

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

K & S ASSOCIATES, INC.,)	
)	
Plaintiff,)	
)	No. 3:09-cv-1108
)	
v.)	
)	
AMERICAN ASSOCIATION OF)	JUDGE SHARP
PHYSICISTS IN MEDICINE,)	
)	
Defendant.)	

ORDER


Plaintiff’s Motion to Preclude Defendant from Relying on an Advice of Counsel Defense (Docket Entry No. 60) is hereby GRANTED.

Defendant, American Association of Physicians in Medicine, would normally hold the attorney-client privilege regarding its communications between Defendant and its attorneys unless this privilege is implicitly waived due to a claim or pleading which places the subject matter of a privileged communication at issue. *Ross v. City of Memphis*, 423 F.3d 596, 605 (6th Cir. 2005). The legal opinion memorandum dated June 9, 2009, authored by Defendant’s legal counsel, remains protected by the attorney-client privilege.

Although Defendant has not raised the advice of counsel as a defense to Plaintiff’s allegations, as a result of withholding the legal opinions that would form the basis of such a defense, Defendant is precluded from relying on this on the aforementioned legal opinion memorandum as an element of its defense at trial. *In re Lott*, 424 F.3d 446, 452-53 (6th Cir. 2005). Defendant’s failure to make a full disclosure of the legal opinions during discovery

constitutes a waiver of the advice of counsel defense and consequently, Defendant is precluded from relying on an advice of counsel defense at trial.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE