

ANSELL GRIMM & AARON  
A Professional Corporation  
1500 Lawrence Avenue  
CN 7807  
Ocean, New Jersey 07712  
732-922-1000 (phone)  
732-922-6161 (fax)  
Attorneys for Plaintiff #76658 (BEA)

BLAIR KIM, by and through his Guardian Ad  
Litem, John Kim

Plaintiff

vs.

MATAWAN-ABERDEEN REGIONAL SCHOOL  
DISTRICT BOARD OF EDUCATION;  
MATAWAN REGIONAL HIGH SCHOOL;  
JOSEPH J. MARTUCCI; SUZANNE S.  
MERGNER; JESS MONZO; ANDREW LASKO;  
JOHNNY SHORT; MICHELE RUSCAVAGE;  
AND JOHN/JANE DOES 1-10

Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO. MON-L-483-12

CIVIL ACTION

PLAINTIFF'S NINTH REQUEST FOR  
PRODUCTION OF DOCUMENTS

TO: Bruce Helies, Esquire  
Wolff Helies Duggan Spaeth & Lucas  
PO Box 320  
Manasquan, NJ 08736-1994  
Attorney for Defendants

SIR:

PLEASE TAKE NOTICE that the plaintiff by his attorneys hereby requests that the defendants produce at the office of Ansell Grimm & Aaron, 1500 Lawrence Avenue, CN 7807, Ocean, New Jersey copies of documents referred to below within thirty (30) days after receipt of this document.

DEFINITIONS

The following definitions shall apply to those documents to be produced and the instructions therein;

A. "Document" shall mean all writings and all drawings of every kind and description, both originals and all incidental copies thereof either inscribed by hand or mechanical, electronic,

microfilm, photographic, or other means, as well as phonic or visual reproductions or oral statements, conversations, or events including but not limited to: correspondence, transcripts or testimony letters, memoranda, notes, reports, papers, files, books, pamphlets, periodicals, records, contracts, agreements, purchase orders, invoices, sales confirmations, telegraphs, teletypes or their communications sent or received diaries, calendars, telephone logs, drafts, work papers, agendas, bulletins, notices, announcements, instructions, charts, manuals, brochures, schedules, summaries, minutes, and other records and recordings of any conferences, meetings, visits, statements, interviews, or telephone conversations, bills, statements and other records of obligations and expenditures, canceled checks, vouchers, receipts and other records of payments, financial data, analysis, statistical complications, tabulations, tallies, plans, compilations of computer-generated data, including any ancillary programming material, interviews, affidavits, printed matter (including published books, articles, speeches, news paper clippings), advertising or promotional matter, press releases and photographs.

"Documents" shall also mean voice records, film, video tapes, disks and other data compilations from which information can be obtained, including all materials used in data processing or computer operations.

B. "Relating to" shall mean embodying, pertaining to, concerning, constituting, comprising, reflecting, discussing, referring to, or having any logical or factual connection whatever with the subject matter in question.

C. "This case", "this litigation", "this action", "in suit", and "this lawsuit", shall mean the lawsuit described in the caption of this notice.

D. "Defendant" refers to defendant, any predecessors, subsidiaries, division, affiliates, officers, directors, employees, agents or representatives.

E. "Person" as used herein means an individual or individuals, or corporation(s), a partnership(s), or any other business entity.

REQUESTED DOCUMENTS

1. A complete copy of any and all reports issued by Dr. Keith Benoff during the calendar years 2012 and 2013 in which Dr. Benoff opined or otherwise stated that plaintiff sustained residual cognitive impairment, limitations or difficulties as the result of a head injury caused by an accident or incident. The doctor may delete the name of the plaintiff only from the report.

PLEASE TAKE FURTHER NOTICE that the above demands are continuing demands. Accordingly, defendant's responses thereto must be updated and supplemented, as necessary, up to and through trial. Plaintiff will object to the introduction of any evidence at trial which has not been timely produced in response to this Request for Production of Documents.

