

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

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James Brogan</p> <p>Plaintiffs' Brief regarding Julie Ghoubrial's Testimony and Spousal Privilege</p>
---	---

In Defendant Ghoubrial's various submissions regarding R.C. 2317.02(D), he misstates the law governing the spousal communications privilege, including by proclaiming that "Dr. Ghoubrial has an absolute right to assert his spousal privilege to prevent Julie Ghoubrial from being compelled to testify regarding private marital communications over his objection." *See* Defendant Ghoubrial's Supplemental Brief Regarding Spousal Privilege or Immunity, at 7. But as discussed more fully below, the privilege cannot prevent Julie from testifying because (1) R.C. 2317.02(D) applies strictly and narrowly to "confidential" communications, which do not include the ordinary business information Plaintiffs seek from Julie; (2) Ohio courts have recognized a crime-fraud exception to the marital privileges; (3) the privilege does not provide a basis on which Defendant Ghoubrial can prospectively limit Julie's testimony; and (4) Defendant Ghoubrial and Julie have waived the privilege by permitting Julie to answer questions at a prior deposition concerning the same business practices that are at issue in this lawsuit.

1. R.C. 2317.02(D) applies only to "confidential" spousal conversations; it does not offer blanket protection of all communications between husband and wife.

R.C. 2317.02(D) provides that husband or wife shall not testify "concerning any communications made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing

of a third person competent to be a witness.” The spousal communications privilege, like other statutory privileges, “contravene[s] the fundamental principle that the public ‘has a right to every man’s evidence.’” *State v. VanHoy*, 3d Dist. Henry Case No. 7-2000-01, 2000-Ohio-1893, at *8-9, citing *State v. Mowery*, 1 Ohio St.3d 192, 199, 438 N.E.2d 897 (1982). The privilege must be “strictly construed” “only to the very limited extent that” “excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.” *Id.*

Consistent with *VanHoy* and *Mowery*, Ohio courts have limited the privilege’s application to communications that are clearly confidential, because the purpose of the privilege is not to conceal information, but to protect “the trust and confidence” necessary for the continued success of the marriage. *Muehrcke v. Housel*, 8th Dist. Cuyahoga Nos. 85643, 85644, 2005-Ohio-5440, ¶ 25, citing *Sessions v. Trevitt*, 39 Ohio St. 259, 267 (1883). Accordingly, the spousal communications privilege does not apply to every communication made during the marriage, but is limited to “confidential communications.” *Finnegan v. Metro. Life Ins. Co.*, 162 N.E.2d 216, 1958 Ohio App. LEXIS 894, at *13 (7th Dist.1958) (“the true intent of the legislature in passing R.C. 2317.02 ... was not necessarily intended to exclude all types of conversation between married parties.”). The privilege does not apply to “statements of a routine or business nature.” *Housel* at ¶ 26, quoting *Harrison v. Harrison*, 10th Dist. Franklin No. 91AP-888, 1992 Ohio App. LEXIS 831, at *4-5. Nor does it apply to conversations or observations concerning a spouse’s “whereabouts for a matter of a few days.” *Finnegan* at *13 (7th Dist.1958).

Contrary to this controlling law, Defendant Ghoubril argues at length that Julie cannot be permitted to testify by claiming that the “privilege applies to preclude Mrs. Ghoubril from testifying to **any communications** between her and Dr. Ghoubril made under coverture pursuant to R.C. 2317.02(A)(2).” *See* Ghoubril’s 04/23/2019 Motion for Reconsideration, at 7 (emphasis added).

Defendant Ghoubrial further cites *Lawson v. Grange Mut. Cas. Co.*, 2d Dist. Montgomery No. 18002, 2000 Ohio App. LEXIS 2438 (June 9, 2000), for the proposition that there is no “allowance for judicial construction” in applying the privilege. *See* Ghoubrial’s Supplemental Brief Regarding Spousal Privilege, at 3.

But the *Lawson* court’s statement about judicial construction was limited to the communication of intimate wishes and desires between a husband and wife concerning the husband’s statement to his wife that he wished someone “would steal and burn” the couple’s van, and that he wanted his wife to ask her brother to “burn down” the couple’s residence. *Id.* at *2-3. Without explanation or analysis, the court found that such statements were privileged under R.C. 2317.02(D), simply because the statements “appear[ed] to fall squarely within the framework of the statute.” *Id.* at *3. Here, unlike the communications in *Lawson*, the testimony Plaintiffs’ counsel seeks to elicit from Julie does not concern desires, plans, or wishes shared in confidence between husband and wife. Plaintiffs’ counsel seeks only to elicit testimony concerning Julie’s knowledge of Defendant Ghoubrial’s business activities, which Ohio courts have already ruled are not privileged under R.C. 2317.02(D). *See Housel* at ¶ 26; *Harrison* at *4-5.

