

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

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC,
et al.,

Defendants.

Case No. 2016 09 3928

Judge James Brogan

**DEFENDANTS' MOTION TO STAY
PENDING APPEAL**

Defendants, Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick (collectively, "KNR") move this Court for an Order staying any further proceedings in this matter pending appeal of the Court's Order of December 17, 2019, granting Plaintiffs' Motion For Class Certification as it relates to two putative classes of Plaintiffs. A Notice of Appeal has been filed contemporaneously with the instant motion.

On December 17, 2019, this Court issued an order finding the claims of Plaintiffs Reid, Norris, and Harbour against KNR for fraud, breach of fiduciary duty, and unjust enrichment as it relates to the cost of medical care provided by Defendant Dr. Ghoumbrial were appropriate for class certification (Class A). The Court also found the claims of Plaintiffs Williams, Reid, Norris, and Harbour relating to investigation fees paid by Plaintiffs were appropriate for class certification (Class C). Pursuant to statute, the granting of a motion for class certification is a final appealable order. R.C. 2505.02(B)(5). KNR has filed a timely notice of appeal with the clerk of courts as set forth in App.R. 3 and App.R. 4. Pursuant to App.R. 7, a party seeking a stay of

proceedings pending appeal is ordinarily required to initially seek such leave the from the trial court.

KNR respectfully asks this Court to stay any further proceedings in this matter pending KNR's appeal on the issue of class certification. Any further proceedings in the trial court are inherently dependent upon the outcome the appeal. The scope of any further motion practice, discovery, and/or judicial orders that would need to be completed prior to trial cannot be determined until the appeal is resolved. In the interest of judicial economy, the Court should not be inclined to engage in ruling on potential discovery issues or further motion practice that would become moot if the appeal is successful. Likewise, the parties should not be required to endure the expense associated with continued proceedings in the trial court which would likely become wholly unnecessary in the event of a successful appeal.

For the reasons stated herein, the KNR defendants respectfully request that this Court issue an order staying all proceedings in this matter pending the outcome of the appeal on class certification.

Respectfully submitted,

/s/ James M. Popson

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CERTIFICATE OF SERVICE

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *Motion to Stay Pending Appeal* was filed electronically with the Court on this 6th day of January, 2020. The parties, through counsel, may access this document through the Court's electronic docket system.

/s/ James M. Popson

James M. Popson (0072773)