COURT OF APPEALS
FILED
LORAIN COUNTY
2019 DEC -2 P 3:43
COURT OF COMMON PLEAS
TOM ORLANDO
9th APPELLATE DISTRICT

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON BROS., INC., et al.

Plaintiffs,

-vs-

OBERLIN COLLEGE, et al.,

Defendants.

Case No.: 17CV193761

Judge: Hon. John R. Miraldi

Magistrate: Hon. Joseph Bott

PLAINTIFFS' & NONPARTY ALLYN D. GIBSON'S BRIEF IN OPPOSITION TO MOTION FOR ACCESS TO SEALED CASE DOCUMENTS

-or, in the alternative-

REQUEST TO HOLD DECISION IN ABEYANCE UNTIL COMPLETION OF THE APPELLATE PROCESS

I. INTRODUCTION

After suffering ***three (3) years*** of defamatory conduct, Plaintiffs[1] and Nonparty Allyn D. Gibson ("ADG") are again being subjected to potential embarrassment, ridicule, and defamation by Movants[2] who are seeking to unseal inadmissible discovery papers that Defendants[3] did not even attempt to introduce as evidence at the trial of this matter. Movants' Motion should be denied for the following reasons:

- ***First***, any constitutional arguments must be dismissed out of hand as Movants do not have standing to assert those arguments;
- ***Second***, even if the Court considers Movants' constitutional arguments (it should not), the sealed documents sought by Movants are not entitled to constitutional protection as they were irrelevant and not admitted as evidence in the trial of this matter;

[1] "Plaintiffs" refers collectively to Gibson Bros., Inc. ("Gibson's Bakery"), David R. Gibson ("Dave Gibson"), and Allyn W. Gibson ("Grandpa Gibson").

[2] "Movants" refers collectively to WEWS-TV ("WEWS"), Advance Ohio ("Advance"), and the Ohio Coalition for Open Government ("OCOG").

[3] "Defendants" refers to Oberlin College & Conservatory ("Oberlin College") and Meredith Raimondo ("Dean Raimondo").

- ***Third***, considering the factors listed in Ohio R. Sup. 45, public policy requires continued restricted access to the sealed documents; and

- ***Fourth***, at a minimum, the Court should hold its decision on Movants' motion in abeyance until the appellate process for this case is completed.

II. BACKGROUND

After presiding over a nearly six (6) week trial, the Court is well-aware of the facts and circumstances underlying this litigation, and Plaintiffs will not take the time to rehash them here. But some attention must be paid to the circumstances surrounding the specific document sought by Movants.

A. The Documents Sought by Movants are Unauthenticated Social Media Messages that Allegedly Came from a Court-Ordered Mirror-Image of Nonparty ADG's Private Facebook Account.

ADG is a nonparty to this case. He is not one of the Plaintiffs and was not awarded any damages as part of the jury verdict. Defendants chose not to: (1) call him as a witness; (2) introduce any of his deposition testimony; or (3) introduce any social media communications allegedly attributed to his account. Any claim of tangential relevancy for this motion arises out of ADG being served with a substantially overbroad subpoena by Defendants in 2018 and subjected to ***days*** of deposition testimony. As part of the subpoena, ADG was ***ordered*** to provide Defendants' counsel with a mirror image copy of his Facebook account. (See, Feb. 21, 2019 Order). Importantly, the Facebook account is not connected to Gibson's Bakery, Dave Gibson, or Grandpa Gibson. Instead, it was ADG's ***private, personal Facebook account***. Exhibit G attached to the affidavit of Attorney Cary Snyder, one of Defendants' attorneys, is a grouping of ***unauthenticated, private*** Facebook messages that allegedly came from the mirror image of ADG's Facebook account ("Exhibit G"). In a preliminary ruling on motions *in limine*, the Court ***specifically excluded*** these documents from admission at trial to the extent Defendants sought to use them as

character evidence for ADG. (May 8, 2019 Entry and Ruling on All Motions *in Limine*, pp. 1-2). And, as the Court noted, "***Defendants made no attempt to introduce these materials as evidence***" of any other issue during trial. (Sep. 16, 2019 Order [emphasis added]).

Interestingly, during the course of discovery, the Plaintiffs requested private communications from the social media accounts of Defendant Dean of Students and Vice President Raimondo and other high-ranking administration officers of Oberlin College, but Oberlin College refused to provide any social media communications for those individuals.

B. The Court has Already Rejected Arguments that Exhibit G Relates to Defendants' Purported Truth Defense.

This Court has already dealt with Defendants' false post-trial contention that Exhibit G somehow supports Defendants' non-existent and waived truth defense to Plaintiffs' libel claim. At page 3 of the Motion, Movants parrot that same claim: "A portion of that Facebook account which defendants contend contains information regarding Mr. Gibson's views as to the Bakery's reputation and its alleged racial profiling was filed under seal as Exhibit G to defendants' combined summary judgment reply brief." However, Defendants' summary judgment reply brief used these materials solely for the argument that Plaintiffs were public figures or limited public figures. (See Defendants' MSJ Reply, pp. 10-12). Those issues were determined by the Court and would never have been presented to the jury because the determination of the Plaintiffs' status is a question of law, not fact.

In actuality, ***Defendants did not present any evidence supporting their purported truth defense at trial, including Exhibit G.*** Movants' efforts present a dangerous potential for abuse of process. When responding to subpoenas, nonparties would no longer be secure in the belief that their private and sensitive information is protected by a Stipulated Protective Order if all such information is released following trial (including material that was *irrelevant*, *inadmissible* and

not even proffered at trial!).

C. The Circumstances Suggest that Movants' Intent in Seeking Exhibit G is Part of a Collaborative Public Relations and Business Crisis Management Campaign by the Defendants to Continue the Defamation of Plaintiffs.

Movants appear to be acting under the guise of independent media outlets. But the true motivation behind their Motion is not so clear.