Moreover, in requesting a confidentiality order in relation to the Ghoubrial divorce proceedings in Summit County Common Pleas Case No. DR 2018-04-1027, Defendant Ghoubrial represented that Julie’s testimony concerned statements of a “business nature,” when he argued to the Domestic Relations Court that a confidentiality order was necessary because Julie’s deposition testimony pertained to “business information regarding” Defendant Ghoubrial’s “business” and that Julie was “an office holder” in his “business.” *See* Defendant Ghoubrial’s Motion to mark Julie’s Deposition Transcript as Confidential Information, at 1, attached as **Exhibit 1**.¹ Because statements

¹ The Court may easily and properly reject Defendant Ghoubrial’s assertions that Plaintiffs’ claimed knowledge “regarding the subject matter of Julie Ghoubrial’s testimony in the divorce case is either

pertaining to Defendant Ghoubrial's business are not privileged under R.C. 2317.02(D), and Julie, as an officeholder in the business, has knowledge of the business independent of the marriage, Defendant Ghoubrial may not prevent Julie from testifying to such knowledge.

2. The Supreme Court of Ohio has recognized a crime-fraud exception to the privilege.

Defendant Ghoubrial has repeatedly claimed that "there is no case law in Ohio extending the crime fraud exception ... to the spousal privilege created by R.C. 2317.02(D)." *See* Ghoubrial's Supplemental Brief, at 3.² To the contrary, The Supreme Court of Ohio has long recognized an exception to the marital privileges premised on knowledge that one's spouse has engaged in illegal activity. In *State v. Mowery*, 1 Ohio St.3d 192, 199, 438 N.E.2d 897 (1982), the Court permitted a spouse to testify about her husband's illegal activity, over her husband's objections, on the basis that a wrongdoer may not conceal evidence of his unlawful conduct by claiming privilege:

The United States Supreme Court recently dealt with the privilege rule in the context of federal courts in the case of *Trammel v. United States*, *supra*. In *Trammel*, the court used a balancing test to determine " * * * whether the privilege against adverse spousal testimony promotes sufficiently important interests to outweigh the need for probative evidence in the administration of criminal justice." *Id.*, at 51.

In reaching its decision the court, at page 50, noted: "Testimonial exclusionary rules and privileges contravene the fundamental principle

purely speculative and unsupported or was obtained in direct violation of Judge Quinn's orders." *See* Ghoubrial's Supplemental Brief, at 7, note 6. Indeed, Defendant Ghoubrial has stated as a matter of fact that Julie "testified to confidential business information regarding Defendant's business" at her deposition. *See* **Ex. 1**, at 1. Moreover, in asking the Domestic Relations Court to rule that Julie's deposition testimony is "confidential," Defendant Ghoubrial apparently believed that Julie violated an underlying protective order designed to shield information about Defendant Ghoubrial's various businesses, including Clearwater Billing Services, LLC, Sam Ghoubrial, M.D., Inc., and TPI Airways, LLC. *See* Julie Ghoubrial's Response to Defendant Ghoubrial's Motion to Mark Deposition Transcript as Confidential Information, at 1, attached as **Exhibit 2**.

² Defendant Ghoubrial also protests on the basis that the crime-fraud exception cannot apply to past conduct, despite that Defendant Ghoubrial himself does not dispute that he has not changed the business practices and conduct at issue in this lawsuit, such that his conduct is ongoing. *See* Ghoubrial Tr. at 422:14-17.

that ‘the public ... has a right to every man's evidence.’ *United States v. Bryan*, 339 U.S. 323, 331 (1950). **As such, they must be strictly construed and accepted ‘only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.’** *Elkins v. United States*, 364 U.S. 206, 234 (1960) (Frankfurter, J., dissenting).

Applying this balancing test to the instant case it is clear there is no compelling ‘public good’ to be served by the exclusion of any portion of Mrs. Mowery's testimony. Indeed, as this court recognized in *Antill*, *supra*, at page 64: **‘The wrongdoer not only injures his spouse but he also injures the public, and it is for his offense against the public that he is subject to criminal prosecution. When the injured spouse is a witness for the state his competency cannot be affected by his desires or fears. He must testify to protect the public.’** *Turner v. State* (1882), 60 Miss. 35, 45, 45 Am. Rep., 412.

