pattakoslaw.com>
Date: October 13, 2018 at 7:43:36 AM EDT
To: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Subject: Re: Williams v KNR

Tom,

Once again it seems clear that you are being intentionally obtuse. *See 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.").

Also, I'm sure you don't need me to send you cases saying that litigation and the threat of litigation against a witness has a chilling effect on that witnesses testimony. You have already corrupted these proceedings enough and you continue to reveal your improper intentions by continuing to insist on your right to corrupt them further.

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

On Fri, Oct 12, 2018 at 5:08 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

> Mr. Pattakos:
>
> As I indicated, I will consider any case law you forward. Just send the case name and I'll read it. You state such a case is contained in one of your many filings with the Court. I've spent an hour searching the docket, and can't find any such citations. If you want me to properly consider your request, I have no idea why you refuse to identify the cases you say that support your position. Please provide the names and citations for these cases. Otherwise, I will take it by your silence that you have ZERO cases supporting your proposition regarding the order of which attorney asks questions first. This is an attempt to resolve without court intervention. If you want to play hide-and-seek with your arguments to support your proposition, so be it, but that tactic will not help us sort things out. Likewise, I have asked you mutliple times to please explain how me asking questions before you - to a witness under oath who is represented by counsel - unfairly prejudices your client. If you do not respond to these two requests, I will not be able to adequately re-evaluate your request. It's up to you... provide the information and we can talk about it, or hide the ball and bring it up with the Court.

Tom

LEWIS BRISBOIS

Thomas P. Mannion
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Subject: Williams v KNR: Horton Deposition
Date: 10/16/2018 9:03 AM
From: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>
To: "Peter Pattakos" <peter@pattakoslaw.com>

Case law sent to me by attorney who researched issue in my office:

The party who serves a valid Notice of Deposition "controls" the deposition, including the priority in questioning the witness. While Ohio and other state courts have rarely, if at all, addressed the issue as to whether the party who noticed the deposition gets the priority in questioning the witness, such a rule has been followed by federal courts.

Anderson's Ohio Personal Injury Litigation Manual 2012 edition, states that the party that notices the deposition controls the order of questioning, and the manual gives several examples such as:

> 1. If the plaintiff demands the examination of a defendant physician, the plaintiff's attorney begins the examination.
>
> 2. If the defendant demands an examination of the plaintiff, the defendant's attorney begins the examination.
>
> 3. For cases plaintiff notices a deposition of plaintiff's own expert to preserve the testimony for trial, the plaintiff begins the questioning.

Prior to 1970, under the Federal Rules of Civil Procedure, which the Ohio Rules are modeled after, it was well-settled that priority in depositions went to the party first serving a notice of deposition. *Occidental Chem. Corp. v. OHM Remediation Servs.*, 168 F.R.D. 13, 14-15 (W.D. N.Y. 1996). However, the "priority rule" led to opposing counsel racing to file Notices of Deposition to gain priority. The overwhelming majority of priority races involved the question of who would be deposed first (Plaintiff or Defendant), as opposed to who would have the right to question the witness first, as is the case here.

The 1970 Amendments to the Federal Rules of Civil Procedure, and in specific the amendment to Fed. R. Civ. P. 26(d), abolished the priority rule. Fed. R. Civ. P. 26(d) now provides the court has discretion over the sequence of discovery.

Nevertheless, the priority rule regarding who has the right to first question a given witness still rules the day. In *Schlein v. Wyeth Pharms., Inc.*, 2012 U.S. Dist. LEXIS 18957 (S.D. Georgia), the Court was tasked with determining whether Plaintiff or Defendant had the priority to question a number of physicians who had been noticed for deposition by both Plaintiff and Defendant's counsel. Despite the fact the "priority rule" was abolished in 1970, the *Schlein* Court stated, "the first party to serve a notice of deposition is entitled to priority of questioning at that deposition." This same logic was followed in *Moss v. Wyeth*, 3:04-cv-1511-SRU, 2011 U.S. Dist. LEXIS 158073 (D. Conn. Mar. 16, 2011), where the Court stated, "The party who controls the deposition – that is, the party who subpoenas a treating physician or otherwise is responsible for initiating the deposition – is the party who gets to question the treating physician."