ANSELL GRIMM & AARON  
Attorneys for Plaintiff

By: \_\_\_\_\_  
Brian E. Ansell, Esquire

Dated: July 26, 2013

**WOLFF, HELIES, SPAETH & LUCAS, P.A.**

Valley Park Professional Center  
2517 Highway 35  
Building K, Suites 201 & 202  
P.O. Box 320  
Manasquan, New Jersey 08736  
(732) 223-5100

Attorneys for Defendant(s), Matawan Aberdeen Regional School  
District Board of Education, Matawan Regional High School,  
Joseph J. Martucci, Suzanne S. Mergner, Jess Monzo, Andrew Lasko  
& Michele Ruscavage  
Our File No.: 0951.18075-H

Plaintiffs

BLAIR KIM, by and through his  
Guardian Ad Litem, John Kim

vs.

Defendants

MATAWAN ABERDEEN BOARD OF  
EDUCATION, MATAWAN REGIONAL  
HIGH SCHOOL, JOSEPH J.  
MARTUCCI, SUZANNE S. MERGNER,  
JESS MONZO, ANDREW LASKO,  
MICHELE RUSCavage, JOHNNY  
SHORT, ET AL

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

Docket No. MON-L-483-12

**Civil Action**

DEFENDANT(S), MATAWAN ABERDEEN  
REGIONAL SCHOOL DISTRICT BOARD  
OF EDUCATION, MATAWAN  
REGIONAL HIGH SCHOOL, JOSEPH  
J. MARTUCCI, SUZANNE S.  
MERGNER'S RESPONSE TO  
PLAINTIFF'S NINTH NOTICE TO  
PRODUCE DOCUMENTS

TO: Brian E. Ansell, Esq.  
Attorney for Blair Kim

SIRS:

PLEASE TAKE NOTICE that, pursuant to your Notice to Produce,  
defendant(s), Matawan Aberdeen Regional School District Board of  
Education, Matawan Regional High School, Joseph J. Martucci,  
Suzanne S. Mergner, Jess Monzo, Andrew Lasko & Michele Ruscavage

hereby provide responses to plaintiff's Ninth Notice to Produce Documents as follows:

1. Defendant states that Dr. Keith Benoff has no documents in response to plaintiff's Ninth Notice to Produce Documents.

**WOLFF, HELIES, SPAETH & LUCAS**  
Attorneys for Defendant(s),  
Matawan Aberdeen Regional  
School District Board of  
Education, Matawan Regional  
High School, Joseph J.  
Martucci, Suzanne S. Mergner,  
Jess Monzo, Andrew Lasko &  
Michele Ruscavage

By: \_\_\_\_\_  
BRUCE E. HELIES

Date: October 15, 2014

**WOLFF, HELIES, SPAETH & LUCAS, P.A.**

Valley Park Professional Center  
2517 Highway 35  
Building K, Suites 201 & 202  
P.O. Box 320  
Manasquan, New Jersey 08736  
(732) 223-5100

Attorneys for Defendant(s), Matawan Aberdeen Regional School  
District Board of Education, Matawan Regional High School,  
Joseph J. Martucci, Suzanne S. Mergner, Jess Monzo, Andrew Lasko  
& Michele Ruscavage  
Our File No.: 0951.18075-H

Plaintiffs :

BLAIR KIM, by and through his  
Guardian Ad Litem, John Kim

vs.

Defendants

MATAWAN ABERDEEN BOARD OF  
EDUCATION, MATAWAN REGIONAL  
HIGH SCHOOL, JOSEPH J.  
MARTUCCI, SUZANNE S. MERGNER,  
JESS MONZO, ANDREW LASKO,  
MICHELE RUSCavage, JOHNNY  
SHORT, ET AL

:

:

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

Docket No. MON-L-483-12

**Civil Action**

DEFENDANT(S), MATAWAN ABERDEEN  
REGIONAL SCHOOL DISTRICT BOARD  
OF EDUCATION, MATAWAN  
REGIONAL HIGH SCHOOL, JOSEPH  
J. MARTUCCI, SUZANNE S.  
MERGNER'S RESPONSE TO  
PLAINTIFF'S NINTH NOTICE TO  
PRODUCE DOCUMENTS

TO: Brian E. Ansell, Esq.  
Attorney for Blair Kim

SIRS:

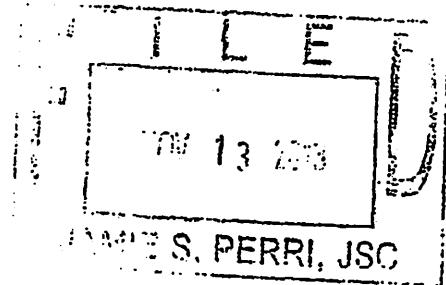
PLEASE TAKE NOTICE that, pursuant to your Notice to Produce,  
defendant(s), Matawan Aberdeen Regional School District Board of  
Education, Matawan Regional High School, Joseph J. Martucci,  
Suzanne S. Mergner, Jess Monzo, Andrew Lasko & Michele Ruscavage

faith effort to identify additional documents that are responsive to the request and to promptly serve as a supplemental written response and production of such documents, as appropriate, as I become aware of them.