(emphasis added). Though in *Mowry*, the Ohio Supreme Court was interpreting R.C. 2945.42—the privilege pertaining to criminal trials—the policy set forth in *Mowry* applies with equal force to the analogous privilege contained in R.C. 2317.02(D), particularly given the essentially criminal nature of the claims at issue here. Accordingly, in ruling on Defendant Ghoubril’s objections to Julie testifying about any knowledge she has of his fraudulent business activities, the privilege must be “strictly” applied “only to the very limited extent that” doing so would have “a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.” *Mowry*, at 199, citing *Trammel v. United States*, 445 U.S. 40, 52 (1980) (internal citations omitted).

Defendant Ghoubril has provided no basis on which the Court could find that the privilege prohibits Julie from attending her deposition and testifying, especially where there is a protective order in place shielding such testimony. In addition, Defendant Ghoubril has not explained or attempted to explain how preventing Julie from testifying would transcend the public good of ascertaining the truth of the allegations in this case, which are supported by extensive evidence of Defendants’ liability for a widespread, fraudulent, and essentially criminal scheme. *See, generally*, Plaintiffs’ 05/15/2019 Motion for Class-Action Certification (summarizing evidence). The Court

should order that Julie's deposition go forward to further the public good in ascertaining the truth of the allegations in this lawsuit and subject her deposition testimony to an *in camera* review to determine whether the privilege applies.

3. As with other testimonial privileges, the spousal communications privilege does not provide a means to prospectively limit Julie's testimony.

It is well settled that testimonial privileges, including the spousal communications privilege, must be asserted in response to specific questions, such that a blanket assertion of privilege cannot and does not relieve a witness of attending a properly noticed deposition. *See, e.g., Weierman v. Mardis*, 101 Ohio App.3d 774, 777, 656 N.E.2d 734 (1st Dist. 1994) (affirming trial court order that a deposition occur despite objections based on privilege, because the status or identity of a party does not "exempt him from the normal discovery procedures ... If a dispute arises between the parties concerning the nature of" deposition "testimony, the trial court, at that time, may determine whether specific statements amount to privileged communications."); *Carroll v. Student Transp., Inc.*, E.D.Pa. No. 10:1439, 2011 U.S. Dist. LEXIS 11470, at *10 (Feb. 4, 2011) (denying motion to quash subpoena based on assertion of spousal privilege, because parties may not use the privilege to "prospectively" limit another party's ability to access or obtain evidence and such determinations must instead be based on "the nature and subject matter of the communication at issue before determining" the privilege's application); *Briley v. U.s. Barge Line, LLC*, W.D.Ky. No. 5:10-CV-00046-R, 2011 U.S. Dist. LEXIS 92694, at *407 (ordering that a deposition take place despite a party's asserting "the marital confidential communication privilege" because "a blanket claim of privilege" is "insufficient" to determine whether the communication at issue "merits protection"); *United States v. Cordes*, E.D.Mich. No. 15-CV-10040, 2016 U.S. Dist. LEXIS 37528, at *8-9 (neither spouse "may assert a blanket

spousal communication privilege that would justify quashing the subpoenas ... whether the privilege applies must be determined on a question-by-question, and document-by-document basis.”³

Because the spousal communications privilege may not be used to prospectively limit Julie’s testimony, *in camera* review, after her deposition, is the proper procedure to determine whether her testimony should be protected. *See, e.g., Hirzel v. Ooten*, 4th Dist. Meigs Nos. 06CA10, 07CA13, 2008-Ohio-7006, ¶¶ 66-67 (once a party raises a privilege claim, it is “the duty of the trial court to conduct an *in camera* inspection of the information before allowing it to be admitted”); Accordingly, the Court should order that Julie be permitted to testify at her properly noticed deposition and subject such testimony to an *in camera* review for a determination of whether the privilege applies.

Conclusion

Because Plaintiffs have not had any chance to elicit Julie’s testimony about the facts at issue in this case, there is simply no basis for a conclusion that this testimony would be privileged. Further, given that this testimony will relate only to Defendant Ghoubrial’s allegedly fraudulent business practices, and not any “confidential communications” between husband and wife, it is doubtful that any such privilege could ever apply, or that it wouldn’t be subject to Ohio’s long-established crime-