In *Dargis v. Wyeth, Inc.*, 2012 U.S. Dist. LEXIS 189881 (D. Minn. 2012), the Defendants first noticed the deposition of one of Plaintiffs' treating physicians. Despite Defendants being first to notice the deposition, Plaintiffs argued they should have priority for fact deposition questioning for all treating and prescribed medical personnel regardless of which party noticed the deposition. *Id.*

Plaintiffs stated they should be given priority as they will bear the burden of proof at trial. Plaintiffs alleged their position was consistent with Fed. R. Civ. P. 30(c)(1) which provides, "the examination and cross-examination of a deponent proceed as they would at trial or under the Federal Rules of Evidence." However, the Court noted Fed.

R. Civ. P. 30(c)(1) does not mandate the order of questioning, but simply provides that examination and cross-examination during depositions are subject to the making and preservation of objections under the Federal Rules of Evidence. The Court held Fed. R. Civ. P. 30(c)(1) did not support Plaintiffs' assertion that the party with the burden of proof should be given priority. *Id.* Instead, the *Dargis* Court stated:

> "It has long been the custom and practice in Minnesota that the party who first serves a valid notice of a deposition 'controls' that deposition – bearing any costs associated with the deposition and assuming priority in questioning."

Id., See, e.g., *Story v. Quarterback Sports Fed'n., Inc.* 46 F.R.D. 432, 433 (D. Minn. 1969); See also, *Smith v. Logansport Cmty.Sch. Corp.*, 139 F.R.D. 637, 642 (N.D. Ind. 1991) ("customarily . . . the party noticing the deposition will commence the interrogation with direct examination. Afterward, each other attending party may cross-examine").

A court may alter the rule that the noticing party is the first to question the deponent; however, such alteration "is the exception, rather than the rule." *Sinco Inc. v. B&O Mfg.,* Civ. No. 03-5277, 2005 U.S. Dist. LEXIS 12086, at *7 (D. Minn. May 23, 2005).

The *Dargis* Court resolved the deposition questioning dispute by Ordering that based upon "the customary practice . . . combined with a general fairness to each side, the Court orders . . . for any fact witness, the party who first serves a valid notice of deposition shall have priority of questioning in that deposition." *Id.* at * 19.

Even when a notice of deposition was not technically "valid," the party who first sought the deposition should be given priority in questioning. In *Occidental Chem. Corp. v. OHM Remediation Servs.,* 168 F.R.D. 13, (W.D. N.Y. 1996), the Defendant issued a notice of deposition to Plaintiff's Project Engineer. However, the Project Engineer had recently left the Plaintiff's employment and become hostile with his former employer (Plaintiff); thus, counsel was not able to secure the witness's appearance without a subpoena. Therefore, Plaintiff's counsel and Defendant's counsel each subpoenaed the former Project Engineer for deposition.

Plaintiff then argued it should be given priority to question the witness at the deposition, as Plaintiff subpoenaed the witness first. The *Occidental* Court noted the well-settled former priority rule was that the first to notice a deposition gets priority. The Court held that the deposition should be permitted to continue on the basis on which it was originally intended to be scheduled – that being by Defendant's Notice of Deposition. Therefore, the Court Ordered Defendant was the first to question the witness at deposition.

Mr. Pattakos claims *Russo v. Burns*, 2014-0952 (La. App. 4 Cir. 09/09/14), 150 So. 3d 67, 71-72, provides a trial court has discretion "over trial proceedings and the order of witnesses" and such discretion "should not be exercised in such a way that deprives the litigation of his day in court." This case has absolutely no applicability to the question as to who gets to question a deponent first. *Russo* involved an election contest matter. In that election contest litigation, Mr. Russo and Mr. Burns were seeking election as the Orleans Parrish District Attorney. Prior to the election, Mr. Russo filed a petition to disqualify Mr. Burns as a candidate as Russo alleged Burns failed to file his Louisiana state tax returns from 2010-2013, which was a prerequisite for the District Attorney.

