

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**DOCTOR'S DATA, INC.,** )  
**a Nevada corporation,** )  
) )  
**Plaintiff,** )  
) )  
**v.** )  
) )  
**STEPHEN J. BARRETT, M.D.,** )  
**NATIONAL COUNCIL AGAINST** )  
**HEALTH FRAUD, INC., a California** )  
**corporation, and QUACKWATCH, INC.,** )  
**a dissolved Pennsylvania corporation,** )  
) )  
**Defendants.** )

**No. 10-CV-3795**

**Hon. John J. Tharp, Jr.**

**DEFENDANTS' SUBMISSION IN SUPPORT OF  
THE APPLICATION OF THE COMMON INTEREST PRIVILEGE**

Defendants, Stephen J. Barrett, M.D. ("Dr. Barrett"), the National Council Against Health Fraud, Inc. ("NCAHF"), and Quackwatch, Inc. ("Quackwatch"), by and through their attorneys, submit the following in support of their claim that certain documents are privileged pursuant to the common interest doctrine:

**INTRODUCTION**

Defendants' Privilege Log, attached as Exhibit A, identifies 29 documents that have not been produced to Plaintiff, Doctor's Data, Inc., as these documents are protected under the attorney-client privilege, work-product doctrine, and/or the common interest doctrine. During the September 5, 2012 court appearance, Plaintiff argued that email communications between Defendant, Dr. Barrett, and third-party, non-attorney Dr. Baratz are not privileged because an attorney is not copied on the communication. Because Drs. Barrett and Baratz have a common interest in the instant litigation and their communications seek confidential information from

each other on behalf of attorney Michael Botts and share work product that is related to the instant litigation, their email communications are protected by the common interest doctrine.

## **ARGUMENT**

### **I. The Documents Are Protected Under the Attorney-Client Privilege and the Work-Product Doctrine.**

Dr. Barrett and Dr. Baratz are corporate representatives of Defendant NCAHF, each representing the interests of that Defendant. Dr. Barrett and Dr. Baratz were the last two active officers/directors of Defendant NCAHF. Attorney Michael Botts (“Botts”), lead counsel for all Defendants, was authorized to represent Defendant NCAHF by both Dr. Baratz and Dr. Barrett. Dr. Barrett is included in each of the named Defendants in this case – himself personally, himself as the sole owner of dissolved corporation Quackwatch, Inc., and as one of the last officer/directors of the now dissolved corporation NCAHF. Dr. Baratz was consulted and authorized Botts to represent NCAHF to ensure that there were no conflicts of interest in Botts representing all Defendants.

In addition to being one of the last officer/directors of NCAHF, Dr. Baratz is also a recognized expert in the science involved in the present case, provoked urine toxic metals testing. Dr. Barrett is also a recognized expert in provoked urine toxic metals testing and consumer health fraud issues related to that test.

In order to prepare the best defense of NCAHF, Botts specifically requested that Drs. Barrett and Baratz cooperate to investigate, strategize, and evaluate evidence that may be used in the defense – combining their knowledge for the benefit of the corporation.<sup>1</sup> Dr. Barrett and Dr. Baratz were both instructed by their attorney, Botts, to work together to prepare evidence in support of the defense of NCAHF, and to report their findings and

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<sup>1</sup> The Declaration of Michael K. Botts is attached hereto as Exhibit B.

information to Botts for further discussion and consideration. In that both doctors were communicating pursuant to the specific directions of the attorney for the corporation they represented, all e-mails between the two doctors are protected under the attorney-client privilege. Communications from the attorney to the client are privileged if it is shown that the client had a reasonable expectation in the confidentiality of the statement or if the communications tend to directly or indirectly reveal a client confidence. *IBJ Whitehall Bank & Trust Co. v. Cory & Assocs., Inc.*, No. CIV.A. 97C5827, 1999 WL 617842, at \*3 (N.D. Ill. Aug. 12, 1999).