³ Moreover, the time for objecting to Julie’s appearing for deposition has long passed. Under Civ.R. 45, a claim of privilege must be asserted “on timely motion” in response to service of the subpoena. Civ.R.45(3)(b). In addition, any assertion of privilege must be made expressly and in sufficient detail for the reviewing court to determine whether the information is properly deemed privileged and for the opposing party to contest the claim. Civ.R.45(D)(4). As explained more fully in Plaintiffs’ Motion to Compel the Deposition of Julie Ghoubrial and Opposition to Defendants’ Motion to Quash and for Protective Order, filed on April 18, 2019, Defendants were aware of the subpoena issued to Julie Ghoubrial in October 2018, yet waited until the eve of her deposition to ask the Court that it not occur on the specious basis of “privilege.” In further violation of the procedures established in Civ.R.45, Defendant Ghoubrial failed to provide sufficient detail of how the testimony Plaintiffs’ counsel seek to elicit from Julie Ghoubrial is privileged, proclaiming without explanation that “no basis exists for Julie Ghoubrial’s deposition to go forward” and that “issues of spousal privilege preclude the deposition from going forward.” *See* Defendant Ghoubrial’s Motion to Quash and Motion for Protective Order re: Deposition of Julie Ghoubrial, filed April 17, 2019, at 3-4. Defendant Ghoubrial’s last-minute attempts to prevent Julie Ghoubrial from testifying were not only untimely, but provide no basis on which the Court could prevent Julie’s deposition.

fraud exception to it. Thus, Julie's deposition in this matter should proceed as noticed, and any relevant non-privileged⁴ portions of her deposition testimony from the D.R. case,⁵ as determined by the Court upon its in camera review, should be immediately produced to the Plaintiffs.

Respectfully submitted,

/s/ Peter Pattakos

Peter Pattakos (0082884)
Rachel Hazelet (0097855)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536
peter@pattakoslaw.com
rhazelet@pattakoslaw.com

Joshua R. Cohen (0032368)
Ellen Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building, Suite 400
Cleveland, Ohio 44113
Phone: 216.781.7956
Fax: 216.781.8061
jcohen@crklaw.com

Attorneys for Plaintiffs

Certificate of Service

⁴ While the Court has suggested that the privilege might have been waived by Defendant Ghoubrial having elicited the testimony from Julie in their divorce proceedings, Plaintiffs tend to agree with Defendant that the privilege does not apply in divorce proceedings as between the spouses and thus could not have been waived in this particular way.

⁵ Attorney David Best represents the KNR Defendants in this case. In the Domestic Relations Court case, he appeared at Julie's deposition on behalf of Ghoubrial's businesses (named third-party defendants in the divorce) to question her specifically about the allegations at issue in this case. Best also appeared on behalf of Ghoubrial's businesses at the March 27, 2019 hearing in the Domestic Relations Court on the motion to intervene that Plaintiffs in this case filed in the D.R. proceedings regarding Julie's transcript. That Best would represent both Ghoubrial and the KNR Defendants simultaneously in this manner further shows that the Defendants have engaged in an organized conspiracy to defraud in violation of the Ohio Corrupt Practices Act. As does the fact that Ghoubrial and the KNR Defendants are both represented by attorneys from the same law firm, Lewis Brisbois, in this case.

The foregoing document was filed on May 24, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Patakos
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

Julie Ghoubrial	*	Case No.: DR 2018-04-1027
Plaintiff	*	Judge Quinn
vs.	*	Magistrate Dennis
Sameh N. Ghoubrial, et al.	*	<u>MOTION TO MARK DEPOSITION</u>
Defendants	*	<u>TRANSCRIPT AS CONFIDENTIAL</u> <u>INFORMATION</u>

Now comes Defendant, Sameh N. Ghoubrial, by and through counsel, and hereby requests an order from this Court requiring the designation of the Plaintiff's deposition in this matter taken on October 12, 2018 as confidential information in accordance with the Stipulated Protective Order filed on August 23, 2018.

More specifically, the Defendant took the deposition of Plaintiff on October 12, 2018. The Plaintiff testified to confidential business information regarding Defendant's business. Further, Plaintiff is an office holder in Defendant's business. Defendant has attempted to resolve this matter with Plaintiff's counsel. Plaintiff's counsel has refused to abide by the terms of the Stipulated Protective Order.

Wherefore, Defendant, Sameh N. Ghoubrial, is hereby requesting an order from this Court requiring the Plaintiff to mark the deposition transcript as confidential information in accordance with the Stipulated Protective Order and follow all terms of the Stipulated Protective Order.

