10-13-1983

Bond v. District Court of County of Denver

SUPREME COURT, STATE OF COLORADO

Case No. 83 SA 390

ORIGINAL PROCEEDING, DISTRICT COURT NO. 82CV15703

ANSWER TO PETITION FOR RELIEF IN THE NATURE OF MANDAMUS

ERIN LUCELE BOND; her parents, WENDELL ANSON BOND and EILEEN MARIE BOND; her brother, RYAN RALPH BOND; and her sister, SYDNEY NOTERMAN BOND,

vs.

THE DISTRICT COURT IN AND FOR THE COUNTY OF DENVER AND THE HONORABLE ROGER CISNEROS, ONE OF THE JUDGES THEREOF,

Respondents.

COMES NOW YMCA of the Rockies, a Colorado corporation, Defendant in Action No. 83CV932, by and through its attorneys, GREENGARD, BLACKMAN & SENTER, and hereby submits its Answer to the Petition for Relief in the Nature of Mandamus as directed to the District Court in and for the County of Denver and the Honorable Roger Cisneros, one of the Judges thereof.

SUMMARY OF RELEVANT FACTS

The Complaint in Action No. 83CV932 is based upon the fact that Erin Lucele Bond suffered physical injuries when she was struck by a vehicle being operated by the Defendant, YMCA of the Rockies (hereinafter "YMCA" or "Defendant"). The accident took place during a hayride on August 20, 1982, when Erin was four years of age. Although Erin's parents, as well as an older brother and a younger sister were present at the time of the accident, they did not suffer any physical injuries. The sole nature of the claims made on behalf of Erin's parents, Wendell and Eileen Bond, are that in addition to some financial loss they have

suffered and will suffer emotional trauma and damage to the family unit as a result of the accident. The sole nature of the claims made on behalf of Erin's brother, Ryan, and Erin's sister, Sydney, are that they have suffered emotional fright, trauma, and anguish. These injuries are allegedly the result of Erin's accident.

The Complaint contains a separate prayer for damages on behalf of each of the five individual Plaintiffs. In each instance, the prayer includes past and future mental pain and suffering, past and future loss of enjoyment of life, and, in the case of the children, future psychiatric and other similar expenses. Trial to a jury of six has been set to begin on March 19, 1984.

The Plaintiffs have undergone psychiatric evaluation and therapy, some of which is continuing and some of which has been terminated, with individual doctors and staff members associated with the Foothills Clinic in Boulder, Colorado, beginning in October, 1982. In addition, Wendell and Eileen Bond have seen therapists not connected with the Clinic both prior to an after the accident. Treatment is continuing with some of these individual therapists and treatment with other therapists has been terminated. A document entitled "Report of Psychological Evaluation and Projected Costs for Psychiatric Care Concerning Erin Bond (D.O.B. 10-24-77) and Her Family" was prepared by two of the doctors at the Foothills Clinic on approximately February 28, 1983. A copy of this document is as attached to the Petition for Relief in the Nature of Mandamus (hereinafter "Petition") as Exhibit "B." The report contains a recommendation for continuing psychiatric care for four out of the five family members individually and for the family as a unit. The total projected cost for this continuing care over the next twenty years is $353,980.

Defendant YMCA requested a copy of all written notes and records as compiled by therapists and their staff during evaluation or treatment of the Bond family members. A Motion for Order Compelling Discovery was filed on behalf of the YMCA on July 14, 1983, and a Motion for Protective Order was filed on behalf of the Plaintiffs on July 28, 1983. Plaintiffs' Response to Defendant's Motion for Order Compelling Discovery and Memorandum Brief in Support of Plaintiffs' Motion for Protective Orders was subsequently filed, as was Defendant's Reply to Plaintiffs' Response to Motion for Order Compelling Discovery and Response to Plaintiffs' Memorandum Brief in Support of Motion for Protective Orders. Copies of these pleadings are attached hereto as Exhibits "A" through "D" in the order as above stated. Attachments to these pleadings which were a part of the Petition have been deleted. A hearing was held on the Motion to Compel and on the Motion for Protective Order on September 1, 1983, and the Honorable Roger Cisneros ruled that the YMCA was to have access to the records as listed in its Request for Production of Documents and that the contents of the records were to be kept confidential. This ruling was made after the court had considered the pleadings, had heard oral argument, and had reviewed the affidavit of Dr. Marshall G. Vary, the director of the Foothills Clinic. A copy of this affidavit has been attached to the Petition as Exhibit "D."