Further, all of the documents on the Privilege Log discuss strategy in defending against the lawsuit, including the interpretation of technical, scientific information regarding provoked testing and chelation, and thus constitute work product. The purpose of the work-product doctrine is to protect a party's litigation strategies from disclosure to the opposing party. *Trading Technologies Int'l, Inc. v. eSpeed, Inc.*, No. 04C5312, 2007 WL 1302765, at \*2 (N.D. Ill. May 1, 2007). Where defendants correspond with third parties in preparation for litigation, such communications are privileged under the work-product doctrine. *Id.* Dr. Baratz was called-upon to assist in preparing a defense in this case because of his status as a representative of NCAHF and knowledge regarding the scientific information involved.

## **II. The Documents Are Protected Under the Common Interest Doctrine.**

Even if it is determined that the attorney-client privilege and work-product doctrine do not protect the email communications between Dr. Barrett and Dr. Baratz, the common interest doctrine extends the privilege to these documents. The common interest doctrine extends the attorney-client privilege to otherwise non-confidential communications in

limited circumstances. *U.S. v. BDO Seidman, LLP*, 492 F.3d 806, 815-16 (7th Cir. 2007). The common interest doctrine will apply where the parties undertake a joint effort with respect to a common legal interest, and the doctrine is limited strictly to those communications made to further an ongoing enterprise. *Id.* In order to assert the common interest privilege, a party must demonstrate: (1) the communications were made in the course of a joint defense effort; (2) the statements were made in furtherance of that effort; and (3) the privilege has not been waived. *Ocean Atlantic Dev. Corp. v. Willow Tree Farm, LLC*, No. 01C5014, 2002 WL 649043, at \*5 (N.D. Illinois April 19, 2002).

Plaintiff forced Dr. Barrett to wear several hats as a Defendant in this litigation. Dr. Barrett is named personally, he is the sole owner of Quackwatch, Inc. (now dissolved), and he was one of the last two remaining active officer/directors of NCAHF (now dissolved), along with Dr. Baratz. Drs. Barrett and Baratz have identical common interests in defending this suit in that the allegations made by Plaintiff against Dr. Barrett, NCAHF, and Dr. Baratz are identical, namely defamation and conspiracy to defame. Even if the correspondence of Drs. Barrett and Baratz is viewed as correspondence between representatives of separate Defendants, their interests are identical. Further, the Defendants are all represented by the same attorney, and the attorney specifically instructed Drs. Barrett and Baratz to work together to pool their personal knowledge and resources for the benefit of the Defendants, to cooperate in evaluating evidence and strategy, and to educate their attorney.

**A. The Communications Were Made in Furtherance of a Joint Defense Effort Between Dr. Barrett and Dr. Baratz.**

The communications between Drs. Barrett and Baratz were made in furtherance of a joint effort between these parties. An oral joint defense agreement may be valid to

establish the existence of a joint defense effort. *Ocean Atlantic*, 2002 WL 649043 at \*6 (finding a joint defense effort where the parties had a common interest in the outcome of the litigation). All that is required to establish a joint defense effort is an expressed intent to cooperate in the litigation. *Trading Technologies Int'l, Inc. v. eSpeed, Inc.*, No. 04C5312, 2007 WL 1302765, at \*1 (N.D. Illinois May 1, 2007). Additionally, a person need not be a litigant to be a party to a joint defense agreement. *Ocean Atlantic*, 2002 WL 649043 at \*6.