EXHIBIT 1

Respectfully submitted,

/s/ Adam R. Morris

Adam R. Morris (0086513)
Randal A. Lowry (0001237)
Mora Lowry (0070852)
Attorneys for Defendant
4000 Embassy Parkway, Suite 200
Akron, Ohio 44333
(330) 576-3363

CERTIFICATE OF SERVICE

I, Adam R. Morris, do hereby certify that a copy of the foregoing has been sent via e-mail this 24th day of January, 2019 to:

Gary Rosen, Esq.
grozen@goldman-rosen.com

/s/ Adam R. Morris

Adam R. Morris (0086513)
Randal A. Lowry (0001237)
Mora Lowry (0070852)
Attorneys for Defendant
4000 Embassy Parkway, Suite 200
Akron, Ohio 44333
(330) 576-3363

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

JULIE GHOUBRIAL)	CASE NO: DR-2018-04-1027
)	
Plaintiff,)	JUDGE QUINN
)	
-vs-)	MAGISTRATE DENNIS
)	
SAMEH N. GHOUBRIAL, et al)	<u>PLAINTIFF'S RESPONSE TO</u>
)	<u>DEFENDANT'S MOTION TO</u>
Defendants.)	<u>MARK DEPOSITION</u>
)	<u>TRANSCRIPT AS CONFIDENTIAL</u>
)	<u>INFORMATION</u>

Comes now Plaintiff, **Julie Ghoubrial**, by and through undersigned counsel, in response to the Motion to Mark Deposition Transcript as Confidential Information, filed by Defendant, Sameh N. Ghoubrial, on January 24, 2019, in this matter, and states the following:

1. The Defendant's request to mark the deposition transcript from Defendant's deposition of Plaintiff on October 12, 2018, is inappropriate and based upon inaccurate and misleading information.
2. The parties previously agreed upon, and the Court issued on August 23, 2018, a Confidentiality Agreement and Stipulated Protective Order, which is attached hereto as *Plaintiff's Exhibit 1*.
3. That Order states: "This Protective Order shall govern all designated documents, tangible things, testimony, and information produced, provided, or made available in this action by the Third-Party Defendant business entities hereto, Blue Streak Flight Group, LLC, Clearwater Billing Services, LLC, GLTCP Health Care Services, Inc., Sam H. Ghoubrial, MD, Inc., SGM Holdings, Inc., and TPI Airways, LLC"
4. The Deposition of Plaintiff on October 12, 2018, is plainly not covered by the terms of the Confidentiality Agreement and Stipulated Protective Order.
5. The Confidentiality Agreement and Stipulated Protective Order pertains solely to discovery materials produced by the Third-Party Defendant business entities.
6. Plaintiff's deposition testimony is not the testimony of any of the business entities. Rather, Plaintiff's testimony was hers and hers alone.
7. Defendant's interpretation of the Confidentiality Agreement and Stipulated Protective Order is

EXHIBIT 2

erroneous and should be disregarded by this Court.

WHEREFORE, Plaintiff prays for the following:

1. That Defendant's Motion be dismissed, and all relief requested therein be denied;
2. For such other relief as shall be deemed necessary and proper.

Respectfully submitted,

/s/ Gary M. Rosen

Gary M. Rosen, #0009414

Joshua A. Lemerman, #0091841

Day Ketterer, Ltd.

11 South Forge Street

Akron, Ohio 44304

(330) 376-8336 (Main Office)

(330) 376-2522 (Fax)

e-mail: grosen@dayketterer.com

e-mail: jlemerman@dayketterer.com

Attorneys for Plaintiff, Julie Ghoubril

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice was sent by email, on this 24th day of **January, 2019**, to, Randal A. Lowry & Adam R. Morris, Attorneys for Defendant, Randal A. Lowry & Associates, 4000 Embassy Parkway, Suite 200, Akron, Ohio 44333, *Email: rlowry@randallowry.com & amorris@randallowry.com*, and a courtesy copy was sent by email to: **Stephen P. Griffin, Co-Counsel for Third-Party Defendants**, Griffin Law, LLC, 4051 Whipple Avenue NW, Suite 201, Canton, Ohio 44718, sgriffin@griff-law.com and **David M. Best, Co-Counsel for Third-Party Defendants**, David M. Best Co., LPA, 4900 West Bath Road, Akron, Ohio 44333, dmbest@dmbestlaw.com

/s/ Gary M. Rosen

Gary M. Rosen, #0009414

Joshua A. Lemerman, #0091841

Day Ketterer, Ltd.

