

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Case No. CV-2016-09-3928</p> <p>Judge James A. Brogan</p> <p>Notice of Cross-Appeal</p>
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Plaintiffs hereby give notice that they are cross-appealing to the Ninth District Court of Appeals, Summit County, Ohio, from the Decision of the Summit County Court of Common Pleas that was entered on January 26, 2024, a copy of which is attached along with the attached docketing statement and incorporated by reference herein.

Respectfully submitted,

/s/ Peter Pattakos
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Zoran Balac (0100501)
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Certificate of Service

The foregoing document was filed on February 26, 2024, using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs

**COURT OF APPEALS OF OHIO
NINTH APPELLATE DISTRICT**

Docketing Statement

Appeal No. CA-31007, CA-31008

A time-stamped copy of the final judgment being appealed must be attached to this statement.

Trial Court Name Summit County Court of Common Pleas

Trial Court Caption MEMBER WILLIAMS
(Name of first plaintiff)

v.

KISLING, NESTICO & REDICK, LLC
(Name of first defendant)

Trial Court Case Number CV-2016-09-3928

Trial Court Judge James A. Brogan

Date of judgment appealed January 26, 2024
Was the time to appeal extended
by App.R. 4(B)? Yes No

CALENDAR DESIGNATION

THIS APPEAL SHOULD BE ASSIGNED TO:

- Regular Calendar.
- Accelerated Calendar. *See* Loc.R. 11.1.
- Expedited Calendar (generally for appeals involving termination of parental rights). *See* App.R. 11.2.

THE RECORD

Mark the paragraph that applies.

TO THE CLERK OF COURTS: Please immediately assemble and transmit the record in this case. I certify that the paragraph I marked accurately describes the complete record to be filed:

1. The record will consist of **ONLY** the original papers, exhibits, a certified copy of the docket and journal entries, and any transcripts of proceedings that were filed in the trial court prior to final judgment.
2. The record will include the original papers and exhibits filed in the trial court, a certified copy of the docket and journal entries, and a full or partial transcript of proceedings prepared for this appeal by a court reporter appointed by the trial court, who I served with a praecipe that I also filed with this court. If only a partial transcript of proceedings is requested, see App.R. 9(B).
3. The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and a statement of the evidence or proceedings pursuant to App.R. 9(C) or an agreed statement of the case pursuant to App.R. 9(D).
4. The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and both a transcript of proceedings prepared by a court reporter appointed by the trial court and a statement of the evidence or case pursuant to App.R. 9(C) or (D). If only a partial transcript of proceedings is requested, see App.R. 9(B).

If you intend to rely upon a transcript of proceedings filed in an earlier appeal, you must seek permission from the court to supplement the record in this appeal with the transcript filed in the earlier appeal.

**A time-stamped copy of the final judgment being appealed must be attached to this statement.
If the order appealed is not final and appealable under R.C. 2505.02, the Court must dismiss the appeal.**

THE PARTIES

Please provide the following information for all parties to the proceedings in the trial court.

A party who files a notice of appeal is an appellant. A party who would be adversely affected if the judgment below is reversed should be designated as an appellee. All other parties to the action below should retain their trial court designation (plaintiff, defendant, third-party plaintiff, third-party defendant, petitioner, respondent, etc.). See Local Rule 3.

If a party was not represented by counsel in the proceedings below, please provide the address and phone number of the party. If there are additional parties and/or attorneys, please copy this page, complete the information for the additional parties, and attach it to this statement. Appellant must attach a copy of any order that resolved a claim against any of the parties.