By: \_\_\_\_\_  
BRUCE E. HELIES

Date: October 15, 2014

Brian E. Ansell, Esq.  
NJ Attorney ID #017941989  
ANSELL GRIMM & AARON  
A Professional Corporation  
1500 Lawrence Avenue  
CN 7807  
Ocean, New Jersey 07712  
732-922-1000 (phone)  
732-922-6161 (fax)  
Attorneys for Plaintiff #76658 (BEA)



BLAIR KIM, by and through his Guardian Ad  
Litem, John Kim

Plaintiff  
vs.

MATAWAN-ABERDEEN REGIONAL  
SCHOOL DISTRICT BOARD OF  
EDUCATION; MATAWAN REGIONAL HIGH  
SCHOOL; JOSPEH J. MARTUCCI;  
SUZANNE S. MERGNER; JESS MONZO;  
ANDREW LASKO; JOHNNY SHORT;  
MICHELE RUSCAVAGE; AND JOHN/JANE  
DOES 1-10

Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO. MON-L-483-12

CIVIL ACTION

**ORDER COMPELLING DISCOVERY**

**THIS MATTER** having been opened to the Court by Brian E. Ansell, Esquire of the firm of Ansell Grimm & Aaron, attorneys for the Plaintiff herein, on a motion to compel Defendant Matawan-Aberdeen Regional School District Board of Education and Matawan Regional High School to comply with Plaintiff's Sixth, Seventh, Eighth and Ninth Notices to Produce, and the Court having read the moving papers and any opposition thereto, and for good cause being shown;

IT IS on this 13<sup>th</sup> day of November, 2013;

ORDERED that:

ANSELL GRIMM & AARON  
A PROFESSIONAL CORPORATION  
CORPORATE ATTORNEYS  
1500 LAWRENCE AVENUE  
CN 7807  
OCEAN, NJ 07712  
(732) 922-1000



1. Pursuant to R.4:23-1 Defendant, Defendants Matawan-Aberdeen Regional School District Board of Education and Matawan Regional High School shall produce copies of all documents requested in Plaintiff's Sixth, Seventh, Eighth and Ninth Notices to Produce, within \_\_\_\_\_ days of the entry of this Order; *by 12/1/13.*

and it is further

**ORDERED** that a copy of this Order be served upon all parties to this action within seven (7) days from the date hereof.

  
\_\_\_\_\_  
HON. JAMIE S. PERRI, J.S.C.

☒ Opposed  
☐ Unopposed

**SEE ATTACHED RIDER**

*No further*

**SEE COMPANION ORDER**

RIDER TO ORDER DATED

7/7/14

v.

Docket No. MON-L-483-12

*The court makes the following findings of fact and conclusions of law regarding the motion(s) identified in the attached Order:*

The plaintiff in this matter claims that he was injured on 4/20/12 while participating in a physical education class at Matawan-Aberdeen High School. Plaintiff previously served a Ninth Notice to Produce, seeking copies of all reports issued by defendant's expert, Dr. Benoff, between 2012 and 2013 in which he "opined or otherwise stated that plaintiff sustained residual cognitive impairment, limitations, or difficulties as a result of a head injury caused by accident or incident." In essence, the plaintiff sought evidence which may suggest positional bias on the part of Dr. Benoff. On 11/13/13, the court granted plaintiff's motion to produce copies of all requested documents. Defendants now move for reconsideration of the court's Order. Plaintiff opposes the motion. The court finds that oral argument will not be of assistance in deciding this matter.

Reconsideration of an order or judgment is a matter "within the sound discretion of the court to be exercised in the interest of justice." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). R. 4:49-2 governs the reconsideration of a judgment or order, and provides:

Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred.