Erin Bond is now six years of age. Ryan is now nine years of age and Sydney is three. Based upon the ages of the children, the Plaintiffs have filed a Motion for Protective Orders to prohibit scheduled depositions of the children by the Defendant. This motion is now pending before the trial court.

LEGAL ARGUMENT

The issue before the trial court was whether the Plaintiffs had made a showing of good cause as necessary pursuant to C.R.C.P. 26(c) in order to obtain a protective order. The Defendant asserts that the trial court did not err in holding that either no good cause had been shown for the issuance of a protective order as broad as that asserted by the Plaintiffs or in holding that any good cause shown warranted only an order requiring that the information discovered be kept confidential. In so holding the trial court correctly based its order upon C.R.C.P. 26(c), upon § 13-90-107(1)(g), C.R.S. 1973, and upon its consideration of applicable case law.

A. The Trial Court was Correct in its Determination that there was no Showing of Good Cause for the Issuance of the Protective Order as Proposed by the Plaintiffs.

Colorado Rule of Civil Procedure 26(c) states that the court may make a protective order as "justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. . . ." The Plaintiffs here are seeking the issuance of a protective order based upon statements contained in paragraph 9 of the affidavit of Dr. Vary which in summary says that if the Defendant is allowed to have access to the notes and records as requested, three members of the Bond family will suffer immediate and irreparable harm as the success of further treatment may be impaired due to the loss of confidentiality.

Plaintiffs also rely upon the psychologist-client privilege created by § 13-90-107(1)(g), C.R.S. 1973, to show that the notes and records should be

protected from discovery. Although the Plaintiffs here admit that they have waived the privilege due to the fact that they have placed their mental health at issue, they also assert that the question of how broadly or how narrowly that waiver is to be interpreted remains to be determined, and that they did not waive any right to the confidentiality of these materials. The YMCA asserts that once the privilege has been waived, it is an absolute waiver, and the Plaintiffs cannot thereafter regain the protection it would have afforded.

This Court recently addressed the nature of the psychologist-client privilege in Colorado in the case of Clark v. District Court, Second Judicial District, Vol. 12, No. 10, Colo.Law. 1719 (October, 1983), as well as the circumstances under which that privilege is deemed to have been waived. In Clark, it was determined that the privilege was not a qualified privilege, as asserted by the respondent in that case, but rather the privilege was absolute until either expressly or impliedly waived. In the event that the holder of the privilege put his mental condition at issue in a court proceeding, "the only reasonable conclusion is that he thereby impliedly waives any claim of confidentiality respecting that same condition." Id. at 1721. Just as the privilege is absolute, the waiver of the privilege is also absolute.

The doctrine of waiver of statutory privilege has also been discussed in Kelley v. Holmes, 28 Colo.App. 79, 470 P.2d 590 (1970), where the court specifically held that it did not agree with a restricted theory of waiver. Rather, it stated that if the plaintiff wished to establish that he was seriously injured by offering testimony of medical practitioners who treated him, he must make available "all relevant data" in order for the finder of fact to reach a just decision. Id. at 592. Thus, the doctrine of waiver in Colorado has been broadly interpreted,

and only matters which are not relevant to the issue are not deemed to have been waived. The reasoning in Kelley is much the same as that found in 8 Wigmore, Evidence, Section 2389 (McNaughton rev. 1961).

In enacting Section 13-90-107(1), C.R.S. 1973, the legislature expressly recognized the need for confidentiality in a psychologist-client relationship. The history of such statutes is clear that they were enacted to foster encouragement for patients to seek treatment, to continue with necessary treatment, and to disclose all information to the psychologist. Shuman and Weiner, The Privilege Study: An Emperical Examination of the Psychotherapist-Patient Privilege, 60 N.C.L. Rev. 893 (1982). The patient is thus protected from disclosure of confidential information—unless he chooses to put his mental condition into issue in a court proceeding. Once at issue, the patient cannot and should not then be permitted to reassert the same reasons for the issuance of a protective order as were the basis of the statutory privilege just waived. The reasons set out in Dr. Vary's affidavit to show immediate and irreparable harm are the same reasons for which § 13-90-107(1), C.R.S. 1973, was enacted.