11 South Forge Street

Akron, Ohio 44304

(330) 376-8336 (Main Office)

(330) 376-2522 (Fax)

e-mail: grosen@dayketterer.com

e-mail: jlemerman@dayketterer.com

Attorneys for Plaintiff, Julie Ghoubril

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

JULIE GHOUBRIAL	*	CASE NO: DR 2018-04-1027
Plaintiff	*	JUDGE QUINN
vs.	*	MAGISTRATE DENNIS
SAMEH N. GHOUBRIAL, et al	*	
Defendants.	*	

**CONFIDENTIALITY AGREEMENT AND
STIPULATED PROTECTIVE ORDER**

Plaintiff served Interrogatories and Requests for Production of Documents on the Third-Party Defendant business entities, Blue Streak Flight Group, LLC, Clearwater Billing Services, LLC, GLTCP Health Care Services, Inc., Sam H. Ghoubrial, MD, Inc., SGM Holdings, Inc., and TPI Airways, LLC, in the above-captioned case, whereby certain documents have been requested that may contain confidential personal or business information, including, but not limited to, information pertaining or belonging to third parties, which, if disclosed, might adversely affect a party, third party, or producer of such information or invade the privacy rights of others. Accordingly, pursuant to the agreement of Plaintiff and Defendant,

Sandra Kurt, Summit County Clerk of Courts

Sandra Kurt, Summit County Clerk of Courts



IT IS HEREBY ORDERED BY THE COURT THAT:

1. This Protective Order shall govern all designated documents, tangible things, testimony, and information produced, provided, or made available in this action by the Third-Party Defendant business entities hereto, Blue Streak Flight Group, LLC, Clearwater Billing Services, LLC, GLTCP Health Care Services, Inc., Sam H. Ghoubrial, MD, Inc., SGM Holdings, Inc., and TPI Airways, LLC, including:

- (a) documents, including but not limited to written, typed or printed matter of any kind, sound recordings, computer or other electronic recordings, photographs, or any other medium for preserving, transmitting, communicating, conveying, duplicating, or recording written or spoken words, figures or images;
- (b) responses and/or answers to interrogatories;
- (c) testimony and/or transcripts of testimony;
- (d) answers, information, and documents provided in written or oral depositions;
- (e) responses to requests for admission; and
- (f) documents, tangible things, and information produced or made available even if not formally requested under the discovery rules (hereinafter "Documents and/or Discovery Responses").

2. If at any time any producer ("Designating Party") of documents or information determines in good faith that a Document or Discovery Response contains confidential personal or business information (collectively "Confidential Information"), the item may be designated "Confidential Information." Any document designated as "Confidential Information" shall bear the label or stamp "CONFIDENTIAL." The designation "CONFIDENTIAL" does not mean that the

document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.

- (a) Regarding information concerning a Third-Party Defendant business entity obtained pursuant to a subpoena from non-parties, the parties shall treat any document or information received in response to a subpoena as "Confidential Information" pursuant to this Order, whether or not the other party has made a designation regarding same. While any party or Third-Party Defendant may thereafter mark the documents produced in response to a subpoena from non-parties as "CONFIDENTIAL," the failure to do so shall not relieve a party from the obligations under this Order to treat all documents and information produced as Confidential information.

3. If any party or its legal counsel objects to a producer's designation of a Document or Discovery Response as Confidential Information, it shall notify the producer and the parties shall make a reasonable, good-faith effort to resolve the issue. If the parties are unable to resolve the issue, the objecting party may move the Court for an appropriate order. Pending a ruling on the motion, all the material as to which such a dispute exists shall be treated as Confidential Information and shall be subject to the provisions of this Protective Order. A dispute as to a designation of Confidential Information shall not be grounds for delay of or refusal to permit discovery.

4. Documents and Discovery Responses which are designated as Confidential Information, copies thereof, and the information contained therein, shall be produced only to counsel for parties to this action, who shall use such Documents or Discovery Responses and the information contained therein solely in the prosecution or defense of this action, and shall not be exhibited or disclosed by

legal counsel or by any party to any other person or entity; provided, however, that nothing herein shall prevent the exhibition of such Documents or Discovery Responses or the disclosure of information contained therein to the following persons:

- (a) legal counsel for the parties, including the parties' counsel who are not counsel of record in this case, and their employees who are actively engaged in connection with, or who are making decisions with respect to, the mediation, settlement, preparation for, and trial of this action;
- (b) the parties;
- (c) persons who have prepared or assisted in the preparation of such Confidential Information or to whom the Confidential Information was addressed or delivered;
- (d) employees, consultants, investigators, or experts employed or engaged by the parties or their counsel who are assisting in the preparation of, or are actively engaged in connection with, or are making decisions with respect to, the mediation, settlement, preparation for, and trial of this litigation;
- (e) court personnel and court reporters who are actively engaged in connection with the preparation for and trial of this action;
- (f) commercial photocopying, document handling, and/or litigation support firms used by counsel or a party to this action for photocopying, storage, review, retrieval, duplication or production of Confidential Information, provided that such firm on behalf of itself and its employees has agreed, in writing, to be bound by this Protective Order;
- (g) to the extent deemed necessary by legal counsel, witnesses or potential witnesses and their legal counsel, in preparation for giving testimony in this litigation by deposition or at trial relating to Confidential Information or who are believed to possess information deemed necessary for the prosecution or defense of this action, provided that the witness and his or her legal counsel have agreed in writing or in sworn testimony to be bound by this Protective Order;

- (h) any person who otherwise would be entitled to review the Confidential Information, including auditors, as a result of contractual obligations, federal or state laws, or court orders provided that such persons have agreed in writing or in sworn testimony to be bound by this Protective Order.