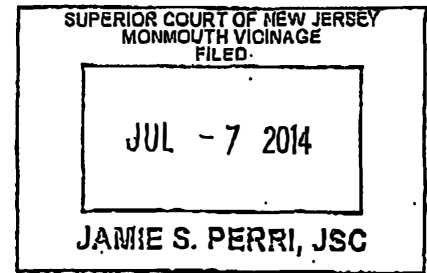
Reconsideration is warranted only in very narrow circumstances. Specifically, reconsideration is warranted when either (1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence. Cummings v. Bahr, *supra*, 295 N.J. Super. at 384; see also Fusco v. Board of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002); Calceterra v. Calceterra, 206 N.J. Super. 398, 403 (App. Div. 1986) (finding reconsideration warranted only where an order is "improvidently entered"). A motion under R. 4:49-2 is not a vehicle to obtain "a second bite of the apple." Fusco, *supra*, 349 N.J. Super. at 463. Further, a litigant should not seek reconsideration merely because of dissatisfaction with a decision of the court. Rather, the preferred course to be followed when one is disappointed with a judicial determination is to seek relief by means of either a motion for leave to appeal or, if the order is final, by a notice of appeal.

In support of the motion for reconsideration, defendants essentially renew their objections to the original motion, arguing that plaintiff's discovery requests are annoying, harassing, and burdensome to defendants' expert. Defendants directs the court's attention to Gensollen v. Pareja, 416 N.J. Super. 585 (App. Div. 2010), a case which does not appear to have been cited in the original motion. The court finds that, in any event, the case is distinguishable from the within

matter. There, the court held that an expert's admission that approximately 95% of his practice involved defense examinations for defendants, and testimony about the amount of money he earned from such examinations, was sufficient to permit the plaintiff to place the issue of bias before the jury. In this matter, however, when Dr. Benoff's testimony was not nearly as precise. When he was asked how many cases he could remember in which he found a plaintiff had some residential cognitive deficiency, he responded that out of 50 or 60 open cases *in his office*, he "knew" he had given an opinion of some residential cognitive deficiency but could not recall "percentage wise" the number of cases in which he had rendered such an opinion. He testified that "[o]ff the top of my head, one recent case comes to mind. But I don't know how many I have, how many the office has over the last several months, or, quite frankly, at the moment, the last couple of years that are still open." Dr. Benoff also testified that of the 20-25 head injury evaluations he performed in 2013, he could recall "three or five matters" in which he found deficits. Dr. Benoff's recollection was sufficiently vague to leave open the issue of whether plaintiff would be able to argue positional bias simply based on these recollections.

Based upon the foregoing, and the motion record, the court finds that plaintiff has failed to meet its burden on a motion for reconsideration and defendants' motion is denied.

  
\_\_\_\_\_  
JAMIE S. PERRI, J.S.C.



BRUCE E. HELIES, ESQ., ATTORNEY ID #017991974

WOLFF, HELIES, SPAETH & LUCAS, P.A.

Valley Park Professional Center

2517 Highway 35

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(732) 223-5100

Attorneys for Defendant(s), Matawan Aberdeen Regional School

District Board of Education, Matawan Regional High School,

Joseph J. Martucci, Suzanne S. Mergner, Jess Monzo, Andrew

Lasko & Michele Ruscavage

Our File No.: 0951.18075-H

Plaintiffs

BLAIR KIM, by and through his  
Guardian Ad Litem, John Kim

vs.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

Docket No. MON-L-483-12

Defendants

*Civil Action*

MATAWAN ABERDEEN BOARD OF  
EDUCATION, MATAWAN REGIONAL  
HIGH SCHOOL, JOSEPH J.  
MARTUCCI, SUZANNE S. MERGNER,  
JESS MONZO, ANDREW LASKO,  
MICHELE RUSCAGAVE, JOHNNY  
SHORT, ET AL

ORDER  
GRANTING RECONSIDERATION  
PURSUANT TO RULE 4:49-2 OF  
THE COURT'S PRIOR ORDER TO  
COMPEL DISCOVERY DATED  
NOVEMBER 13, 2013