Party's name <u>Member Williams</u> Party's designation <u>Appellee/Cross-Appellant</u> Attorney's name <u>Peter Pattakos, Zoran Balac & Gregory Gipson</u> Attorney's registration number <u>0082884, 0100501, 0089340</u> Address of counsel or party <u>The Pattakos Law Firm LLC</u> <u>101 Ghent Rd., Fairlawn, OH 44333</u> Phone <u>330-836-8533</u> Fax <u>330-836-8536</u> Email <u>peter@pattakoslaw.com; zbalac@pattakoslaw.com</u> <u>ggipson@pattakoslaw.com</u>	Party's name <u>Thera Reid</u> Party's designation <u>Appellee/Cross-Appellant</u> Attorney's name <u>Peter Pattakos, Zoran Balac & Gregory Gipson</u> Attorney's registration number <u>0082884, 0100501, 0089340</u> Address of counsel or party <u>The Pattakos Law Firm LLC</u> <u>101 Ghent Rd., Fairlawn, OH 44333</u> Phone <u>330-836-8533</u> Fax <u>330-836-8536</u> Email <u>peter@pattakoslaw.com; zbalac@pattakoslaw.com</u> <u>ggipson@pattakoslaw.com</u>
Party's name <u>Monique Norris</u> Party's designation <u>Appellee/Cross-Appellant</u> Attorney's name <u>Peter Pattakos, Zoran Balac & Gregory Gipson</u> Attorney's registration number <u>0082884, 0100501, 0089340</u> Address of counsel or party <u>The Pattakos Law Firm LLC</u> <u>101 Ghent Rd., Fairlawn, OH 44333</u> Phone <u>330-836-8533</u> Fax <u>330-836-8536</u> Email <u>peter@pattakoslaw.com; zbalac@pattakoslaw.com</u> <u>ggipson@pattakoslaw.com</u>	Party's name <u>Richard Harbour</u> Party's designation <u>Appellee/Cross-Appellant</u> Attorney's name <u>Peter Pattakos, Zoran Balac & Gregory Gipson</u> Attorney's registration number <u>0082884, 0100501, 0089340</u> Address of counsel or party <u>The Pattakos Law Firm LLC</u> <u>101 Ghent Rd., Fairlawn, OH 44333</u> Phone <u>330-836-8533</u> Fax <u>330-836-8536</u> Email <u>peter@pattakoslaw.com; zbalac@pattakoslaw.com</u> <u>ggipson@pattakoslaw.com</u>
Party's name <u>Kisling, Nestico & Redick LLC</u> Party's designation <u>Appellant/Cross-Appellee</u> Attorney's name <u>R. Eric Kennedy & Daniel P. Goetz</u> Attorney's registration number <u>0006174, 0065549</u> Address of counsel or party <u>Weisman, Kennedy & Berris Co., LPA</u> <u>101 Prospect Ave, 1600 Midland Bldg, Cleveland, OH 44115</u> Phone <u>216-781-1111</u> Fax <u>216-781-6747</u> Email <u>ekennedy@weismanlaw.com; dgoetz@weismanlaw.com</u>	Party's name <u>Alberto R. Nestico</u> Party's designation <u>Appellant/Cross-Appellee</u> Attorney's name <u>R. Eric Kennedy & Daniel P. Goetz</u> Attorney's registration number <u>0006174, 0065549</u> Address of counsel or party <u>Weisman, Kennedy & Berris Co., LPA</u> <u>101 Prospect Ave, 1600 Midland Bldg, Cleveland, OH 44115</u> Phone <u>216-781-1111</u> Fax <u>216-781-6747</u> Email <u>ekennedy@weismanlaw.com; dgoetz@weismanlaw.com</u>

Party's name <u>Robert Redick</u>	Party's name <u>Sam Ghoubrial, M.D.</u>
Party's designation <u>Appellee/Cross-Appellant</u>	Party's designation <u>Appellee/Cross-Appellant</u>
Attorney's name <u>R. Eric Kennedy & Daniel P. Goetz</u>	Attorney's name <u>Bradley J. Barmen</u>
Attorney's registration number <u>0006174, 0065549</u>	Attorney's registration number <u>0076515</u>
Address of counsel or party <u>Weisman, Kennedy & Berris Co., LPA</u>	Address of counsel or party <u>Lewis Brisbois</u>
<u>101 Prospect Ave, 1600 Midland Bldg, Cleveland, OH 44115</u>	<u>1375 E. 9th Street, Suite 2250, Cleveland, OH 44114</u>
Phone <u>330-836-8533</u> Fax <u>330-836-8536</u>	Phone <u>216-344-9422</u> Fax <u>216-344-9421</u>
Email <u>ekennedy@weismanlaw.com; dgoetz@weismanlaw.com</u>	Email <u>brad.barmen@lewisbrisbois.com</u>

Was a stay requested in the trial court? Yes No

If a stay was requested, how did the trial court rule? Granted Denied Pending

If this case has previously been before this Court, list prior appellate case number(s): 29630, 29636, 30602, 30604, 31031

List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal: _____

Probable issues for appeal:) (1) Whether the trial court erred in failing to account for evidence demonstrating the appropriateness of the remedy of disgorgement of all fees collected by Defendants in cases where KNR clients were treated by Defendants Ghoubrial, Floros, and other participants in Defendants' cash kickback scheme; and (2) whether the trial court erred in otherwise limiting the class based on purported "discounts" offered by Defendants to the clients they defrauded, which at most offset the fraudulent overcharges and were in reality used to conceal the fraudulent nature of Defendants' scheme.