5. In the event disclosure of any Confidential Information is sought from anyone subject to this Protective Order pursuant to a lawful subpoena, demand by governmental authority, court order, or any other legal process, such person or entity shall, as soon as practicable after receipt of the request, notify the Designating Party of the request for disclosure by both (i) overnight mail and (ii) by facsimile or e-mail. Under no circumstances may production take place before notice is sent. The Designating Party may then seek to prevent disclosure by filing a motion for protective order with this Court within seven (7) calendar days of receiving such notice or by taking other appropriate action in any other court with jurisdiction. If such motion is filed with this Court or other appropriate action taken by the Designating Party, the Confidential Information shall not be disclosed until the issue is resolved by order of the appropriate court unless required by the law or Court Order.

6. If a party desires to give, show, make available, or communicate a Document or Discovery Response marked as Confidential Information to any persons other than those referred to in paragraph 5, its legal counsel shall notify legal counsel for the Designating Party in writing. The writing shall specify the Confidential Information to be disclosed; the proposed use of the Confidential Information to be disclosed; the reason for the proposed disclosure; and the name,

occupation, and address of the person to whom disclosure is proposed (the Notice). In the event that the Designating Party objects to the disclosure of the Confidential Information, it shall, within ten (10) days of receipt of the Notice, respond in writing describing its objection and the grounds therefor. The parties shall attempt to resolve any dispute regarding the proposed disclosure. If the dispute is not resolved on an informal basis, the parties shall promptly submit the matter to the Court by motion. The Confidential Information shall not be disclosed pending a resolution of the dispute by the Court.

7. Documents and/or Discovery Responses marked as Confidential Information that may be disclosed under this Order shall not be given, shown, made available, discussed, or otherwise communicated to anyone other than the attorneys of record and in-house counsel without first informing such recipients of the contents of this Protective Order. Documents and/or Discovery Responses marked as Confidential Information shall not be given, shown, made available, discussed, or otherwise communicated to other persons pursuant to paragraphs 5(f) through 5(h) above until counsel has first obtained from such person a signed Acknowledgment and Agreement Pursuant to Protective Order, in the form attached hereto as Exhibit A ("Acknowledgment"). Counsel making any such disclosures shall retain each original Acknowledgment and a description of the Confidential Information disclosed to each signer. After final resolution of this litigation as to all parties, legal counsel for the Designating Party shall be entitled to receive, within a reasonable time upon request, an affidavit executed by legal counsel for the receiving parties attesting that the signed Acknowledgments have been obtained from all individuals to whom Confidential Information has been

disclosed other than those excepted in paragraph 5 of this Protective Order.

8. DEPOSITIONS INVOLVING CONFIDENTIAL INFORMATION

- (a) Prior to the start of the deposition of any deponent other than the author or source of a Confidential Document and/or Discovery Response or other Confidential Information, or a director, officer, employee, or agent of the Designating Party, the questioning party shall advise the deponent of the provisions of this Protective Order. Thereafter, the questioning party shall ask the deponent, on the record, to agree to be bound by the terms of this Protective Order.
- (b) If the deponent refuses to assent to the terms of this Protective Order, disclosure of the Confidential Information during deposition shall not constitute a waiver of the protections afforded by this Protective Order. Under such circumstances, the witness may nonetheless be deposed on any Confidential Information; provided, however, that the witness shall not be entitled to remove any Confidential Information from the room in which the deposition is conducted; and further provided that all parties and court reporters shall be instructed that, if the witness does not waive reading and signing, the witness shall review and sign the original deposition transcript in the presence of the court reporter or other appropriate designee, and further that a non-party witness shall not be entitled to receive any original or duplicate exhibits containing Confidential Information or transcripts containing examination on or discussion of Confidential Information.

10. Any producer or party may in good faith designate as Confidential Information testimony given during a deposition, provided the designation be made within fifteen (15) days of the date that the deposition transcript is received by such producer or party. The producer or party requesting the confidential designation shall provide written notice to all parties, including the full name of the deponent, the date, time and place of the deposition, and the specific portions of the deposition to be designated as Confidential Information. In such an event, the confidential portion of the transcript shall be marked "Confidential Information" in accordance with the

provisions of paragraph 2 of this Protective Order.