THIS MATTER having been opened to the Court by Notice of Motion pursuant to Rule 1:6-2 filed by Wolff, Helies, Spaeth & Lucas, P.A., attorneys for the defendants, Matawan Aberdeen Regional School District Board of Education, Matawan Regional High School, Joseph J. Martucci, Suzanne S. Mergner, Jess Monzo, Andrew Lasko & Michele Ruscavage for an Order seeking Reconsideration of the Court's prior Order to compel discovery

dated November 13, 2013 requiring Dr. Keith Benoff to search records to find reports upon which he opined that a plaintiff had sustained cognitive residuals; all parties having been duly served; the Court having considered the attached Certification and Briefs submitted and all good cause having been shown;

IT IS on this 7<sup>th</sup> day of July, 2013;

ORDERED that the Court's Order of November 13, 2013 be and is hereby reconsidered and defendants shall not be required to have Dr. Benoff undertake an examination of prior reports to ascertain on how many occasions he may have found a cognitive deficit in a plaintiff for whom he had conducted an independent medical examination on behalf of the defense; and it is

FURTHER ORDERED that this Order be served upon all parties within 7 days of the date hereof.



, J.S.C.

JAMIE S. PEEN, J.S.C.

PAPERS CONSIDERED:

\_\_\_\_ Notice of Motion  
\_\_\_\_ Movant's Affidavits  
\_\_\_\_ Movant's Brief  
\_\_\_\_ Answering Affidavits  
\_\_\_\_ Answering Brief  
\_\_\_\_ Cross-Motion  
\_\_\_\_ Movant's Reply  
\_\_\_\_ Other \_\_\_\_\_

*motion granted*

SEE ATTACHED RIDER

RIDER TO ORDER DATED 11/3/12  
Kim v. Matawan-Aberdeen  
Docket No. MON-L- 483-12

*The court makes the following findings of fact and conclusions of law regarding the motion(s) identified in the attached Order:*

The minor plaintiff claims that he was injured on 4/20/12 while participating in a physical education class at Matawan-Aberdeen High School. Plaintiff moves to compel the defendants to respond to plaintiff's Sixth, Seventh and Eighth Notices to Produce regarding records allegedly maintained by the defendants. Defendants' expert, Dr. Benoff, was deposed and asked how many cases he could remember in which he found a plaintiff had some residential cognitive deficiency. Dr. Benoff testified that out of 50 or 60 open cases in his office, he "knew" he had given an opinion of some residential cognitive deficiency but could not recall "percentage wise" the number of cases in which he had rendered such an opinion. He testified "Off the top of my head, one recent case comes to mind. But I don't know how many I have, how many the office has over the last several months, or, quite frankly, at the moment, the last couple of years that are still open." Dr. Benoff also testified that of the 20-25 head injury evaluations he had performed in 2013, he could recall "three or five matters" in which he found deficits. Following the deposition, plaintiff served a Ninth Notice to Produce, seeking copies of all reports issued by Dr. Benoff in 2012 and 2013 in which he "opined or otherwise stated that plaintiff sustained residual cognitive impairment, limitations or difficulties as the result of a head injury caused by an accident or incident." In essence, plaintiff seeks discovery which might support a claim of "positional bias" on the part of Dr. Benoff.

Defendants filed no substantive opposition regarding the Sixth, Seventh or Eighth Notices but submitted a Certification by Dr. Benoff in opposition to the Ninth Notice. Dr. Benoff certifies that there are five practicing physicians in his group and the group's records are not segmented as between patients who are receiving treatment and those who are examined for litigation purposes. Dr. Benoff states that compliance would "amount to any [sic] extensive and/or insurmountable amount of time."

R. 4:10-2 provides that a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending actions. When contemplating imposing a limitation on discovery, the court must begin with the principle that pretrial discovery is afforded the broadest possible latitude and extends not only to relevant information but also to any information that might lead to the discovery of relevant information. Shanley & Fisher, P.C. v. Sisselman, 215 N.J. Super. 200, 216 (App. Div. 1987).

The court finds Dr. Benoff's opposition unpersuasive. Irrespective of the number of files maintained by the five physicians in his office, he has offered no coherent explanation why retrieving and reviewing records for patients he personally evaluated would be unduly burdensome. He has offered no particulars regarding his office's recordkeeping practices which would suggest that he could not readily access his own records nor has he provided an estimate of the "insurmountable" amount of time which would be needed to respond to the Notice.

  
JAMIE S. PERRI, J.S.C.