The leading case cited to the trial court and as argued by the parties was In Re Lifschutz, 85 Cal.Rptr. 829, 467 P.2d 557 (1970). The controversy in Lifschutz was based upon a constitutional right to privacy regarding communications to and from psychotherapists, as balanced against a recognized "litigant-patient" exception to the statutory privilege in California. In Lifschutz, the court, after very carefully weighing all of the factors, held that the waiver of the privilege mandated disclosure of all communications except communications regarding two specific areas. These areas were 1) if the communications were not "directly

relevant to the specific 'mental and emotional' injuries for which plaintiff is claiming relief . . . . ," Id. at 573, and 2) if the probative nature of the communication is substantially outweighed by the probability of the creation of undue prejudice, Id. at 572. The scope of the statutory waiver was limited in these two ways so that the litigant would not be required to sacrifice all privacy in order to bring suit for specific mental injuries. Caesar v. Mountanos, 542 F.2d 1064 (9th Cir., 1976), and Britt v. Superior Court of San Diego County, 20 Cal.3rd 844, 574 P.2d 766 (1978).

The rationale of the Colorado and California decisions is in no way changed merely because the issue came before the trial court in the form of a motion for protective order rather than the assertion of an absolute privilege. The result is the same in that in either event the Defendants are not permitted to have access to crucial information as based upon a need for confidentiality to ensure the success of continuing treatment and to potentially protect the patient from embarrassment or humiliation pursuant to C.R.C.P. 26(c). As no showing was made to the trial court that certain notes and records were not relevant to the issues as presented in the Complaint, no protective order was or should have been granted, and discovery was ordered.

There was also no showing of good cause before the trial court due to the fact that the affidavit of Marshall G. Vary was insufficient. In paragraph 8 of the affidavit, Dr. Vary admits that he has not been directly involved in treatment of any of the Bond family members. His affidavit is based upon information received from other doctors at the Foothills Clinic. As there is no statement that Dr. Vary has talked with any of the therapists not employed by the Clinic who the Bonds are

currently seeing, the affidavit is certainly insufficient to establish immediate and irreparable harm to those continuing relationships. No specific reasons are given in the affidavit as to why the Defendant should not have access to the notes and records of therapists who once treated the Bonds but no longer do so.

The affidavit states only conclusions of Dr. Vary, and it does not state the facts upon which those conclusions are based. Furthermore, the affidavit addresses, in paragraph 9, only Dr. Vary's conclusion that the disclosure of the records may cause serious and irreparable harm to Erin, Wendell, and Eileen Bond; it does not assert that there is any potential harm to Ryan or to Sydney Bond. The records of Ryan and Sydney are not in question and should be turned over for discovery by the YMCA.

The mere fact that an affidavit is submitted to the trial court does not mean that the trial court is forced to make its rulings based upon the statements made in that affidavit. Here the trial court could have seriously questioned the sufficiency of the affidavit, as stated above, and the trial court could have also questioned the continued connection of both Marshall G. Vary and the Foothills Clinic with the Bond family members. Dr. Vary, in addition to being the director of the Foothills Clinic, has been retained by the Plaintiffs as their expert witness to testify at trial. In the event that treatment of the Bond family members is carried out pursuant to Exhibit "D" of the Petition, the Foothills Clinic will collect the sum of $353,980 over the course of approximately the next 20 years.

For the reasons as stated above, there was no showing of good cause made to the trial court. The trial court was correct in its decision to require discovery of notes and records reagrding psychiatric treatment and evaluations.

B. Even in the Event that there was a Showing of Good Cause for a Protective Order, the Trial Court Correctly Exercised its Discretion in Issuing its Order for Production.