In addressing whether the common interest doctrine protected communications between non-attorneys, the court in *IBJ Whitehall Bank & Trust Co. v. Cory & Assocs., Inc.* answered affirmatively, finding that the nature of the communication determines whether it is privileged, 1999 WL 617842 at \*6. A communication between two parties who have a common interest in litigation may be privileged if (1) one party is seeking confidential information from the other on behalf of an attorney; (2) one party is relaying confidential information to the other on behalf of an attorney; and (3) the parties are communicating work product that is related to the litigation. *Id.*

As described in more particularity in the attached Declaration, Botts specifically instructed Drs. Barrett and Baratz to communicate in order to educate and provide information to Botts in forming a defense against Plaintiff's claims against NCAHF. Botts was not included on all communications between Drs. Barrett and Baratz because it was deemed more efficient that the doctors discuss the science and potential exhibits first. Dr. Barrett later presented the information to Botts. In addition, since Dr. Baratz has a busy medical practice, it was considered more efficient for Dr. Barrett to contact Dr. Baratz when he was available and, again, report back to Botts later. In this way, the use of Botts'

time was more efficient, as he did not have to track every communication between Dr. Barrett and Dr. Baratz. Accordingly, the parties' communications are protected work product related to this litigation.

**B. The Common Interest Doctrine Has Not Been Waived.**

As long as the parties keep the documents within their circle of common interest, the privilege is not waived. *IBJ Whitehall*, 1999 WL 617842 at \*6. Defendants and joint parties have not waived the privilege of these documents as they have not been shared with anyone other than Dr. Barrett, Dr. Baratz, and Defendants' attorneys.

**Conclusion**

Because Drs. Barrett and Baratz are cooperating in the common defense of Plaintiff's claims against Dr. Barrett and the National Council Against Health Fraud, Inc., the email communications between the doctors seeking confidential information related to the instant litigation from one another on behalf of attorney, Michael Botts, and sharing work product related to the instant litigation are privileged. Accordingly, Defendants respectfully request that these documents remain in Defendants' possession.

September 12, 2012

Respectfully Submitted,

STEPHEN J. BARRETT, M.D., THE  
NATIONAL COUNCIL AGAINST HEALTH  
FRAUD, INC., AND QUACKWATCH, INC.

By: /s/ Ashley L. Orlor  
One of their Attorneys

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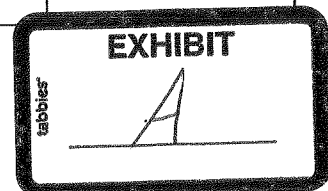
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## JOINT DEFENSE PRIVILEGE LOG

DDI v. Barrett, et al., Case No. 10-CCV-3795, N.D. Ill

September 4, 2012

Doc. Number	Doc. Date	From	To/cc/bcc	Description/Attachments	Privilege
DEF 05677	6/9/10	Dr. Barrett	D. Wilzig, Esq. cc: P. Parker, Esq.	E-mail: "Libel threat" - Discussion of response to Augustine letter threatening suit. Attach: Augustine letter	Attorney/client
DEF 05678	6/19/10	Dr. Barrett	D. Wilzig, Esq.	E-mail: "Doctor's Data" - Discussion of defense strategy in this suit. Discussion of evidence for defense from this suit. Attach: Complaint filed in this suit (Document not attached electronically)	Attorney/client
DEF 05679	6/24/10	Dr. Barrett	D. Wilzig, Esq. cc: P. Parker, Esq. Dr. Baratz M. Botts, Esq.	E-mail: "Another [redacted]" - Discussion of potential defense evidence. Title of document reveals potential defense exhibit.	Attorney/client; Common interest
DEF 05680	9/19/10	Dr. Barrett	D. Wilzig, Esq. cc: Dr. Baratz M. Botts, Esq.	E-mail: "Strategy" - Discussion of potential defense evidence and defense strategy.	Attorney/client; Common interest
DEF 05646	9/20/10	Dr. Barrett	Dr. Baratz	E-mail: "[redacted]" - Discussion of potential defense evidence and defense strategy. Title of document reveals subject matter of discussion.	Common interest
DEF 05647	9/23/10	Dr. Barrett	Dr. Baratz	E-mail: "[redacted] Challenge Instructions" - Discussion of potential defense evidence and defense strategy. Title of document reveals subject matter of discussion. Attach: Challenge instructions (Document not attached electronically)	Common interest
DEF 05648	1/5/11	Dr. Barrett	Dr. Baratz	E-mail: "DDI FOIA Request answered" - Discussion of potential defense evidence and defense strategy. Attach: copies of potential trial evidence (Document not attached electronically)	Common interest
DEF 05649	3/8/11	Dr. Barrett	Dr. Baratz	E-mail: "DDI [redacted] reports" - Discussion of potential defense evidence and defense strategy. Title of document reveals subject matter of discussion. Attach: copies of potential trial evidence (Document not attached electronically)	Common interest