An election contest requires expedited litigation; thus, trial on this matter was set 3 days after Russo filed his petition to disqualify Burns. At trial, Burns testified he did not personally file his tax returns, but had his assistant, Monica Jackson, file them. At trial, Burns requested he be allowed to call Ms. Jackson as a witness, and that she would take the stand the following morning. The trial court denied the request, as the Judge explained "according to the statute, I have to complete the hearing." The trial court then rendered judgment in favor of Russo, and disqualified Burns as a candidate. *Id.*

On appeal, the appellate court noted the trial court's denial of Burns' request to call Ms. Jackson effectively denied him his day in court. Therefore, the trial court abused its discretion in not providing Burns due process. This matter had absolutely nothing to do with which party gets to question a deponent first. Mr. Pattakos uses dicta that was merely describing due process to somehow support his contention he should question the witness first. The dicta Pattakos cited provided:

> La. C.C.P. articles 1631 and 1632 give the trial court power over trial proceedings and the order of witnesses; and in general, a trial court's judgment as to these decisions will not be disturbed absent an abuse of discretion. However an abuse of discretion occurs when the trial court's discretion is exercised in such a way that deprives a litigant of his day in court.

The *Russo v. Burns* case had nothing to do with who questions a deposition witness first.

Mr. Pattakos cites another inapplicable case, *In re Oxbow Carbon LLC Unitholder Litigation,* Ch., 2017 Del. Ch. LEXIS 135, At *8 (July 28, 2017). Mr. Pattakos claims this case supports his proposition that "the general custom is to give the party with the burden of proof the ability to determine the order of witnesses and to question first if the party wishes to exercise that option." However, *In re Oxbow Carbon LLC Unitholder Litig.* does not deal with priority in conducting deposition questioning. Instead, *In re Oxbow*, deals with the order of proof in Chancery cases, which differs from the norm in civil litigation. The case has zero to do with which party gets to question a witness first at deposition.

Shepardizing the cases revealed that neither *In re Oxbow* nor *Russo v. Burns* has ever been cited by any court on the issue of order of questioning at deposition.

LEWIS BRISBOIS

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COURT & JUSTICE

Former KNR attorney whose information led to fraud lawsuit says he never saw instances of misconduct

Updated Oct 17, 2017;
Posted Oct 17, 2017

A former attorney for the Kisling, Nestico & Redick law firm who gave information to a fellow lawyer that filed a fruad lawsuit against the firm wrote in an affidavit that he never saw anybody at his old firm do anything to violate Ohio's attorney ethics rules.(Cory Shaffer/cleveland.com)

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By Eric Heisig, cleveland.com

Robert Horton, who started at the Fairlawn-based personal injury firm in February 2012 and left in March 2015, wrote in an affidavit that he was not aware of any payments made to KNR by a third-party vendor that could be construed as a "kickback." He also wrote in the Aug. 8 affidavit that he "did not personally observe any violations of the Ohio Rules of Professional Conduct."

It says that while he has been referred to as a "whistleblower," Horton does not consider himself one.

(You can read the affidavit here or at the bottom of this story.)

Horton is a central figure in a lawsuit brought against the personal injury firm whose advertisements and the slogan, "Hurt in a car ... Call KNR!"" are ubiquitous to anyone in northeast Ohio.

In it, three former clients accuse KNR of participating in an illegal kickback scheme with chiropractor clinics, fraudulently charging customers for investigations that never occurred and directing customers to take high-interest loans from an outside company. KNR has vigorously denied the allegations and filed a counterclaim against the former clients.

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The affidavit was signed about a month before KNR agreed to drop a separate lawsuit it filed against Horton that accused him of violating a confidentiality agreement when he downloaded files and gave them to Peter Pattakos, an Akron attorney who filed the fraud lawsuit against KNR.

Horton agreed to turn over all documents he took from KNR and the judge and to destroy any copies he still has in his possession, according to the affidavit. He also agreed to not disseminate it. Court records indicate that he followed his promise.

Pattakos said in an interview Tuesday that the lawsuit against Horton and the affidavit "is the product of KNR's effort to intimidate and bully him." He said the affidavit was "carefully worded" and that Horton will testify in court that the allegations described in the lawsuit are true.