When opposing interests are involved in a question of discovery, the trial court must use its discretion and must issue an order which will balance the need to limit the exposure of the contested material against the need of the opposing party to have the knowledge as contained in that material. In Colorado, this has been applied to actions involving the discovery of trade secrets. Curtis, Inc., v. District Court in and for the City and County of Denver, 186 Colo. 226, 526 P.2d 1335 (1974). In Curtis, the appellate court held that the trade secrets should be protected from unnecessary disclosure; however, this had to be balanced against the defendants' need to know the exact nature of those secrets in order to defend the charges made against them. Upon review, the court held that good cause had been shown for the trial court's grant of all but one of the limitations as requested by the plaintiff. The limitations imposed by the trial court were basically that the documents and their contents be kept as confidential as possible until further order. The court in Curtis did not totally bar the disclosure of the trade secrets to defendants, and the trial court here was similarly correct in not totally barring the disclosure of the records as requested by the Defendant. Rather, the court used its discretion to fashion an order that balanced the conflicting interests while still recognizing the rule that "all conflicts should be resolved in favor of discovery." Id. at 1339.

The trial court protected the Bonds from unnecessary discloure by ordering that the contents of the documents be kept confidential. Disclosure of the

documents to the Defendant is necessary in that this is the only written documentation konwn to be in existence regarding the Bonds' claims of past and future mental pain and suffering. These claims are the sole basis of potential liability of the YMCA regarding four of the five Plaintiffs. The records are, therefore, crucial to the ability of the Defendant to determine the nature and the extent of the damage which it allegedly caused, crucial to the determination of whether it was the proximate cause of any such damage; and, as some of the information was given to treating doctors and the staff members within one month after the accident in question, extremely probative in terms of containing reliable information which may lead to the discovery of admissible evidence.

The other means of discovery as proposed by the Plaintiffs are not appropriate. Any conference between Dr. Vary and a psychiatrist who would be the expert witness for the Defendant would at best suffer from multiple hearsay, as the information would have come from the Bonds to a doctor or staff member at the Foothills Clinic to Dr. Vary to the Defendant's expert to Defendant's counsel. No proposal has been made by the Plaintiffs for the transfer of information from treating doctors or staff members not connected with the Clinic, and the Defendant knows of the existence of at least four such individuals.

The compromises are not appropriate for several other reasons. The expert witness as retained by the Defendant does not represent the Defendant and would not have the ability to assess or determine the existence of legal issues as contained in the records. In order to do a proper psychiatric evaluation of the individual Plaintiffs, the Defendant's expert must have access to the records of the patient. In order to draft proper interrogatories, background information from the

notes and records of the Foothills Clinic is essential. Interrogatories or any other form of discovery which may disclose defenses to the Plaintiffs' Complaint cannot be prepared using only the information which the Plaintiffs choose to reveal. Although the Petition states that the Petitioners have been made available for depositions, the fact is that only the parents, Wendell and Eileen, are not the subject of the currently pending Motion for Protective Order regarding the taking of depositions.

Furthermore, the trial court did not abuse its discretion in ordering the discovery, as the Protective Order as drafted was both overly broad and premature. At this point the YMCA does not and cannot know whether any of the information obtained from the notes and records will be used at trial and, thus potentially made known to the public. In the event that it is necessary for the YMCA to use any of the information at trial and in the further event that the Plaintiffs then believe that the probative value of this particular material would be outweighed by the harm or prejudice which its use may cause, either a stipulation regarding the use of the evidence or a motion in limine to be determined by the court could provide the necessary protection. In the same light, however, it is ironic that the Plaintiffs' claim that the same facts and information upon which they must necessarily rely to prove their case at trial must at this point, less than five months from the scheduled trial date, be shielded from disclosure. If the confidential dissemination of the materials held by treating therapists would cause serious and irreparable harm to three of the Plaintiffs, then it is clear that the matter should not be litigated at this time and that the proper remedy to be asserted by the Plaintiffs is a Motion for Continuance.

CONCLUSION

The trial court did not abuse its discretion in ordering that the records as requested by the YMCA be produced and that the contents of the records be kept confidential. The trial court used its discretion correctly in that there was no showing of good cause presented, and even in the event that good cause was shown, the need for discovery outweighed the need for a protective order of the scope and magnitude as asserted by the Plaintiffs. The YMCA asserts, as it has throughout the course of this litigation, that the contents of the records will not be disclosed to the public in general.

WHEREFORE, Defendant prays that the Order to Show Cause be dissolved and for such other and further relief as the Court may deem just and proper.

Oral argument on this matter is requested.

