

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THE MEDICAL CENTER AT
ELIZABETH PLACE, LLC,

Case No. 3:12-cv-26

Plaintiff,
vs.

Judge Timothy S. Black

PREMIER HEALTH PARTNERS, *et al.*,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO COMPEL (Doc. 108)

This civil action is before the court on Defendants' motion to compel (Doc. 108) and the parties' responsive memoranda (Docs. 112, 115). The Court previously found that Defendants made a threshold "showing of a factual basis adequate to support a good faith belief by a reasonable person...that *in camera* review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies." *United States v. Zolin*, 491 U.S. 554, 572 (1989); (Doc. 118 at 2).¹ Subsequently, Plaintiff produced 40 documents *in camera* for the Court's review.

A proponent seeking to pierce the attorney-client privilege under the crime-fraud exception must first make a *prima facie* showing that a crime or fraud has occurred. Specifically, the evidence presented by the movant must be such that "a prudent person [would] have a reasonable basis to suspect the perpetration of a crime or fraud." *In re Antitrust Grand Jury*, 805 F.2d 155, 164 (6th Cir. 1986).

¹ The Court incorporates the background facts from its Order at Doc. 118.

The crime-fraud exception has a precise focus: It applies only when the communications between the client and his lawyer further a crime, fraud or other misconduct. It does not suffice that the communications may be related to a crime. To subject the attorney-client communications to disclosure, they must actually have been made with an intent to further an unlawful act.

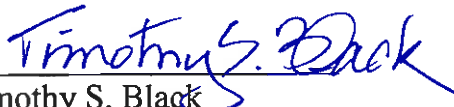
U.S. v. White, 887 F.2d 267, 271 (D.C. Cir. 1989).

Upon careful review of the documents, the Court finds that “a prudent person [would] have a reasonable basis to suspect the perpetration of a ... fraud.” *In re Antitrust Grand Jury*, 805 F.2d at 166. However, while there is evidence that “a prudent person [would] have a reasonable basis to suspect” that “the client” communicated with “an intent to further an unlawful act,” there is not evidence that the attorneys acted with “an intent to further an unlawful act.” *White*, 887 F.2d at 271.

Accordingly, for these reasons, Defendants’ motion to compel (Doc. 108) is **DENIED.**

IT IS SO ORDERED.

Date: 3/31/14


Timothy S. Black
United States District Judge