It may be helpful to note the advertised nature of the business of Advance Ohio, which offers its services for marketing in various industries, including four-year state universities, local community colleges, and retailers. In large text on its website, Advance Ohio claims, "Great Creative, The Right Message, And A Terrific Strategy."[4]

Further, compared to the daily media attention from other outlets, Advance Ohio, through cleveland.com, and WEWS-TV paid very little attention to this case until after the jury issued its verdicts in June of 2019. By Plaintiffs' count, both outlets have published approximately ten (10) stories on this case, combined. And of those, several were only picked up by Movants from the Associated Press.[5] With Movants having such little interest in this case while the trial was ongoing, there is significant reason to suspect the true collaborative purpose and source of efforts to expend resources ***months later*** to gain access to documents that were irrelevant and not admitted as evidence at trial. Perhaps more troubling, Movants have ***only requested access to documents marked confidential by Plaintiffs***. While the text of Plaintiffs' response in opposition to Defendants' motions for summary judgment along with the embedded documents and deposition excerpts were unsealed by this Court (see, April 3, 2019 Entry and Ruling), numerous documents

---

[4] Advance Ohio's website on marketing can be found at https://www.advance-ohio.com/product/campaign-strategy/.

[5] *See, e.g., Market awarded $44M in racism dispute with Oberlin College*, News 5 Cleveland (June 13, 2019) (https://www.news5cleveland.com/news/local-news/oh-lorain/market-awarded-44m-in-racism-dispute-with-oberlin-college); *Judge slashes Gibson's Bakery $44 million settlement*, cleveland.com (June 28, 2019) (https://www.cleveland.com/news/2019/06/judge-slashes-gibsons-bakery-44-million-settlement.html).

and deposition exhibits that were filed with Plaintiffs' summary judgment response brief remain under seal.

Is there reason to suspect the motivation and timing of the instant motion by Movants, who had little interest in this case while it was ongoing, seeking access to documents marked confidential by Plaintiffs while ignoring the vast trove of Defendants' documents that remain under seal? Could the answer to that question be that there are substantial connections between Defendants and Movants? Indeed, Defendants' lead attorney, Ron Holman, II, ***was a television legal analyst for Movant WEWS-TV for more than ten (10) years***:

> . For more than a decade, he appeared as a legal analyst and commentator on News Channel 5 – WEWS-TV

(Ex. 1, p. 1).[6] With this convenient connection, and with the Movants seeking only Exhibit G out of all the sealed filings, it appears that Defendants are attempting to leverage nonparty media contacts to circumvent the Court's previous orders for the purpose of doxing[7] ADG and further smearing Plaintiffs' reputation and brand.

Movants want access to private, personal, and unauthenticated social media messages that were irrelevant and inadmissible at trial. Neither the First Amendment, the Ohio constitution, nor Ohio R. Sup. 45 support such blatant invasions of privacy. Thus, Movants' Motion must be denied.

III. LAW & ARGUMENT

A. Movants do not have Standing to Seek Access to the Exhibit G Under the First Amendment or Ohio Constitution.

At the outset, Plaintiffs submit that the Court should deny Movants' arguments under

[6] A true and accurate copy of the attorney bio page for Attorney Ron Holman, II is included herein as **Exhibit 1**.

[7] "Doxing" is a slang term meaning "to publicly identify or publish private information about (someone) especially as a form of punishment or revenge" as defined by Merriam-Webster. https://www.merriam-webster.com/dictionary/dox

federal and state constitutional law because Movants lack standing to raise those arguments in their Motion.

Ohio R. Sup. 45(F)(1) provides standing to any person to seek access to sealed documents under the procedures and factors outlined by the Ohio Rules of Superintendence. But, Rule 45(F)(1) ***does not grant standing to nonparties to assert state or federal constitutional challenges to a trial court decision restricting access to case documents***. Sup.R. 45(F)(1) [emphasis added] ("Any person, by written motion to the court, may request access to a case document or information in a case document that has been granted restricted access ***pursuant to division (E) of this rule.***"). Movants are not parties to this case and have never moved to intervene in this case. As a result, the Movants lack standing to challenge the parties' stipulated protective order, including the propriety of designations made thereunder, under the Ohio and federal constitution. Additionally, Movants are not seeking some sort of extraordinary relief, such as mandamus. As a result, the Court should deny the Motion as it relates to federal and state constitutional law because Movants lack standing to assert those arguments.

B. The First Amendment and Ohio Constitution do not Provide a Right of Access for Inadmissible Discovery Papers like Exhibit G.

1. Because Exhibit G is nothing more than pretrial discovery materials from a nonparty, Ohio law does not create a presumption of access in favor of Movants.

Under both Ohio and federal law, discovery materials have "historically never been open to the public." *Adams v. Metallica, Inc.*, 143 Ohio App.3d 482, 487, 758 N.E.2d 286 (1st Dist.2001); *Speece v. Speece*, 11th Dist. Geauga No. 2016-G-0100, 2017-Ohio-7950, ¶ 25.

While discussing discovery within the criminal context, the Ohio Supreme Court specifically held that discovery materials should not be subject to public access: "We agree with the foregoing that discovery should be encouraged and that public disclosure would have a chilling

effect on the parties's [sic] search for and exchange of information pursuant to the discovery rules." *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 354, 1997-Ohio-271, 673 N.E.2d 1360 (1997). The *Lowe* Court, relying on First Amendment precedent from the United States Supreme Court, further expounded on the dangers to be posed by presuming discovery materials are accessible to the public by stating:

> The Supreme Court noted that the danger of abusing the liberal pretrial discovery rules by publicly releasing information that is irrelevant and could be damaging to reputation and privacy is great and thus the court held that the governmental interest in preventing such abuse is substantial. *** The court also noted that pretrial discovery is not a public component of a trial and any controls on the discovery process do not prevent the public dissemination of information gathered through means other than discovery. *** Accordingly the court held that the limitation on " 'First Amendment freedoms [is] no greater than is necessary or essential to the protection of the particular governmental interest involved,' " *** and thus the protective order did not violate the First Amendment. [Internal citations omitted.].

Id. citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984).[8]

The reasoning underlying *Lowe* is fully applicable to civil litigation. *Adams*, 143 Ohio App.3d at 489 ("While Lowe concerned only discovery in a criminal case, the logic of Lowe would appear to apply with equal, if not more, force to civil discovery in a private lawsuit. Discovery exchanged by a prosecutor in a criminal case is clearly a governmental activity to which the Act would otherwise appear to apply, whereas discovery in a private lawsuit does not involve any government activity other than judicial supervision.").

Additionally, Ohio does not provide an unqualified right to access those materials *merely because they are filed with the court. Id.* at 490. ("In sum, there appears to be no clear, unqualified public right to inspect pretrial discovery materials, ***even when they are filed with the trial court***, under either the First Amendment, the common law, the "open courts" provision of the Ohio Constitution, or the Ohio Public Records Act.") (Emphasis added.).