11. Papers, such as briefs and memoranda, that are filed with the Court and that contain Documents and/or Discovery Responses marked as "Confidential Information" or that reference Confidential Information may be filed with the Court, attached to, or referred to in documents filed with the Court if such filings are made under seal. No Documents and/or Discovery Responses or other materials which have been filed under seal shall be made public unless written notice is provided to all parties and each of them has assented in writing or unless specifically authorized by an order of this Court. The party or parties filing such Documents and/or Discovery Responses or other materials under seal shall do so according to the requirements of the Clerk of Court and/or the Court.

12. Nothing in this Protective Order shall affect the right of any party in trial or otherwise before the Court to move for the admission of Confidential Information into evidence.

13. This Protective Order shall not apply to any document, or information contained therein, which is available publicly, or which is a matter of public record on file with any other court or governmental or regulatory agency or board, or which is or becomes available to a party by any lawful and unrestricted means.

14. Within twenty-four (24) months after the conclusion of this litigation by dismissal, final judgment, disposition on appeal, or settlement, all Confidential Information produced in this litigation, and all copies, images or reproductions thereof, shall, at the option of the party receiving the Confidential Information:

- (a) be returned to the producing party; or
- (b) be destroyed by the receiving party, in which case the receiving party shall certify to all other parties in writing that all Confidential Information

has been destroyed.

15. This Protective Order shall survive the conclusion of this litigation and shall continue in full force and effect. The protections afforded by this Protective Order shall extend to any Confidential Information, which remains in the hands of any receiving party subsequent to the conclusion of this litigation, including Confidential Information that is incorporated, analyzed, or discussed in the work product of the receiving party, including but not limited to notes, compilations, charts, summaries, memoranda, or other work product.

16. The parties agree that this Protective Order may not be used in this or any other matter for any purpose against any party, except as may be necessary to enforce its terms.

17. Nothing in this Protective Order shall operate to require the production of information or documents that are privileged or otherwise protected from discovery.

18. A party's designation as, its failure to designate as, or its failure to object to another party's designation as Confidential Information as permitted by this Protective Order shall not operate as an admission that any particular Document and/or Discovery Response is or is not "CONFIDENTIAL" privileged, or admissible as evidence at trial.

19. This Protective Order may be modified or amended by agreement of all party's subject to approval by the Court, or by order of the Court for good cause shown.

20. The requirements of this Protective Order shall apply to any materials

produced in this action both before and after the date of this Protective Order is entered.

21. Nothing in this Protective Order shall limit any party's right to appropriate discovery or restrict the prosecution, defense, or settlement of this action.

IT IS SO ORDERED.

JUDGE JOHN P. QUINN

APPROVED BY:

/s/ Adam R. Morris, via email approval 8/17/18
RANDAL A. LOWRY (0001237)
ADAM R. MORRIS (0086513)
Attorneys for Defendant, Sameh N. Ghoubrial
4000 Embassy Parkway, Ste. 200
Akron, OH 44333
(330) 576-3363; fax (330) 576-6631
rallowry@randallowry.com

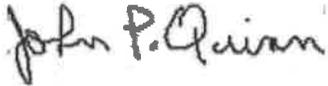
/s/ Stephen P. Griffin, via email approval 8/17/18
STEPHEN P. GRIFFIN (0039655)
Co-Counsel for Third-Party Defendants
Griffin Law, LLC
4051 Whipple Avenue NW, Suite 201
Canton, OH 44718
(234) 360-8090; fax (234) 360-3329
sgriffin@griff-law.com

/s/ Joshua A. Lemerman
GARY ROSEN (0009414)
JOSHUA A. LEMERMAN (0091841)
Attorney for Plaintiff, Julie Ghoubrial
Goldman & Rosen
11 S. Forge Street
Akron, OH 44304
(330) 376-8336; fax (330) 376-2522
grozen@goldman-rosen.com

/s/ David M. Best, via email approval 8/17/18
DAVID M. BEST (0014349)
Co-Counsel for Third-Party Defendants
DAVID M. BEST CO., LPA
4900 West Bath Road
Akron, OH 44333
(330) 665-1855; fax (888) 364-9803
dmbest@dmbestlaw.com

The foregoing document styled 'CONFIDENTIALITY ORDER' and consisting of 10 pages plus this signature page is hereby approved and made an Order of this Court.

IT IS SO ORDERED



Judge QUINN, JOHN