## JOINT DEFENSE PRIVILEGE LOG

DDI v. Barrett, et al., Case No. 10-CCV-3795, N.D. III

September 4, 2012

DEF 05650	3/13/11	Dr. Barrett	Dr. Baratz	E-mail: "Another piece of dynamite: - Evaluation of recent litigation documents and discussion of defense strategy. Attach: potential litigation exhibit (Document not attached electronically)	Common interest
DEF 05651	11/22/11	Dr. Barrett	Dr. Baratz	E-mail: "Judge Rules" – Discussion of defense evidence strategy. Attach: copy of Order on Motion. (Document not attached electronically)	Common interest
DEF 05652	11/30/11	Dr. Barrett	Dr. Baratz	E-mail: "DDI FOIA Request answered" (re-sent) – Discussion of potential defense evidence and defense strategy. Attach: copies of potential trial evidence (Document not attached electronically)	Common interest
DEF 05653	12/28/11	Dr. Barrett	Dr. Baratz	E-mail: "First DDI Interrogatories" – Discussion of defense strategy evaluation. Attach: DDI Interrogatories to Defendants (Document not attached electronically)	Common interest
DEF 05654	12/31/11	Dr. Barrett	Dr. Baratz	E-mail: [redacted] – Transmission of potential trial exhibit. Defense strategy implicit in title of e-mail.	Common interest
DEF 05655	1/10/12	Dr. Barrett	Dr. Baratz	E-mail: "[redacted] document re: provoked testing" – Transmittal of potential defense exhibits. Title of document reveals subject matter of discussion. Attach: potential trial exhibits (Document not attached electronically)	Common Interest
DEF 05656	2/20/12	Dr. Barrett	Dr. Baratz	E-mail: "DDI and HIPPA" – Discussion of defense strategy.	Common Interest
DEF 05657	2/20/12	Dr. Baratz	Dr. Barrett	E-mail: "Reply re: "DDI and HIPPA" – Discussion of defense strategy.	Common Interest
DEF 05658	2/23/12	Dr. Barrett	Dr. Baratz	E-mail: "[redacted]" – Discussion of potential defense exhibits. Title of document reveals subject matter of discussion. Attach: potential defense exhibits. (Document not attached electronically)	Common Interest