---

[8] Plaintiffs discuss *Seattle Times*'s applicability to the Motion in greater detail below. *See, infra* Sec. III(B)(2)(a).

Here, there must be no mistake – Exhibit G is nothing more than discovery materials attached to one brief but were not admitted or even proffered as evidence during trial. They consist of a few messages and/or postings from the private Facebook account of a nonparty. Attaching a document to a summary judgment motion does not, in and of itself, transform the document into admissible evidence. In fact, those documents are subject to the same standards of admissibility as trial evidence. *Knoth v. Prime Time Marketing Mgt., Inc.*, 2nd Dist. Montgomery No. 20021, 2004-Ohio-2426, ¶ 13 ("It is fundamental that the evidence offered by affidavit in support of or in opposition to a motion for summary judgment must also be admissible at trial, albeit in a different form, in order for the court to rely on it."); *Buckeye Lake Firebells v. Leindecker*, 5th Dist. Licking No. 2010-CA-100, 2011-Ohio-1792, ¶ 34 (holding that inadmissible hearsay evidence submitted on summary judgment must be disregarded); *Carter v. Gerbec*, 9th Dist. Summit No. 27712, 2016-Ohio-4666, ¶ 42 (holding that inadmissible hearsay evidence is prohibited in the summary judgment context).

Defendants cannot meet this standard on the facts at hand, as Defendants, the party attempting to meet the statement-by-statement employee/agent hearsay rule, bear the burden to demonstrate "that the statement concerned a matter within the scope of the employment of the declarant. . . ." *Gerry v. Saalfield Square Properties,* 9th Dist.Summit No. 19172, 1999 WL 66204, *2.[9] Defendants adduced no evidence to so demonstrate.

[9] *Gerry,* *2. "Gerry bore the burden of demonstrating that the statement concerned a matter within the scope of the employment of the declarant, "Little Steve." *Brock v. Gen. Elec. Co.* (Jan. 30, 1998), Hamilton App. No. C-970042, unreported, 1998 Ohio App. LEXIS 251, at *12-*13. The only evidence in the record is that "Little Steve" was a maintenance man employed by Saalfield. There is no evidence that the maintenance of the freight elevator was within the scope of employment of "Little Steve." Absent such evidence, the statement is inadmissible hearsay. See *Shumway v. Seaway Foodtown, Inc.* (Feb. 24, 1998), Crawford App. No. 3-97-17, unreported, 1998 Ohio App. LEXIS 1131, at *6-*7 (statements of supermarket cashier as to whether store's freezer had recently experienced problems not within Evid.R. 801[D][2][d] absent evidence that freezer maintenance was within scope of cashier's employment); *Brock, supra,* at *13 (statements of supervisor as to cause for employee's termination not within Evid.R. 801[D][2][d] absent evidence that supervisor had any input into decision to terminate employee). See, also, *Hill v. Spiegel, Inc.* (C.A.6 1983), 708 F.2d 233, 237 (statements by "managers" not within Fed.R.Evid. 801[d][2][D] where no evidence that

As discussed below, *see infra* Sec. III(B)(2), the attachment of discovery materials to a motion for summary judgment cannot act as some sort of magic wand to create a constitutional right of access.

Based on the foregoing, Ohio law does not give Movants a presumptive right to access Exhibit G.

2. There is no consensus under federal law that any and all materials attached to summary judgment briefs are immediately subject to a presumption of access.

Contrary to Movants' claim, there is not a consensus among the federal courts that a right for public access to a document is created merely by attaching the document to a motion for summary judgment.

a. The United States Supreme Court distinguishes between those materials that are not ultimately admitted as evidence and those that are admitted as evidence when deciding whether a right of public access exists.

In *Seattle Times Co. v. Rhinehart*, the United States Supreme Court reviewed a defamation lawsuit wherein the lower court restricted the defendants-newspapers ability to disseminate materials it obtained during discovery. 467 U.S. 20, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). Specifically, the lower court's order restricted the dissemination of the plaintiffs' financial information, the names and addresses of numerous nonparties, and various contributors and clients associated with the plaintiffs' religious organization. *Id.* at 27.

Discussing discovery materials, generally, the Court first acknowledged that a party gains discovery materials solely through the civil justice system's discovery processes. *Id.* at 32. Because of this, the First Amendment does not protect a litigant's right to obtain or otherwise access materials for purposes of litigating its case. *Id.*, citing *Zemel v. Rusk*, 381 U.S. 1, 85 S.Ct. 1271,

---

managers had input into termination of employee)."

14 L.Ed.2d 179 (1965). Given the long history of keeping discovery materials away from public view, discovery materials which are obtained by a party ***but which are not yet admitted as evidence in the trial*** are not subject to public access. *Id.* at 33 [emphasis added] ("Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. Therefore, ***restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information***.").

b. The admitted versus not admitted standard properly balances competing interests during discovery.

To permit the public to obtain discovery materials merely because they are filed is indeed a slippery slope:

> It is clear from experience that pretrial discovery by depositions and interrogatories has a significant potential for abuse. This abuse is not limited to matters of delay and expense; ***discovery also may seriously implicate privacy interests of litigants and third parties***. The Rules do not distinguish between public and private information. Nor do they apply only to parties to the litigation, as relevant information in the hands of third parties may be subject to discovery.
>
> There is an opportunity, therefore, for litigants to obtain—incidentally or purposefully—information that not only is irrelevant but if publicly released could be damaging to reputation and privacy. The government clearly has a substantial interest in preventing this sort of abuse of its processes.

Id. at 35-36. As a result, the trial court does not lose the ability to restrict public access merely because a discovery document was filed in the case. *Id.* at fn. 19 ("Thus, to the extent that courthouse records could serve as a source of public information, access to that source customarily is subject to the control of the trial court."). In fact, the threshold issue is whether the materials attached to a filed motion are in fact admissible evidence.

In re Reporters Committee for Freedom of the Press, a libel case, discussed at length whether documents attached to a dispositive motion were presumptively accessible to the public. 773 F.2d 1325, 1326 (D.C.Cir.1985). In *In re Reporters Committee*, like this case, the appellants

were not parties to the lawsuit but were members of the press who sought access to certain exhibits filed under seal in the case, including those attached to a summary judgment motion. *Id.*[10]

The court first determined that there has never been a practice of permitting the public to access prejudgment records, *i.e.* those records submitted to the court before a final judgment is rendered:

> Because of their sparseness, the authorities discussed above are perhaps weak support for a general common law rule of nonaccess to pre-judgment records in private civil cases. But when laid beside our inability to find any historical authority, holding or dictum, to the contrary, they are more than enough to rule out a general tradition of access to such records.