Respectfully submitted,

Richard D. Greengard, #1212

Holly E. Rebstock, #8017
Attorneys for Respondents
150 Adams Street
Denver, Colorado 80206
(303) 320-0509

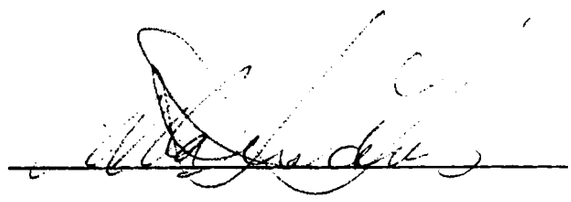
CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONSE TO ORDER TO SHOW CAUSE was mailed this 13th day of October, 1983, postage prepaid, addressed to:

Nancy Alden Bragg, Esq.
FRASCONA, McCLOW and JOINER
75 Manhattan Drive, Suite 206
Boulder, CO 80303

Clerk of the District Court
Denver District Court
Denver City and County Building
1437 Bannock Street
Denver, CO 80202

The Honorable Roger Cisneros
Denver District Court
Denver City and County Building
1437 Bannock Street
Denver, CO 80202



DISTRICT COURT COUNTY OF DENVER STATE OF COLORADO	Case No. 83CV932 Courtroom 1	MOTION FOR ORDER COMPELLING DISCOVERY

ERIN LUCELE BOND; her parents, WENDELL ANSON BOND and EILEEN MARIE BOND; her brother, RYAN RALPH BOND; and her sister, SYDNEY NOTERMANN BOND,

Plaintiffs,

vs.

YMCA OF THE ROCKIES, a Colorado non-profit corporation,

Defendant.

COMES NOW the Defendant, YMCA OF THE ROCKIES, by and through its attorneys, GREENGARD, BLACKMAN & SENTER, pursuant to Rule 37 of the Colorado Rules of Civil Procedure, and hereby requests that this Court enter its Order compelling discovery. As grounds therefor, it is stated:

1. On February 25, 1983, the Defendant sent a Request for Production of Documents to the Plaintiffs, a copy of which is attached hereto as Exhibit "A."

2. On March 30, 1983, the Plaintiffs supplied Answers to Defendant's Request for Production of Documents, a copy of which is attached hereto as Exhibit "B."

3. The Answers as provided for Paragraphs 1, 2, and 3 of Exhibit "A" were, either in whole or in part, refusals to provide the discovery as requested, although Plaintiffs did not file a Motion for Protective Order pursuant to C.R.C.P. 26(c).

4. In regard to Paragraph 1, the Plaintiffs were required to provide all medical records, including records of patient visits and notes made by therapists, regarding psychological evaluations and psychiatric care received by the Plaintiffs at the Foothills Clinic.

5. The information from the Foothills Clinic is critical to the preparation of this case by Defendant due to the fact that a very large portion of the damages as alleged in the Complaint relate to the need for past and future psychiatric care of the Plaintiffs, and also due to the fact that the Defendant has been presented with a Report of Psychological Evaluation and Projected Costs for Psychiatric Care from the Foothills Clinic dated February 28, 1983, giving a total projection of costs in the amount of $353,980. A copy of this document is attached hereto as Exhibit "C."

EXHIBIT "A"

6. The Plaintiffs have refused to provide information from the Foothills Clinic to the Defendant in any manner other than a proposed review by Defendant's expert witness in the offices of the Foothills Clinic, although the Defendant has agreed to execute a stipulation stating that the information will be kept strictly confidential and that the use of said information will be limited to settlement and trial purposes.

7. In regard to Paragraph 2, the Plaintiffs were required to provide photographs taken before and after the accident here in question. The Plaintiffs have refused to provide said photographs, although the Defendant has offered to narrow this request to a time period of one year prior to the accident to date. This discovery is necessary for the preparation of the Defendant's case and for any possible settlement of this lawsuit, due to the fact that the photographs are an effective way of assessing the impact of the accident on Plaintiffs' lives, and, particularly in the case of young children, have less potential for psychological disruption than do the taking of depositions.

8. The Plaintiffs have refused to provide federal income tax returns for the years 1978 and 1979, as requested in Paragraph 3 of Exhibit "A." Defendant asserts that review of these income tax returns is reasonably calculated to lead to the discovery of admissible evidence and production by the Plaintiffs would not be unduly burdensome.