## JOINT DEFENSE PRIVILEGE LOG

DDI v. Barrett, et al., Case No. 10-CCV-3795, N.D. III

September 4, 2012

DEF 05659	2/24/12	Dr. Baratz	Dr. Barrett	E-mail: "#8" – Transmittal of potential defense exhibit. Attach: potential defense exhibit. (Document not attached electronically)	Common Interest
DEF 05660	2/24/12	Dr. Barrett	Dr. Baratz	E-mail: "Another article" – Discussion of potential defense strategy and witness. Attach: potential defense exhibit (Document not attached electronically)	Common Interest
DEF 05661	2/28/12	Dr. Baratz	Dr. Baratz	E-mail: "The Key Word" – Discussion of evaluation of potential defense exhibits.	Common Interest
DEF 05662	3/7/12	Dr. Barrett	Dr. Baratz	E-mail: "[redacted]" – Transmittal of potential defense exhibit. Title of document reveals subject matter of discussion. Attach: potential defense exhibit. (Document not attached electronically)	Common Interest
DEF 05663	3/7/12	Dr. Barrett	Dr. Baratz	E-mail: "[redacted]" – Discussion of potential defense exhibit. Title of document reveals subject matter of discussion. Attach: potential defense exhibit. (Document not attached electronically)	Common Interest
DEF 05664	3/9/12	Dr. Barrett	Dr. Baratz	E-mail: "DDI FOIA Documents" - Transmittal of potential defense exhibits. Attach: potential defense exhibits. (Document not attached electronically)	Common Interest
DEF 05665	3/10/12	Dr. Baratz	Dr. Barrett	E-mail: "re: DDI FOIA Documents" - Discussion of potential defense exhibits and defense strategy.	Common Interest
DEF 05666- DEF 05667	4/1/12	Dr. Baratz	Dr. Barrett cc: M. Botts, Esq.	E-mail: "[redacted]" - Discussion of potential defense exhibit. Title of document reveals subject matter of discussion. Attach: potential defense exhibit. (Document not attached electronically)	Attorney client; Common Interest
DEF 05668	5/30/12	Dr. Barrett	Dr. Baratz	E-mail: "Requests for admissions" – Discussion of defense strategy. Attach: response notes. (Document not attached electronically)	Common Interest

## JOINT DEFENSE PRIVILEGE LOG

DDI v. Barrett, et al., Case No. 10-CCV-3795, N.D. Ill

September 4, 2012

DEF 05669	6/19/12	Dr. Baratz	Dr. Barrett	E-mail: “[redacted]” – Discussion of defense strategy. Title of document reveals subject matter of discussion.	Common Interest
DEF 05670	7/16/12	Dr. Barrett	Dr. Baratz	E-mail: “[redacted]” - Discussion of defense exhibits and strategy. Title of document reveals subject matter of discussion.	Common Interest
DEF 05671- DEF 05676	8/29/12	Dr. Baratz	Dr. Barrett	E-mail: “[redacted]” - Discussion of defense exhibits and strategy. Title of document reveals subject matter of discussion.	Common Interest

**NOTES:**Identification of individuals named above:

“D. Wilzig, Esq.” [David Wilzig] is an attorney who had represented Dr. Barrett in the past in a lawsuit unrelated to the parties or subject matter of the present lawsuit. Mr. Wilzig has represented Dr. Baratz in legal matters in the past and still represents him in legal matters unrelated to this lawsuit. Mr. Wilzig represents injured parties in two active suits against Doctor’s Data. Mr. Wilzig is not a named Defendant in the present lawsuit.

“Dr. Baratz” [Robert S. Baratz, M.D., Ph.D., D.D.S.] was NCAHF president from 2001 to 2007, at which time he became executive director. He remained as executive director until NCAHF dissolved last year. Dr. Baratz has appeared as an expert in civil actions against Doctor’s Data and practitioners who used Doctor’s Data’s provoked urine toxic metals tests. Dr. Baratz has also been called as an expert and consultant in administrative medical misconduct actions filed against practitioners who treated and caused harm to individuals based on Doctor’s Data’s provoked urine toxic metals test results. Dr. Baratz has been a client of Mr. Wilzig on various legal matters, unrelated to this case. Dr. Baratz is not a named Defendant in the present lawsuit.

“Dr. Barrett” [Stephen J. Barrett, M.D.] is an individually named Defendant, and a former officer and director of the named corporate Defendants in the present lawsuit – Quackwatch, Inc. (dissolved) and The National Council Against Health Fraud, Inc. [NCAHF] (dissolved).

“M. Botts, Esq.” [Michael K. Botts] is lead counsel, *pro hac vice*, for all Defendants in the present lawsuit.

“P. Parker, Esq.” [Pat Parker] is an attorney in the law office of David Wilzig and has been consulted by Dr. Barrett as an attorney on issues in this case. Mr. Parker is not a named Defendant in the present lawsuit.