James Popson, an attorney representing KNR, firmly denied that KNR's counsel engaged in bullying or intimidation tactics. He said Horton was represented by his own attorney and signed the affidavit "because it's the truth."

"If it's carefully worded, that's his opinion," Popson continued, referring to Pattakos' statement. "It is improper for Mr. Pattakos to suggest that any lawyers representing KNR engage in unethical conduct when he has no evidence of that occurring, and it's false."

Messages left for Horton, who now works at the Slater and Zurz law firm, and the lawyer representing him in the KNR lawsuit did not return voicemails.

Horton wrote that he represented more than 1,000 clients and that they were not always treated by a chiropractor. He said he obtained approval from clients before deducting fees and costs from settlement proceeds.

"I am not aware of any attorney, owner, or other employee of KNR conspiring with any chiropractors or any other third party vendors to inflate billings," the affidavit says.

Also on Tuesday afternoon, Summit County Common Pleas[1] Judge Alison Breaux made clear exactly what will be sealed in the case going forward. Breaux previously sealed the

case and issued a gag order -- a move fought by cleveland.com as unfairly restricting access to the courts -- but opened up the docket and withdrew the order on Friday.

Her new restrictions are as follows: all exhibits attached to court documents filed prior to Friday will be restricted from public view on the county clerk's office website. The exhibits can be viewed in person at the clerk's office, said Catherine Loya, Breaux's staff attorney.

The actual court documents -- which include motions -- can still be viewed online, Loya said.

Breaux's decision led the clerk's office to open up nearly the entire docket for public view. This drew concern from KNR, and an attorney wrote in an email to Loya on Tuesday morning that "there are still confidential documents (e.g., the identity of KNR's clients) that are part of the documents previously filed that need the protection of the Gag Order." Pattakos forwarded the emails to cleveland.com.

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Pattakos argued KNR's attempt to restrict access to the docket is at odds with a statement managing partner Rob Nestico made to cleveland.com Monday that he was "relieved that the judge lifted the gag order, because the public needs to know the truth."

NOTE: Cleveland.com is represented in challenging the judge's sealing order by attorney Patrick Kabat, who works at the Chandra Law Firm. Pattakos previously worked at the same law firm and was employed there when he filed the lawsuit against KNR.

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.

1

*****Monday, October 16, 2017

P R O C E E D I N G S

- - -

THE COURT: All right. How is everyone? Not bad for a Monday?

MR. PATTAKOS: Especially after a Brown's game.

THE COURT: Is that just to put the misery out where it belongs on a Sunday?

So, where are we? Setting a trial date at this point?

MR. POPSON: No.

THE COURT: No. Okay. Tell me why.

Do you want everyone to identify themselves? We'll go around the table.

MR. POPSON: This is Attorney Jim Popson on behalf of the defendants.

MR. KENNEDY: Eric Kennedy, defendants.

MR. MANNNION: Tom Mannion, defendants.

MR. ROOF: Brian Roof, defendants.

EXHIBIT T

trying to say?

THE COURT: Enough. Gentlemen, enough. Honestly.

MR. MANNION: That is outrageous.

THE COURT: You haven't even reviewed the document. Don't jump to conclusions either.

Obviously, I'm not going to review this right now. I will look that over.

So, this has not yet been attached to anything, but you are going to make reference to it in your motion?

MR. POPSON: We filed it just as if we would file a deposition or any piece of evidence.

MR. MANNION: Just so you know, Your Honor, he was represented by counsel, Mr. Horton.

THE COURT: Okay. Anything else?

MR. POPSON: That's all we have. Let me ask these guys.

MR. PATTAKOS: Your Honor --

MR. POPSON: We don't have

EXHIBIT T

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, Plaintiff, v. KISLING, NESTICO & REDICK, LLC, et al., Defendants.	)	Case No. CV-2016-09-3928 Judge BROGAN **AFFIDAVIT OF JAMES E. FONNER, D.C.**

Now comes affiant, James E. Fonner, D.C., after first being duly sworn according to law and states the following to be true and accurate to the best of my knowledge:

1. I am a Doctor of Chiropractic care licensed to practice by the Ohio State Chiropractic Board, license number DC-03599.