9. The undersigned attorneys both hereby certify that they have conferred with the opposing counsel regarding the matters here in dispute as required by C.R.C.P. 121, Section 1-12, prior to the filing of this motion, but they have been unable to reach an agreement.

10. The Defendant asserts that an Order must be entered requiring the production of the above documents as the discovery as requested clearly is within the scope of C.R.C.P. 26, as interpreted in Hawkins v. District Court in and for the Fourth Judicial District, _____ Colo. _____, 638 P.2d 1372 (1982). Discovery and copying of medical records and reports is particularly authorized in Fields v. McNamara, 189 Colo. 284, 540 P.2d 327 (1975), and the production of income tax returns is specifically authorized in Michael v. John Hancock Mutual Life Insurance Co., 138 Colo. 450, 334 P.2d 1090 (1959).

WHEREFORE, it is requested that this Court enter its Order compelling discovery and that the Defendant be awarded the expenses of this Motion pursuant to C.R.C.P. 37(a)(3), and that the Defendant be awarded such other and further relief as may be just and proper.

Respectfully submitted,

GREENGARD, BLACKMAN & SENTER

_____
Richard D. Greengard, #1212

_____
Holly Rebstock, #8017
Attorneys for Defendant
150 Adams Street
Denver, Colorado 80206
(303) 320-0500

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Order Compelling Discovery was mailed this _____ day of _____, 1983, postage prepaid, addressed to:

Nancy Bragg, Esq., formerly known as Nancy Alden
Attorney for Plaintiffs
75 Manhattan Drive, Suite 206
Boulder, CO 80303

_____

DISTRICT COURT
COUNTY OF DENVER
STATE OF COLORADO

Case No. 83 CV 932
Courtroom 1

REQUEST FOR PRODUCTION OF DOCUMENTS

ERIN LUCELE BOND; her parents, WENDELL ANSON BOND and EILEEN MARIE BOND; her brother, RYAN RALPH BOND; and her sister, SYDNEY NOTERMANN BOND,

Plaintiffs,

vs.

YMCA OF THE ROCKIES, a Colorado non-profit corporation,

Defendant.

Defendant, YMCA OF THE ROCKIES, by its attorneys, GREENGARD, BLACKMAN & SENTER, pursuant to Rule 34 of the Colorado Rules of Civil Procedure, hereby requests that Plaintiffs, their attorney, or anyone acting on their behalf, produce and permit Defendant's attorneys to inspect and copy the following documents:

1. Any and all medical bills, statements, narrative medical reports, hospital records, medical test results, receipts for prescriptions, and any and all other written document or material concerning the Plaintiff's alleged personal injuries and damages as a result of the incident which is the subject matter of this suit.

2. Any and all photographs of each Plaintiff taken both before and after the subject incident referred to in Plaintiffs' Complaint.

3. Plaintiffs' state and federal income tax returns for the years, 1978, 1979, 1980, 1981 and 1982.

4. Any diagram, survey, sketch, or other depiction of the scene of the incident which is the subject matter of this suit.

5. Any accident report, or other investigation concerning the incident which is the subject matter of this suit.

6. Any written or recorded statements of witnesses of the incident which is the subject matter of this suit.

7. Any estimate, appraisal, or any other document concerning property damages sustained as a result of the incident which is the subject matter of this suit.

8. Any and all written materials, including applications, receipt for benefits, under the Colorado Automobile Accident Reparations law in connection with claims made as a result of the incident which is the subject matter of this suit.

9. Any documentation concerning Plaintiffs' occupancy of the said wagon referred to in Plaintiffs' Complaint.

Said documents shall be produced at the office of Greengard, Blackman & Senter, 150 Adams Street, Denver, Colorado 80206 on Thursday, March 31, 1983, at the hour of 10:00 a.m., pursuant to Rule 34 of the Colorado Rules of Civil Procedure.

GREENGARD, BLACKMAN & SENTER

By_____

Richard D. Greengard #1212
Attorneys for Defendant
150 Adams Street
Denver, Colorado 80206
Telephone: 320-0509

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Production of Documents has been mailed this 25th day of February, 1983 to:

Nancy Alden Bragg, Esq.
Frascona, McClow and Joiner
75 Manhattan Drive, Suite 206
Boulder, Colorado 80303

Terry Kindall

DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO

CIVIL ACTION NO. 83-CV-932

MOTION FOR PROTECTIVE ORDER PURSUANT TO RULE 26(c) OF THE COLORADO RULES OF CIVIL PROCEDURE

ERIN LUCELE BOND,
her parents, WENDELL ANSON BOND and EILEEN MARIE BOND,
her brother, RYAN RALPH BOND; and
her sister, SYDNEY NOTERMANN BOND,

Plaintiffs,

vs.