Id. at 1335-36.

Most importantly, the Court held that the First Amendment does not confer onto the public the right to access inadmissible materials merely because they are attached to motions before the court:

> It is true that in the present case the reporters were only seeking those pretrial materials that could have been considered by the court in its disposition of the Rule 56(c) motion—what they call the "summary judgment record." Chief Justice Burger's analysis[11] does not make any such distinction, though it would be an obvious one to make if it were relevant. ***We are certainly unaware of any tradition of public access (pre- or post-judgment) to all documents consulted (or, as appellants would have it, consultable) by a court in ruling on pre-trial motions. If such a tradition existed, public files would presumably be filled with complaints stricken as scurrilous and with proffered evidence ruled inadmissible. The passage of Seattle Times which cites Chief Justice Burger's analysis with approval evidently considers the admission of evidence the touchstone of a First Amendment right to public access***: "Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information." 104 S.Ct. at 2208 (emphasis added). ***Even if one were to expand this perception to include all admissible evidence, it would still lead to the conclusion that material placed before the court in connection with summary***

[10] Although the district court had eventually unsealed all documents and made the same available to the public, the Court of Appeals determined that appellants' appeal, in part, was not moot under the "capable of repetition, yet evading review doctrine." 773 F.2d at 1328–30.

[11] Referring to Chief Justice Burger's concurring opinion in *Gannett Co. v. DePasquale*, 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979).

> ***judgment motions is not constitutionally required to be open to the public—unless we are to subject trial courts to the constitutional necessity of ruling, either pre-trial or post-trial, on the admissibility of voluminous material that is filed, and perhaps even referred to in the summary judgment motion, but not sought to be introduced.***

Id. at 1337 [emphasis added].

In this case, Exhibit G was not and is not admissible evidence. (See, Plaintiffs' Sep. 11, 2019 Resp. in Opp. to Defs' Motion to Unseal Exhibit G of Defs' Combined Summary Judgment Reply Brief, pp. 4-7). As a result, the First Amendment does not provide Movants' with a presumptive right to access the document.

c. Movants' cited cases do not undermine the holdings and analysis of *Seattle Times* and *In re Reporters Committee for Freedom of the Press.*

Unlike the on-point federal precedent cited by Plaintiffs, Movants' federal precedent is distinguishable.

Movants cite *Richmond Newspapers v. Virginia*, 448 U.S. 555, 580, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) at several points in their motion. However, it is important to note that the United States Supreme Court has not extended the right of access discussed and conferred in that decision outside of criminal proceeding. *See, United States v. Miami Univ.*, 91 F.Supp.2d 1132, 1156 (S.D.Ohio.2000), aff'd, 294 F.3d 797 (6th Cir.2002) ("However, the Supreme Court has not extended this right of access outside the realm of criminal trials and related criminal proceedings."); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 611, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982) (O'Connor, J., concurring) (stating that "neither *Richmond Newspapers* nor the Court's decision today carry any implications outside the context of criminal trials.").

Brown & Williamson Tobacco Corp. v. F.T.C., is distinguishable because it involved a district court sealing the entire record of the case, as opposed to a single inadmissible exhibit

attached to a single summary judgment brief. 710 F.2d 1165, 1177–81 (6th Cir.1983). Moreover, the concerns about the consequences caused by restricting the public's access to a trial expressed by the *Brown & Williamson* court are not present here. For instance, the court was concerned with the possibility that witnesses may be more willing to perjure themselves if the public is not able to attend the trial. *Id.* at 1178. No such concerns are present before this Court because the parties had a six-week long jury trial that was ***open to the public***, the Defendants never attempted to introduce this document, and the relevant person (ADG) was not called as a witness at trial.

The court was also concerned with the "community catharsis" which comes from the public watching and participating in the trial. *Id.* at 1179. Once again, in this case the public, including Movants, was permitted to watch and participate in the open trial. Indeed, reporters from two media outlets were present for nearly every day of trial. Movants, on the other hand, ignored this case until after the jury's verdicts during the compensatory phase of trial. Moreover, the *Brown & Williamson* court was concerned with the possibility that "secrecy insulates the participants, masking impropriety, obscuring incompetence, and concealing corruption." *Id.* Movants cannot reasonably claim that keeping a single exhibit from a summary judgment brief filed months before trial somehow masks alleged impropriety, incompetence, or corruption. Additionally, keeping this single exhibit sealed would not insulant a participant in the litigation because ***ADG is not a party and did not testify at trial.***

Finally, Exhibit G actually meets one of the exceptions to access discussed by the *Brown & Williamson* court, specifically the protection of "privacy rights of participants or ***third parties***..." *Id.* To permit Exhibit G, which consists solely of private social media information from a nonparty, to be unsealed would serve no purpose other than to harass and potentially defame a nonparty. It most certainly would invade ADG's protected privacy rights. As a result, *Brown &*

Williamson does not support Movants' position.

Rudd Equip. Co., Inc. v. John Deere Construction & Forestry Co. is distinguishable because the party alleging potential harm from the unsealing of records was the plaintiff. 834 F.3d 589, 594 (6th Cir.2016). In our case, Exhibit G consists solely of materials from a nonparty. Moreover, much like *Brown & Williamson*, the court originally sealed the entire case, as opposed to certain documents within the record. *Id.* at 591. And perhaps most importantly, the plaintiff failed to "point to any trade secret, or ***privacy right of third parties***, that a seal might legitimately protect." *Id.* at 594 (emphasis added). As detailed above, the privacy rights of a third-party are directly impacted by Exhibit G.

In re Knoxville News-Sentinel Co., Inc. is likewise distinguishable because the district court had sealed the entire record. 723 F.2d 470, 471–72 (6th Cir.1983). Eventually, the record was unsealed, with the exception of two exhibits which contained information about various loans between a bank and numerous private citizens, both of which were ordered to be removed from the court's records and separately maintained for the appellate court's potential review. *Id.* Ultimately, the appellate court upheld the district court's restriction on access to the two exhibits because those exhibits contained private information for nonparties. It relied on the fact that the records involved nonparties, thereby creating a compelling government interest which justifies sealing the records. *Id.* ("Unlike the protected party in *Brown & Williamson*, who sought to deny public access because of the adverse business effect disclosure might cause, the individuals protected by the closure order here are third parties who were not responsible for the initiation of the underlying litigation. These individuals possessed a justifiable expectation of privacy that their names and financial records not be revealed to the public."). The interests of third-parties justify limiting public access to records relating to the third-parties. *Id.* at 478.

San Jose Mercury News, Inc. v. U.S. Dist. Court--Northern Dist. (San Jose) is distinguishable because it specifically declined to address the First Amendment and instead relied solely upon federal common law and the Federal Rules of Civil Procedure. 187 F.3d 1096, 1102 (9th Cir.1999) ("We leave for another day the question of whether the First Amendment also bestows on the public a prejudgment right of access to civil court records."). As discussed above, the First Amendment gives Movants' no presumptive right to access Exhibit G.

The holding and analysis in *Rushford v. New Yorker Magazine, Inc.* ignores the United States Supreme Court's decision in *Seattle Times* and creates an absurd standard, wherein a party could merely file all discovery materials, regardless of their admissibility, and then subject the opposing party and nonparties to public scrutiny. The *Rushford* court claimed that "[o]nce the documents are made part of a dispositive motion, such as a summary judgment motion" they are no longer discovery materials and become accessible by the public. 846 F.2d 249, 252–54 (4th Cir.1988). As discussed above, such a standard is precluded under the *Seattle Times* decision and repudiated by the thorough analysis in *In re Reporters Committee for Freedom of the Press*.

Shane Group, Inc. v. Blue Cross Blue Shield of Michigan is distinguishable because it involves a class action which affected more than 60% of the Michigan commercial health insurance market. 825 F.3d 299 (6th Cir.2016). The litigation ultimately settled, but numerous members of the class objected to the proposed settlement, citing, in part, the heavy redactions to the documents in the record. *Id.* at 304. The district court had "sealed most of the parties' substantive filings from public view, including nearly 200 exhibits and an expert report upon which the parties based a settlement agreement that would determine the rights of those millions of citizens." *Id.* at 302.

Ultimately, the appellate court found the district court had not undertaken a vigorous enough review before sealing the vast majority of the record. The court relied, in part, on the fact

that "[a]s a practical matter, therefore, both the general public and the class were able to ***access only fragmentary information*** about the conduct giving rise to this litigation, and next to nothing about the bases of the settlement itself." *Id.* at 306. In our case, the public's rights were not adjudicated in this litigation and the public was not restricted from seeing most of the record. Additionally, the *Shane Group* court reaffirmed the importance of protecting the private information of nonparties: "Finally, the point about third parties is often one to take seriously; 'the privacy interests of innocent third parties should weigh heavily in a court's balancing equation.'" *Id.* at 308, quoting *United States v. Amodeo*, 71 F.3d 1044 (2d Cir. 1995). Exhibit G consists of information from the private social media account of a nonparty, thereby weighing heavily in favor of restricting public access.

d. Because the vast majority of records from this case are unsealed, including the entire trial record, there is no concern about a lack of public access.

The lack of public access and participation are the overriding concerns and bases for analysis in the cases cited by Defendants. *See e.g., Brown & Williamson*, 710 F.2d at 1178 ("***Without access to the proceedings***, the public cannot analyze and critique the reasoning of the court. The remedies or penalties imposed by the court will be more readily accepted, or corrected if erroneous, if the public has an opportunity to review the facts presented to the court."). As the Ohio Supreme Court acknowledged, the purposes served by open court proceedings is "(1) ensuring that proceedings are conducted fairly, (2) discouraging perjury, misconduct of participants, and unbiased decisions, (3) providing a controlled outlet for community hostility and emotion, (4) securing public confidence in a trial's results through the appearance of fairness, and (5) inspiring confidence in judicial proceedings through education on the methods of government and judicial remedies." *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146,

2002-Ohio-7117, 781 N.E.2d 180, ¶ 43 (2002), citing *Richmond Newspapers*, 448 U.S. at 580.

But these are not concerns in this case. The ***vast majority*** of the records from this case, including the ***entire record from the six-week trial***, are available for public consumption. Newspaper and other reporters and members of the public were present for nearly every day of trial. Indeed, the Court even permitted camera crews in the courtroom. This is not a scenario where the Court has sealed a large portion of the record. Instead, Movants' complain and seek access to a few pages of discovery materials that were attached to Defendants' summary judgment reply brief and ultimately found to be inadmissible at trial. Frankly, Movants' admission that this case has been extensively covered by numerous media outlets cuts against any claim that the public was not adequately kept abreast of the proceedings merely because a single summary judgment exhibit was sealed.

C. Movants are not Entitled to Access Exhibit G Under Ohio R. Sup. 45.

1. Movants bear the burden to show, by *clear and convincing evidence*, that Exhibit G is no longer entitled to protection.

Movants seem to misunderstand the procedural posture of Exhibit G. Throughout their Motion, they assume, without analysis, that Plaintiffs or ADG bear the burden on restricting access to Exhibit G. Without citing a single relevant authority, Movants claim that records may only be sealed if a court makes "specific, on-the-record factual findings" that access should be restricted. That is not the case. In fact, Sup.R. 45(E)(1) specifically leaves the decision to hold a hearing in the sound discretion of the trial court. *See,* Sup.R. 45(E)(1) [emphasis added] ("The court ***may*** schedule a hearing").

The Rules of Superintendence also clearly state that when documents have already been ordered sealed, the party seeking access bears the burden to show that the restricted documents should be made available for public consumption:

> A court may permit public access to a case document or information in a case document if it finds by ***clear and convincing evidence*** that the presumption of allowing public access is no longer outweighed by a higher interest. When making this determination, the court shall consider whether the original reason for the restriction of public access to the case document or information in the case document pursuant to division (E) of this rule no longer exists or is no longer applicable and whether any new circumstances, as set forth in that division, have arisen which would require the restriction of public access.

Sup.R. 45(F)(2) [emphasis added]. By order and entry dated September 16, 2019, the Court held that Exhibit G must remain restricted. (See, Sep. 16, 2019 Order, p. 2 "Defendants' Motion to Unseal Exhibit G ... is hereby ***denied.***").

Thus, Movants bear the burden to show by clear and convincing evidence that the public should have access to Exhibit G.