2. During the first week of October, 2018, I was served with a copy of a Subpoena in a Civil Case, a copy of which is attached as Exhibit "A", by Attorney Peter Pattakos.

3. The Subpoena directed me to attend and give testimony at a deposition on October 23, 2018, at 9:30 a.m., at the Pattakos Law Firm, 101 Ghent Road, Fairlawn, Ohio, 44333.

4. The Subpoena warned me that it was a penalty of law not to show:

HEREOF FAIL NOT UNDER PENALTY OF THE LAW.

EXHIBIT U

5. The Subpoena also warned me that I could be subject to sanctions if I did not obey the Subpoena:

> SANCTIONS:
>
> 1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

6. Prior to October 23, 2018, neither Peter Pattakos nor anyone from his office contacted me to let me know the deposition was no longer going forward and that I did not need to appear at his office by 9:30 a.m. on October 23, 2018.

7. As of the morning of October 23, 2018, it was my belief I was under a legal obligation, pursuant to the subpoena served on me by Attorney Pattakos, to appear at the offices of Attorney Peter Pattakos by 9:30 a.m. on October 23, 2018.

8. Accordingly, at approximately 7 a.m. on October 23, 2018, I drove approximately 120 - 130 miles from Pataskala, Ohio to Fairlawn, Ohio, to the offices of Attorney Pattakos.

9. I arrived at the offices of Attorney Peter Pattakos, 101 Ghent Road, Fairlawn, Ohio, before 9:30 a.m. on October 23, 2018, pursuant to the Subpoena he issued on me, and it did not appear anyone was there.

10. I called the phone number on the subpoena and talked with the office, and then talked with Attorney Pattakos, who invited me into the office.

11. When I arrived inside the offices of Attorney Peter Pattakos, he was the only attorney present to my knowledge, and I was not introduced to any attorneys for any other parties in the case. Attorney Pattakos then informed me the deposition had been canceled.

12. After informing me the deposition was canceled, Attorney Pattakos interviewed me with respect to my interactions with and allegations against KNR and Rob Nestico. He made

EXHIBIT U

numerous derogatory comments concerning Rob Nestico. He asked me about preferred clinics and any deals with KNR, and I told him I don't know anything about that issue and that I don't have any agreements with KNR.

13. Attorney Pattakos also told me that he knew KNR previously filed a lawsuit against me, and he began to ask me details about the lawsuit. I immediately advised him Attorney Pattakos that I could not talk about the lawsuit because of a Confidentiality and Non-Disparagement Agreement. Attorney Pattakos told me that I did not need to worry about the Confidentiality and Non-Disparagement Agreement because it "did not apply" in the case for which I was subpoenaed, and that therefore it would be okay to discuss it. I refused to provide any confidential information that could breach my obligations under the Confidentiality and Non-Disparagement Agreement.

14. When Attorney Pattakos was done interviewing me, I drove the 120 – 130 miles back from Fairlawn, Ohio to Pataskala, Ohio.

15. I canceled all of my patients for October 23, 2018, due to the Subpoena issued by Attorney Pattakos.

16. Driving approximately 240 – 260 miles roundtrip between Pataskala, Ohio and Fairlawn, Ohio, canceling my patients, losing income, incurring substantial lost time for a deposition that did not go forward, and otherwise complying with the Subpoena was an unnecessary and undue burden on me given that it had been previously canceled but Attorney Pattakos did not advise me of the cancellation.

EXHIBIT U

Further affiant sayeth naught.

James E. Fonner, D.C.

11/30/2018
Date

STATE OF OHIO)
)
COUNTY OF FRANKLIN)
)

Sworn to before me and subscribed in my presence this 30 day of November, 2018.

Notary Public

JEFFREY T. KLUESENER
ATTORNEY AT LAW
NOTARY PUBLIC
STATE OF OHIO
My Commission Has No Expiration Date

EXHIBIT U

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Tuesday, November 20, 2018 9:48 AM
To: Tom.Mannion@lewisbrisbois.com; jpopson@sutter-law.com
Subject: [EXT] Re: Tomorrow's Depositions

Tom,

I told you that the witnesses are on notice that the depositions are off. Please stop with the crazy emails.