YMCA OF THE ROCKIES, a Colorado non-profit corporation,

Defendant.

COME NOW the Plaintiffs, Erin Lucele Bond, her parents, Wendell Anson Bond and Eileen Marie Bond, her brother, Ryan Ralph Bond, and her sister, Sydney Notermann Bond, by and through their attorneys, FRASCONA, McCLOW and JOINER, Nancy Alden Bragg, and moves the court for a protective order to prohibit the production of the detailed notes and records of patient visits from The Foothills Clinic, as per Defendant's Request for Production of Documents No. 1, at which clinic the Plaintiffs have been treated for psychological disturbances since the date of the accident in question, for the following reasons:

1. The Plaintiffs have shown good cause for the issuance of a protective order pursuant to Rule 26(c) of the Colorado Rules of Civil Procedure, as more fully stated in their Response and Brief filed herewith;

2. The production of such detailed notes and records are of a highly personal and sensitive nature and would cause serious and

EXHIBIT "B"

irreparable harm to the treatment of the Plaintiffs as set forth in the affidavit of Marshall G. Vary, M.D., director of The Foothills Clinic, attached to the memorandum Brief in support of this Motion.

3. The Defendant has been provided with a narrative report from Dr. Vary, also attached to the Plaintiffs' Memorandum Brief.

4. The Defendant has been offered and has available to it, which it has not utilized, other more appropriate discovery methods which would not cause irreparable harm to the Plaintiffs and which would be adequate to ascertain the facts necessary for a defense of its case.

WHEREFORE, Plaintiffs pray that the Court enter an order granting its Motion for Protective Order and denying the Defendant's motion to compel this discovery.

Respectfully submitted,
FRASCONA, McCLOW and JOINER

By: Nancy Alden Bragg No. [illegible]
75 Manhattan Drive, Suite 206
Boulder, Colorado 80303
Telephone: 494-3456

DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO

CIVIL ACTION NO. 83-CV-932

RESPONSE TO DEFENDANT'S MOTION FOR ORDER COMPELLING DISCOVERY AND MEMORANDUM BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PROTECTIVE ORDERS PURSUANT TO RULE 26(c) OF THE COLORADO RULES OF CIVIL PROCEDURE

ERIN LUCELE BOND,
her parents, WENDELL ANSON BOND and EILEEN MARIE BOND,
her brother, RYAN RALPH BOND; and
her sister, SYDNEY NOTERMANN BOND,

Plaintiffs,

vs.

YMCA OF THE ROCKIES, a Colorado non-profit corporation,

Defendant.

COME NOW the Plaintiffs, Erin Lucele Bond, her parents, Wendell Anson Bond and Eileen Marie Bond, her brother, Ryan Ralph Bond, and her sister, Sydney Notermann Bond, by and through their attorneys, FRASCONA, McCLOW and JOINER, Nancy Alden Bragg, and as a response to the Defendant's motion to compel discovery and in support of their motion for protective orders, submit the following facts and legal authorities.

SUMMARY OF THE ARGUMENT

1. There is "good cause" in this case for protective orders under Rule 26(c) of the Colorado Rules of Civil Procedure, since to provide highly personal and sensitive psychiatric notes and records of patient visits of The Foothills Clinic as requested by the Defendant would cause serious and irreparable harm to Erin Bond and her parents, Wendell and Eileen Bond, as supported by the attached

affidavit of their psychiatrist, Marshall G. Vary, M.D., director of The Foothills Clinic.

2. The Defendant's discovery request has been substantially satisfied by the narrative report of Dr. Vary, attached hereto, concerning his evaluation of the Plaintiffs, which report has been supplied to the Defendant.