2. Even considering the factors in Ohio R. Sup. 45(E)(2), Exhibit G should not be available to the public.

Regardless of who carries the burden of persuasion, Exhibit G should not be available to the public. Pursuant to Sup.R. 45(E)(2), documents should be sealed if by clear and convincing evidence, the presumption of public access is outweighed by a higher interest. Courts consider three factors when making this determination:

> (a) Whether public policy is served by restricting public access;
>
> (b) Whether any state, federal, or common law exempts the document or information from public access; [and]
>
> (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

Sup.R. 45(E)(2)(a)-(c). Factors (a) and (c) weigh heavily in favor of restricting public access to Exhibit G.

a. Public policy requires restricting access to Exhibit G.

For several reasons, public policy requires restricted access to Exhibit G:

First, one of the primary policy reasons behind access to court records is that "[w]hen a litigant brings his or her grievance before a court, that person must recognize that our system generally demands the record of its resolution to be available for review." *Woyt v. Woyt*, 8th Dist. Cuyahoga No. 107312, 2019-Ohio-3758, ¶ 67. This policy makes sense for relevant documents exchanged between parties to litigation that are later admitted as evidence at trial. It does not apply to Exhibit G.

ADG is a nonparty to this litigation. He was served with a subpoena by Defendants and forced to comply under penalty of contempt. *See,* Civ.R. 45(E) ("Failure by any person ... to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued."). Thus, ADG was forced, against his will, to produce private and personal social media messages. Unquestionably, as a nonparty to this litigation, ADG has a substantial privacy interest in Exhibit G. *See, e.g. Lawson v. Love's Travel Stops & Country Stores, Inc.*, M.D. Penn. No. 1:17-cv-1266, 2019 WL 5622453 at *6 (Oct. 31, 2019) [emphasis added] ("social media is at once both ubiquitous and often ***intensely personal***, with persons sharing through social media, and storing on electronic media, the most intimate personal details on a host of matters").[12]

In essence, Movants are requesting unlimited access to a nonparty's private information based solely on the fact that an adversary[13] attached the private documents as an exhibit to a summary judgment motion. Considering the extremely broad scope of civil discovery,[14] under

[12] Indeed, the U.S. Supreme Court has recognized a strong privacy interest not only in social media but in all forms of electronic media storage and communication. *See, Riley v. California*, 573 U.S. 373, 134 S.Ct. 2473 (2014) (substantially restricting warrantless searches of smartphones due to the fact that "many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives – from the mundane to the intimate.").

[13] While ADG was not party to this litigation, Defendants spent the entire pre-trial portion of the case attempting to smear and demonize ADG. (See, Def. First. Am. Answer, pp. 1-2).

[14] While Exhibit G was produced in response to a subpoena, the "'scope of discovery under a subpoena is the same as the scope of discovery under Rule 26.'" *Tcyk, LLC v. Does*, No. 2:13-cv-688, 2013 WL 12130354 at *3 (S.D. Ohio

such a rule, there would be no limit to the invasive and public airing of private information.

The scope of discovery is much broader than the scope of admissible evidence. Civil litigation creates an upside-down funnel effect. Discovery begins at the top of the funnel and makes up the majority of the funnel because the scope of discovery is extremely broad. *See,* Civ.R. 26(B)(1).[15] The bottom of the funnel and the smallest portion of the funnel is the scope of trial evidence, which requires all evidence to meet numerous hurdles for admissibility, including hearsay and relevancy. The point here is that parties receive significant portions of discovery materials which ultimately are inadmissible at trial. And the reason most civil cases do not take decades to complete is that discovery is intended to be agreeable and reciprocal, i.e. a voluntary free flow of responsive information without the need for constant court intervention. *See*, 1994 Staff Notes to Civ.R. 37 ("The purpose of the amendment is to endorse and enforce the view that, in general, discovery is self-regulating and should require court intervention only as a last resort.").

Accepting Movants' position that all discovery materials filed with the court are thereby accessible by the public undoes the current structure of discovery. Parties and nonparties would need to decide whether to: (1) produce materials during discovery and thereby risk the public's access merely because the other party may file the materials in court; or (2) file for protective orders at every turn. This would create a chilling effect on discovery by causing parties to not produce responsive materials and would grind the courts' dockets to a halt by exponentially

---

Nov. 25, 2013), quoting *Hendricks v. Total Quality Logistics, LLC*, 275 F.R.D. 251, 253 (S.D. Ohio 2011). While not limitless, the scope of discovery is extremely broad. *See, Conti v. Am. Axle & Mfg., Inc.*, 326 F. App'x 900, 904 (6th Cir. 2009) ("[T]he scope of discovery under the Federal Rules of Civil Procedure is traditionally quite broad, [and] the limits set forth in Fed. R. Civ. P. 26 must be construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.").

[15] Civ.R. 26(B)(1) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action ... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.").

increasing the number of discovery motions.

This case provides a prime example for why Movants' interpretation of federal and Ohio law is incorrect and potentially dangerous. If Movant's overreach were the rule, it would certainly have given ADG the strong incentive to be an obstructionist because there would have been a substantial risk that his private materials (which were ultimately inadmissible at trial) would be disseminated to the world and splashed across the media. This is not and should not be the rule in Ohio. This is particularly true where there are no restrictions on the documents a litigant may include in summary judgment briefing. And without question, the Movants have ***every intention*** of blasting ADG's private information in the public sphere.

Second, and relatedly, Exhibit G has absolutely no relevance to the issues in this case. This has been conclusively decided not only by the Court's order restricting the presentation of character evidence at trial,[16] but, more importantly, by the fact that ***Defendants did not attempt to introduce Exhibit G at trial and did not even call ADG as a witness to testify at trial***. Thus, granting Movants' request would inevitably lead to the public dissemination of not only private information but clearly ***irrelevant*** private information.

Additionally, Movants misrepresent the reason Defendants attached Exhibit G to their summary judgment reply brief. At page 3 of their Motion, Movants parrot back a false claim by Defendants in post-trial briefing that Exhibit G contains reputational evidence related to Gibson's Bakery. This is a false narrative. In fact, Defendants' own summary judgment reply brief used these materials solely for the argument that Plaintiffs were public figures or limited public figures. (See Defendants' MSJ Reply, pp. 10-12). Defendants had the option to attempt to introduce Exhibit G during trial as reputational evidence, and they chose not to do so.

[16] (See, May 8, 2019 Entry and Ruling on All Motions *in Limine*, pp. 1-2).

