

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

BRIAN KACHAYLO	)	CASE NO.: 4:10-CV-795
	)	
Plaintiff,	)	
	)	
v.	)	JUDGE LIOI
	)	
BROOKFIELD TOWNSHIP BOARD OF	)	PLAINTIFF'S MOTION FOR
TRUSTEES, et al.	)	RECONSIDERATION
	)	
Defendants.	)	

Now comes the Plaintiff, by and through undersigned counsel, who respectfully moves this Court to reconsider its judgment of March 9, 2011 granting Defendants Motion to Dismiss. Plaintiff's Response is supported by the attached Memorandum and Affidavit incorporated herein by reference.

Respectfully submitted,

/s/Warner Mendenhall  
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COUNSEL FOR PLAINTIFF

## **PLAINTIFF'S MOTION FOR RECONSIDERATION**

### **I. INTRODUCTION**

Plaintiff concedes that Brookfield Township acted through its agents the trustees and Chief Barrett. As such dismissal of those parties is appropriate. However, attached hereto are various documents to bolster Brian Kachaylo's argument that Brookfield Township was aware of the FBI investigation triggered by Kachaylo's whistleblowing activity and that it was aware of specific instances of wrongdoing by the Chief.

### **II. FACTS**

As an employee of the Brookfield Township Fire Department, Kachaylo initiated an investigation of Fire Chief Barrett for fraud related to Medicare and Medicaid billing. Chief Barrett is debarred from billing the federal government due to a felony related to improper billing of the Department of Health and Human Services, yet he continues to involve himself in such billing. Kachaylo was terminated on April 16th, 2008 in retaliation for his whistleblowing and the ensuing FBI investigation.

Additionally, Kachaylo's civil rights were violated when he was arrested for trespass and telephone harassment. He went to trial and was not convicted of either charge. A transcript from that trial, obtained after this Complaint was filed, clearly demonstrates Chief Barrett's knowledge of the investigation. At trial, Chief Barrett admitted he was aware that FBI agents visited the Fire Department. Affidavit, Ex. A, Tr. P. 0156. Additionally, Chief Barrett noted that Kachaylo had filed grievances with several agencies including the Department of Health and Human Services over billing matters. *Id.*, Tr. P O165. Chief Barrett and by inference the Township know exactly what Kachaylo's claim in this case is.

Exhibit B of Kachaylo's Affidavit, shows the fund journal for Ambulance and Emergency Services for Brookfield Township. This exhibit demonstrates that a company called Midwest Seagrave Sales and Services was paid out of the fund that contained Medicare funds. Chief Barrett is a Midwest Seagrave Sales and Services dealer. It was a violation of federal regulations for Chief Barrett to have an interest in a company being paid with Medicare and Medicaid funds.

The Affidavit also references Exhibit C which is a letter from Chief Barrett suspending Kachaylo for the allegations of Medicare and Medicaid fraud, among other allegations, that he made against the Brookfield Township Fire Department.

Finally, the Affidavit references Exhibit D which Kachaylo submitted to the Brookfield Township Trustees to demonstrate Chief Barrett's oversight of Medicare and Medicaid billing activities subsequent to ambulance runs despite his debarment and conflict of interest.

Kachaylo presents these facts to show the Court that granted an opportunity to amend the Complaint and to proceed to discovery, there is substantial evidence of fraud and retaliation for whistleblowing in violation of 31 U.S.C. § 3730(h) for Kachaylo to amend his pleading and survive a Motion to Dismiss.

### **III. LAW**

Kachaylo respectfully requests an opportunity to amend his complaint to comply with the pleading standards set forth in *Iqbal* and *Twombly*. Kachaylo contends that he can revise his Complaint to add elements of his claim sufficient to withstand a 12(b)(6) *Iqbal* challenge. *NM EU Corp. v. Deloitte & Touche LLP* (In re NM Holdings Co.), 622 F.3d 613, 623 (6th Cir. 2010). See also *Albrecht v. Treon*, 617 F.3d 890, 893 (6th Cir. 2010).

According to Fed R. Civ. P. 15(a)(2) a court "should freely give leave to amend when justice so requires." The Sixth Circuit addressed this issue in *EEOC v. Ohio Edison Co.*, 7 F.3d 541, 546 (6th Cir. 1993), when it held that "where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice."

As the Sixth Circuit noted in another case involving an attempt to cure deficiencies by amendment, "The relevant issues in our inquiry are (1) whether [the party seeking amendment] had sufficient notice that his amended complaint was deficient, and (2) if so, whether [he] had an adequate opportunity to cure the deficiencies." *U.S. ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 342 F.3d 634, 644 (6th Cir. 2003).

Kachaylo prays for an opportunity to cure the deficiencies of the Complaint.

Respectfully submitted,

/s/Warner Mendenhall

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to the Defendants' through the Court's ecf system on 3-21-2011.

/s/ Warner Mendenhall  
Warner Mendenhall, 0070165