Peter Pattakos
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Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

On Tue, Nov 20, 2018 at 9:35 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

> Peter:
>
> Read the very subpoena you issued:
>
> 1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
>
> It is an obvious undue burden on a person subject to a subpoena for deposition to perform the following activities when the deposition has been canceled:
>
> 1) Cancel all activities for an entire day;
>
> 2) Lose money from not working that day;
>
> 3) Drive hours to the place you were subpoened; and
>
> 4) Drive hours back from the place you were subpoened.

EXHIBIT V

You were responsible for issuance and service of the subpoena and therefore you were required to take reasonable steps to avoid imposing this undue burden on the doctor. While your subpoena indicated the deponent "may" contact you by phone or email, no reason existed for the deponent to do so. You provided a specific date and time for the deposition and the witness knew from the subpoena that sanctions were possible for not showing up at that date and time:

SANCTIONS:

1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

It's one thing to "forget" or have something "slip by." But you are justifying your actions in not notifying witnesses when the subpoena is off and still refuse to tell us whether you notified any of the witnesses for today and tomorrow that the subpoenas are off. This is highly improper conduct and we ask that you immediately cease and desist using your authority as an officer of the Court to issue subpoenas solely to direct witnesses to drive to your place of business so you can interview them. Moreover, if that wasn't your purpose, then we ask you immediately cease and desist your practice of failing to tell a witness YOU subpoenaed that his or her attendance is not required if the deposition is not going forward.

Tom

From: Mannion, Tom
Sent: Tuesday, November 20, 2018 8:51 AM
To: Peter Pattakos <peter@pattakoslaw.com>; James M. Popson <jpopson@sutter-law.com>
Subject: RE: [EXT] Re: Tomorrow's Depositions

If a subpoena is no longer valid because the deposition is off, then you have an absolute duty to notify the witness.

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

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

EXHIBIT V

1375 E. 9th Street, Suite 2250, Cleveland, OH 44114 | **LewisBrisbois.com**

From: Peter Pattakos [mailto:peter@pattakoslaw.com]
Sent: Tuesday, November 20, 2018 8:46 AM
To: James M. Popson <jpopson@sutter-law.com>
Cc: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>
Subject: [EXT] Re: Tomorrow's Depositions

External Email

That is ridiculous. All of the subpoenas I've issued specifically instruct the witness to contact me to confirm a specific date and time and I make all reasonable efforts to communicate with the witnesses. It is not my responsibility when a witness fails to communicate with me about a subpoena and shows up for a deposition that was never confirmed.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

On Mon, Nov 19, 2018 at 7:42 PM James M. Popson <jpopson@sutter-law.com> wrote:

Because you cannot subpoena private interviews. Is there a reason you issued a subpoena, then told me not to attend and left a witness thinking they have a legal obligation to appear?

Jim

Sent from my iPhone

James M. Popson

Sutter O'Connell Co.
Direct: 216.928.4504
Mobile: 216.570.7356

On Nov 19, 2018, at 6:17 PM, Peter Pattakos <peter@pattakoslaw.com<mailto:peter@pattakoslaw.com>> wrote:

Is there a particular reason you are concerned about this? It should be clear to all who need to know that the next deposition Plaintiffs will be taking in this lawsuit is Dr. Gunning's.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com<mailto:peter.pattakos@chandralaw.com>
www.pattakoslaw.com<http://www.pattakoslaw.com/>

On Mon, Nov 19, 2018 at 6:08 PM Mannion, Tom <Tom.Mannion@lewisbrisbois.com<mailto:Tom.Mannion@lewisbrisbois.com>> wrote:

Peter:

Did you let the witnesses set for the next two days know the depositions are off?

[cid:LB-Logo_7c9c5bd0-0a1e-47b8-a3b1-a4b5cdfed8fa.png] Thomas P. Mannion<http://lewisbrisbois.com/attorneys/mannion-thomas-p>
Attorney | Cleveland Managing Partner
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Representing clients from coast to coast. View our locations nationwide.<http://lewisbrisbois.com/about/locations>