Third, there are strong implications that Movants' Motion is nothing more that a backdoor attempt by Defendants to continue the smear campaign against Plaintiffs and dox ADG. On September 16, 2019, this Court denied Defendants' Motion to Unseal the same exact materials:

> Specifically, on May 8, 2019, the Court issued a preliminary ruling excluding the presentation of Allyn D. Gibson's Facebook content as character evidence, but withheld ruling on the question of whether it could be introduced to reflect the reputation of Gibson's Bakery in the community. At trial, the Defendants made no attempt to introduce these materials as evidence of the Bakery's reputation in the community. With this procedural context and at this juncture, the Court is not persuaded by the Defendants' arguments that it should make a post-trial order regarding materials that the Defendants opted to file under seal nearly six months ago in accordance with an agreed protective order that they drafted and stipulated to.

(Sep. 16, 2019 Order, p. 2). While the current motion was not filed by Defendants, there are substantial connections between Movants and Defendants' counsel, including the fact that Defendants' lead counsel, Ron Holman, II, was a television legal analyst for Movant WEWS-TV for ***more than ten (10) years***. (See, Ex. 1, p. 1). Thus, it appears that Defendants are attempting to use nonparties to this litigation to circumvent the Court's orders. They should not be permitted to do so.

b. Numerous additional factors support restricted access to Exhibit G.

Rule 45(E)(2)(c) asks Courts to consider whether factors other than public policy favor restricted access, including "risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process." Several of these identified factors favor restricting access to the Exhibit G:

First – risk of injury to persons. As confirmed by the deposition and trial testimony, the entire Gibson family were subjected to significant threats of violence during and after the defamatory protests in November of 2016. ADG specifically was the victim of vicious threats of

harm and actual physical injury. During his deposition, ADG testified that after the protest, he was the target of death threats and defamatory statements:

> A. I tried to stay away from the college.
> Q. And why is that?
> A. Because people don't treat me well when I'm in that area.
> Q. What do you mean by that? How do they not treat you well?
> A. I've had people harass me and threaten to hurt me, spit at me, say they're going to kill me, threaten my family.
> Q. And does this happen when you go on Oberlin College's campus?
> A. Yes.

(A. D. Gibson Dep. Vol. I, p. 43). In addition to verbal threats, ADG was assaulted behind Gibson's Bakery during the protests. (Id. Vol. II, p. 368).

And ADG was not the only person subject to assaults during and after the protests. Numerous other individuals were subjected to threats of violence, damaged property, and actual physical injury:

- During the protests, the Oberlin Police Department had to escort then 89-year-old Grandpa Gibson home because he was receiving death threats (Ptl. Shoemaker Dep., p. 30-32);
- Gibson's Bakery employee Constance Rehm's tires were slashed in the parking lot behind Gibson's Bakery (May 16, 2019 Tr. Trans., p. 112);
- Gibson's Bakery head baker Shane Cheney's car tires were punctured while it was parked in the Gibson's Bakery parking lot (May 15, 2019 Tr. Trans., pp. 105-06) and
- Worst of all, in the middle of the night six months after the protests, individuals pounded on Grandpa Gibson's front door and, after he fell and broke his neck, left him lying in the doorway of his apartment with a life altering injury (May 16, 2019 Tr. Trans., pp. 29-33).

The protests and defamation of Plaintiffs created a substantial risk of injury and property damage not only to the Gibson family but also to individuals associated with Gibson's Bakery. Movants' attempt to publicly release ADG's private social media messages and to continue the defamation of the Gibson family will create the same risks.

Second – individual privacy rights and interests. As explained in substantial detail above, ADG has a strong privacy interest in restricting public access to his private, personal social media messages. *See, supra* Sec. III(D)(2)(a). Particularly where the documents to be publicly released hold no relevance whatsoever to the issues in this litigation. *See, id.*

Third – fairness of the adjudicatory process. The irrelevance of Exhibit G also calls into question Movants' motive. Because Exhibit G had no relevance at trial, what is the point in attempting the public disclosure of the documents months after the trial concluded? The only logical conclusion is that Movants, likely working in concert with Defendants, *see supra* Sec. III(D)(2)(a), are attempting to continue the defamation of Plaintiffs during the appellate process to hopefully sway potential jurors should Defendants succeed on appeal.

Therefore, Movants' Motion should be denied.

D. In the Alternative, this Motion should be Held in Abeyance Until the Completion of the Appellate Process.

At a minimum, should the Court decide not to deny Movants' Motion outright, it should hold its decision in abeyance until the conclusion of the appellate process.

Clearly, Movants' request for the release of Exhibit G is not time sensitive because if it was, they would not have waited nearly ***seven (7) months*** after Exhibit G was presented to the Court to file their Motion. The appellate process in this case is well under way. The Lorain County Clerk of Courts recently submitted the record to the Ninth District Court of Appeals and briefing will begin in the very near future. To avoid any potential prejudice and continued defamation of

the Plaintiffs, it makes sense to withhold ruling on this issue until after the completion of the appeal.

IV. CONCLUSION

Therefore, for the foregoing reasons, Plaintiffs and nonparty ADG respectfully request that this Court deny Movants' motion in its entirety or, in the alternative, request that this Court withhold ruling on Movants' Motion until after the completion of the appellate process.

DATED: December 2, 2019

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD

Jeananne Wickham

Lee E. Plakas (0008628)
Brandon W. McHugh (0096348)
Jeananne M. Wickham (0097838)
220 Market Avenue South
Eighth Floor
Canton, Ohio 44702
Telephone: (330) 455-6112
Facsimile: (330) 455-2108
Email: lplakas@lawlion.com
bmchugh@lawlion.com
jwickham@lawlion.com

-and-

KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., L.P.A.

Terry A. Moore (0015837)
Jacqueline Bollas Caldwell (0029991)
Owen J. Rarric (0075367)
Matthew W. Onest (0087907)
4775 Munson Street, N.W.
P.O. Box 36963
Canton, Ohio 44735-6963
Telephone: (330) 497-0700
Facsimile: (330) 497-4020
Email: tmoore@kwgd.com
jcaldwell@kwgd.com
orarric@kwgd.com

monest@kwgd.com

-and-

JAMES N. TAYLOR CO., L.P.A.