JOINT DEFENSE PRIVILEGE LOG

DDI v. Barrett, et al., Case No. 10-CCV-3795, N.D. III

September 4, 2012

Basis of claims of privileges:

Dr. Baratz was NCAHF president from 2001 to 2007, at which time he became executive director. Dr. Baratz remained as Executive Director of NCAHF until it was dissolved last year. Dr. Barrett was the only other officer/director of Defendant NCAHF since about 2004. Dr. Baratz and Dr. Barrett represent the interests of Defendant NCAHF in this lawsuit. Plaintiff brought this lawsuit against Dr. Barrett individually and against NCAHF as a corporation represented by Dr. Baratz and Dr. Barrett. Dr. Barrett, individually, and Dr. Baratz, as representative of Defendant NCAHF, have exchanged documents and correspondence related to their identical common interest in defeating Plaintiff's frivolous claims against each of them. Accordingly, documents and correspondence circulated among and between Dr. Barrett and Dr. Baratz relating to potential evidence and defense strategy in this case are claimed to be privileged at least under the common interest doctrine of the attorney client privilege.

Dr. Barrett, Dr. Baratz, and David Wilzig, have identical common interests at least in defending themselves from Plaintiff's frivolous allegations of conspiracy to commit defamation per se and conspiracy to tarnish Doctor's Data's "famous" trademark. Dr. Baratz and Mr. Wilzig have each been identified by the Plaintiff as a target of Plaintiff's conspiracy theory. They were identified in Plaintiff's initial disclosures and in many conversations between counsel early in the case. Plaintiff has, from the beginning, made clear its intentions to pursue all three individuals under this lawsuit. To eliminate all doubt, Plaintiff could not have been more clear in identifying these three individuals as targets of their allegations. See, Plaintiff's Counsel Levens: The main thing that I have been looking at was we have a conspiracy count .... \*\*\* ... Dr. Barrett, Robert Baratz, ... David Wilzig ... we think that's basically the Bermuda Triangle when it comes to the conspiracy issue." Transcript, Motion before the Honorable John J. Tharp, Jr., July 25, 2012, p. 6, lines 16-22. For at least this reason, documents and correspondence circulated among and between Dr. Barrett, Dr. Baratz, and Mr. Wilzig relating to potential evidence and defense strategy in this case are claimed to be privileged at least under the common interest doctrine of the attorney client privilege.

Documents and correspondence circulated among and between Dr. Barrett, Dr. Baratz, and attorneys Botts, Wilzig, and/or Parker, relating to potential evidence and defense strategy in this case are claimed to be privileged under attorney work product, attorney client and the common interest doctrine of the attorney client privilege, as designated by the specific entries.

Miscellaneous:

Some e-mail documents identified above stated that certain documents were attached. The electronic search of Dr. Barrett's files located the e-mails identified, but did not include the attachments. Accordingly, the phrase "(Document not attached electronically)" is used to indicate that the attachment to that e-mail was not associated with the e-mail as that document was kept in the ordinary course of Dr. Barrett's business.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
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**DOCTOR'S DATA, INC.,** )  
**a Nevada corporation,** )  
) )  
**Plaintiff,** )  
) )  
**v.** )  
) )  
**STEPHEN J. BARRETT, M.D.,** )  
**NATIONAL COUNCIL AGAINST** )  
**HEALTH FRAUD, INC., a California** )  
**corporation, and QUACKWATCH, INC.,** )  
**a dissolved Pennsylvania corporation,** )  
) )  
**Defendants.** )

**No. 10-CV-3795**

**Hon. John J. Tharp, Jr.**

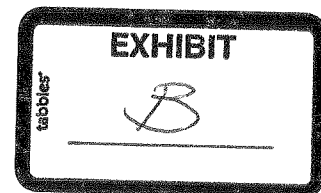
**DECLARATION OF MICHAEL K. BOTTS**

I, Michael K. Botts, being duly sworn under oath, depose and state that I have personal knowledge of the facts set forth in this Declaration, and if sworn as a witness, I can competently testify as follows:

1. I am the lead attorney for Defendants Stephen J. Barrett, M.D. ("Dr. Barrett"), National Council Against Health Fraud, Inc. ("NCAHF"), and Quackwatch, Inc., appearing before this Court *pro hac vice*.