CRIMINAL CASE

Misdemeanor Felony
 Trial Guilty/No contest plea

Charges _____

Sentence _____

Type of Appeal: Defendant's Appeal as of Right State's Appeal as of Right
 Defendant's Appeal by Leave of Court State's Appeal by Leave of Court

CIVIL CASE

Type of action in trial court? _____

Did the judgment dispose of all claims by and against all parties? Yes No

If not, is there a determination that there is "no just reason for delay?" Civ.R. 54(B). Yes No

Have the parties previously participated in mediation of this dispute? Yes No

Would a mediation conference assist in the resolution of this matter? Yes No Maybe

Must this case be expedited as being one of the following types of cases? Yes No

- App.R. 11.2(B) or (C) appeals (abortion without parental consent, adoption, and parental rights)
- App.R. 11.2(D) appeals (dependent, abused, neglected, unruly, or delinquent child appeals)
- Appeal under determination of local fiscal emergency brought by municipal corporation
- Election contests as provided in R.C. 3515.08

I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE ATTACHED A COPY OF THE FINAL JUDGMENT FROM WHICH THIS APPEAL IS TAKEN.

/s/Peter Pattakos
Signature of Counsel (or party if not represented by counsel)

TAVIA GALONSKI
2024 JAN 26 PM 1:43
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.)	CASE NO. CV 2016 09 3928
)	
Plaintiffs)	JUDGE JAMES A. BROGAN
)	(Sitting by Assignment #18JA1214)
-vs-)	
)	
KISLING, NESTICO & REDICK, LLC, et al.)	<u>DECISION</u>
)	
Defendants)	

- - -

The Ninth District Court of Appeals remanded this matter to this Court for the second time. The Court of Appeals held that this Court failed to conduct a “rigorous analysis” of the requirements of Civ.R. 23(B) specifically, the predominance and superiority requirements of the Rule.

In Cope v. Metropolitan Life Ins. Co., 82 Ohio St. 3d 426, the Ohio Supreme Court held that a class satisfies the predominance requirement when generalized evidence exists to prove or disprove an element on a simultaneous class wide basis, because such proof obviates the need to examine each class members’ individual positions. The Supreme Court recognized that when a common fraud is perpetuated on a class of persons, those persons should be able to pursue an avenue of proof that is common to all members and involves standardized procedures by the defendants. See Hamilton v. Ohio Savings Bank (1998) 82 Ohio St. 3d 67 at 77.

In this matter, this Court will certify as Class A only those patients and clients of the defendants who were alleged victims of the price gouging scheme who did not receive a reduction of their medical bills or fees and were told not to use their health insurance carriers to avoid scrutiny of these charges and fees. These charges by Ghoubrial were for trigger point injections, TENS units and back braces.

The fact that some of the patients and clients received more of the procedures or devices than others should not prevent them being in the same class in this lawsuit.

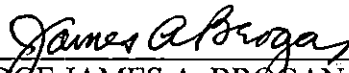
Judge Henzel stated in Mozingo v. 2007 Gaslight Ohio, LLC (2016) Ohio 4828 the fact that each of the class members may have a different amount of damages does not automatically make the class unmanageable and not “superior” to other available methods for adjudication of the controversy.

For the purposes of this class action, the “necessity” for the medical injections and devices will be conceded. The Plaintiff will have to prove in the action that the prices for these items would not be covered by the standard health insurance coverages for these individuals.

The defendants have not asserted in their motion to dismiss that any of the clients or patients have attempted to start a parallel action or to intervene in one, and it seems unlikely in light of the relatively small individual recoverys that would be sought.

Thera Reid qualifies as a class representative because she alleged in the complaint that she was charged unreasonable rates for trigger point injections by Dr. Ghoubrial pursuant to the price gouging scheme alleged in the complaint.

IT IS SO ORDERED.



JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

The Clerk of Courts shall serve all counsel/parties of record.

JAB:lcb
16-3928remand3