James N. Taylor (0026181)
411 East Avenue
Elyria, Ohio 44035
Telephone: (440) 323-5700
Email: taylor@jamestaylorlpa.com

Counsel for Plaintiffs

PROOF OF SERVICE

A copy of the foregoing was served on December 2, 2019, pursuant to Civ.R. 5(B)(2)(f) by sending it by electronic means to the e-mail addresses identified below:

Ronald D. Holman, II
Julie A. Crocker
Cary M. Snyder
William A. Doyle
Josh M. Mandel
Taft Stettinius & Hollister LLP
200 Public Square, Suite 3500
Cleveland, OH 44114-2302
rholman@taftlaw.com;
jcrocker@taftlaw.com;
csnyder@taftlaw.com
wdoyle@taftlaw.com
jmandel@taftlaw.com
Co-Counsel for Defendants Oberlin College aka Oberlin College and Conservatory, and Meredith Raimondo

Richard D. Panza
Matthew W. Nakon
Malorie A. Alverson
Rachelle Kuznicki Zidar
Wilbert V. Farrell, IV
Michael R. Nakon
Wickens, Herzer, Panza, Cook & Batista Co.
35765 Chester Road
Avon, OH 44011-1262
RPanza@WickensLaw.com;
MNakon@WickensLaw.com;
MAlverson@WickensLaw.com;
RZidar@WickensLaw.com;
WFarrell@WickensLaw.com;
MRNakon@WickensLaw.com
Co-Counsel for Defendants Oberlin College aka Oberlin College and Conservatory, and Meredith Raimondo

Benjamin C. Sassé
Irene Keyse-Walker
Tucker Ellis, LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113
benjamin.sasse@tuckerellis.com;
ikeyse-walker@tuckerellis.com
Appellate Counsel for Defendants Oberlin College aka Oberlin College and Conservatory, and Meredith Raimondo

Jeananne Wickham

Jeananne M. Wickham (0097838)
Counsel for Plaintiffs

Ronald D. Holman II

PARTNER / CLEVELAND
E: rholman@taftlaw.com
T: (216) 706-3829
F: (216) 241-3707

Ron is a business litigator and partner at Taft who defends litigation and class actions, including matters involving commercial disputes, unfair and deceptive consumer sales practices, fraud, violations of statutory law, employment law and workers' compensation issues.

Ron provides customized legal services throughout Ohio and the Midwest to his national, state, and local clients. In his class action work, Ron develops and executes successful defense strategies that are tailored to the needs of clients and their in-house counsel. Because of his track record, corporate clients have retained Ron to protect their interests in class actions involving hundreds of millions of dollars of potential exposure. He also has significant experience in a wide range of other commercial controversies, including those generating significant media exposure or threatening long-term reputational harm.

Ron's passion for solving clients' problems makes him an invaluable business partner. He views each engagement with an eye toward achieving the client's business objectives expeditiously and cost-effectively. Ron also serves as a trusted advisor to his clients in evaluating and minimizing risk, and views successful client representation as a business partnership.

Ron has represented clients before state and federal courts, Ohio appellate courts, the Supreme Court of Ohio, and the United States Court of Appeals for the Sixth Circuit, among other courts.

Outside of his practice, Ron has been appointed by the Chief Judge of the Northern District of Ohio to the federal court's Civil Justice Reform Act Advisory Group and Magistrate Selection Panel. Ron served on the transition committees for City of Cleveland Mayors Jane Campbell and Frank Jackson. He also has served as board chair for numerous nonprofit agencies. Ron served on the board of directors for a financial institution for 10 years. For more than a decade, he appeared as a legal analyst and commentator on News Channel 5 – WEWS-TV

Practices
Class Action, Derivative and Multi-Party Litigation
Commercial Litigation
Employment Law
Labor and Employment Litigation

Education
Columbia Law School (1986)
Dartmouth College (1982)

Admissions
State - Ohio
Federal - Northern District of Ohio
Federal - 6th Circuit Court of Appeals
Federal - Southern District of Ohio
Federal - Eastern District of Kentucky

PLAINTIFF'S EXHIBIT
NO. 1
PENGAD 800-631-6989

(the Cleveland ABC news affiliate).

Notable Matters

- Obtained summary judgment of all class claims in a consumer class action (challenging discount advertising) for one of the nation's largest retailers, which led Plaintiff to voluntarily dismiss the action for a nominal settlement.
- Successfully defended state turnpike commission in $800 million dispute challenging the federal and state constitutionality of toll increases, leading to a dismissal of all state and federal claims.
- Obtained the dismissal of all class claims in a consumer class action challenging a national TV retailer's "Buy One Get One Free" advertising, including those involving violation of a consumer protection statute, fraud, and unjust enrichment.
- Secured dismissals of three class actions challenging different workers' compensation practices of state agency, all of which were affirmed by the Supreme Court of Ohio.
- Successfully petitioned the Sixth Circuit Court of Appeals to reverse District Court's ruling on proper standard to apply in calculating damages for purposes of removal under the Class Action Fairness Act.
- Procured the dismissal of 15 claims for a gaming client in a suit alleging claims for breach of contract, libel, slander, and constitutional violations.
- Obtained summary judgment for a national client and its top executives in a gender and age discrimination dispute, which was affirmed on appeal.
- Demanded and secured voluntary dismissal (with prejudice) of an employment action after taking Plaintiff's deposition.
- Procured the voluntary dismissal (with prejudice) of one of the world's largest food and beverage companies and all Defendants in a premises liability action after deposing Plaintiff.
- Successfully settled a class action representing one of the nation's leading providers of eye care services, after obtaining dismissals of multiple claims (including those for class relief).
- Obtained summary judgment of all claims (including age, race and national origin discrimination, and retaliation) in favor of a university, which was affirmed by the Sixth Circuit Court of Appeals.
- Secured a dismissal of a collective action and class action under the Fair Labor Standards Act for one of the nation's largest luxury vehicle dealerships.

Professional Affiliations

- Cleveland Metropolitan Bar Association
  Member

- Ohio State Bar Association
  Member
- American Bar Association
  Member
- U.S. District Court
  Former Member, Northern Division Magistrate Selection Panel
  Former Member, Civil Reform Selection Panel
- Nisi Prius
  Member

Community Involvement

- Centers for Families and Children
  Former President
- North Coast Community Homes
  Former President
- Florence Crittenden Services of Greater Cleveland
  Former President
- Park View Federal Savings Bank
  Former Director, Board of Directors
- Sigma Pi Phi
  Member