2. At the time of the filing of this lawsuit, NCAHF was not actively engaged in doing business, and filed for corporate dissolution in the State of California during the pendency of this litigation.

3. Dr. Barrett and a non-party individual, Dr. Baratz, were the last remaining officers/directors of NCAHF at the time of the filing of instant lawsuit.



4. Prior to making my appearance on behalf of NCAHF, I obtained the permission of Dr. Barrett and Dr. Baratz, on behalf of NCAHF, to represent the interests of NCAHF in this litigation.

5. I have known Dr. Barrett for more than twenty years, having served on some of the same committees and having represented him in legal matters unrelated to this case. I have also known Dr. Baratz for about the same time, but to a lesser degree than Dr. Barrett. Since early in my acquaintance with Doctors Barrett and Baratz, I have known that they were friends and spoke often.

6. Upon accepting the representation of NCAHF, I specifically and clearly requested Dr. Barrett and Dr. Baratz to cooperate to investigate, strategize, and develop evidence that might be used in defense of the suit. I knew Dr. Barrett and Dr. Baratz to be capable of understanding and evaluating the scientific issues involved in this case. I also knew from discussing the case with each of them that the doctors were well informed of the history and science of the provoked urine toxic metals tests and the history of the Plaintiff.

7. I asked Dr. Barrett and Dr. Baratz to cooperate in their research in defense of NCAHF, and to educate me on the science of the evidence identified as I worked with them in defense of NCAHF. My primary contact was through Dr. Barrett whom I instructed to work with Dr. Baratz and to report their findings to me. Working through Dr. Barrett was more efficient than contacting each of them separately, and Dr. Barrett was chosen as the representative to report to me because, in part, Dr. Baratz has a very active medical practice, and Dr. Barrett is retired and thus has more time to discuss the case with me. Again, knowing that the doctors were long-time friends, it made sense for them to discuss the issues without me because they were used to the times and methods of communication. It was more efficient from

my perspective to use Dr. Barrett as the conduit for reporting to me the results of the cooperative research of the doctors. My time was lessened by only receiving the results of the conversations, rather than tracking each individual conversation. I gave Dr. Barrett questions to ask Dr. Baratz and they would discuss the question and propose additional information, and Dr. Barrett would report back to me.

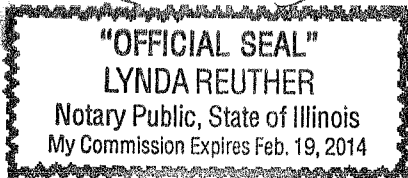
8. The communications identified in Defendants' Privilege Log are all related to my express instructions to Dr. Barrett and Dr. Baratz to cooperate in assisting me to represent the interests of Defendant NCAHF. Although I was not included on some of the e-mails, all documents on the Privilege Log discuss strategy in defending against this lawsuit, including the interpretation of technical information regarding provoked testing and chelation, and I respectfully assert that since the Doctors did this work at my request for the benefit of my clients, their communications constitute my attorney work product.

Dated: September 12, 2012

By: Michael K. Botts  
Michael K. Botts

SUBSCRIBED AND SWORN TO  
before me this 12<sup>th</sup> day of September, 2012

Lynda Reuther  
Notary Public



**CERTIFICATE OF SERVICE**

I, Ashley L. Orlor, one of the attorneys herein, hereby certify that I caused the foregoing Defendants' Submission In Support of The Application of the Common Interest Privilege to be served upon:

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Algis K. Augustine, Esq.  
Jaya Frances White, Esq.  
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by causing a copy of same to be served electronically via ECF/PACER, this 12<sup>th</sup> day of September, 2012.

/s/ Ashley L. Orlor