3. The Plaintiffs have proposed discovery compromises on this issue consistent with the Defendant's right to information concerning their mental status which include: (1) an evaluation of the Plaintiffs by a psychiatrist of the Defendant's choice; (2) a conference between Dr. Vary and a psychiatrist chosen by the Defendant to discuss the diagnosis made by Dr. Vary and members of The Foothills Clinic and their treatment plan for the Plaintiffs; (3) depositions of the Plaintiffs; and (4) any other appropriate discovery, including interrogatories to Plaintiffs' experts.

4. Defendant's requests for additional tax returns and photographs is moot since Plaintiffs have agreed to provide this material.

FACTS AND LEGAL AUTHORITIES

1. Good cause for a protective order under Rule 26(c).

On August 20, 1983, Plaintiff Erin Bond, 5 years old, while on a family vacation, was run over by the wheel of a truck which was owned by the Defendant and operated by one of its employees. Erin suffered severe physical and psychological injuries, and other family members who were present at the time of her injury suffered psychological damage as well as a result of her near-death experience. Erin and her

parents have been under psychiatric treatment by members of The Foothills Clinic since that time.

The central issue as to the Defendant's discovery motion and Plaintiffs' motion for protective orders concerns the Defendant's insistence upon the highly sensitive and detailed notes and records of patient visits of The Foothills Clinic where Erin and her parents have been treated for their psychological injuries. Marshal G. Vary, M.D., who is the director of The Foothills Clinic and a diplomate in child and general psychiatry certified by the American Board of Psychiatry and Neurology, is of the opinion that to provide detailed notes and records concerning Erin and her parents' visits to The Foothills Clinic would cause serious and irreparable harm. Dr. Vary's affidavit which states his opinion in this regard is attached hereto.

Dr. Vary states that it is important for the well being and successful treatment of Erin and her parents that notes or other detailed records of their treatment not be used against them in an adversary proceeding. This is so, in his opinion, because to do so would be to destroy the feeling of trust and openness that a patient must have to be successfully treated for psychological difficulties. In addition, Dr. Vary states that use of detailed notes against the Bonds in connection with their treatment would serve to destroy the stability and clarity the treatment represents in their lives, which are in a high degree of turmoil and confusion. Thus, it is easy to see that it would be highly detrimental to the Bonds' emotional health and further treatment to have notes concerning these issues, complicated issues involving the most intimate details of their lives, turned over to legal

advocates to be used against them for the purpose of defeating their claims. As Dr. Vary so aptly said in his affidavit: ". . . the Bonds have been hurt enough and this would serve only to hurt them more."

Rule 26(c) of the Colorado Rules of Civil Procedure states in relevant part: "Upon motion by a party . . . and for good cause shown, the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions; including a designation of the time or place; (3) that the discovery be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters . . ."

What constitutes good cause for a protective order under section (c) of Rule 26 is a matter to be decided on the facts of each particular case. Curtis, Inc. v. District Court, 186 Colo. 226, 526 P.2d 1335 (1974); 4 J. Moore, Federal Practice, ¶26.68 (2d ed. 1973). Motions for protective orders are solely within the discretion of the trial judge. Bigler v. Bigler, 482 P.2d 996. Although the intent of the Rules is to permit liberal discovery, Phillips v. District Court In and For Second Judicial District, 194 Colo. 455, 573 P.2d 553, Section (c) of Rule 26 gives the court the authority to make exceptions for good cause and in its discretion to fashion an appropriate method of discovery for the particular case or even to order that discovery not be had at all. In Curtis, Inc. v. District Court In and For City and County of Denver,

supra, a case involving the disclosure of trade secrets where protective orders were made, the court used a kind of balancing test to determine whether good cause had been shown. Such test involved balancing the need for the information against the need not to have it exposed.

Certainly the instant case meets the test for good cause under Rule 26(c) as well as under the Curtis case. Dr. Vary has testified in his affidavit that to disclose the Bonds' psychiatric notes and records in an adversary proceeding would cause them serious and irreparable harm. Thus, there is an important need not to have it exposed. On the other hand, the Defendant does not need to have access to this highly personal and sensitive information about the Plaintiffs for it to defend its case, as shown below.

2. The Defendant's discovery request has been substantially satisfied.

Paragraph No. 1 of Defendant's Request for Production of Documents reads as follows:

> Any and all medical bills, statements, narrative medical reports, hospital records, medical test results, receipts for prescriptions, and any and all other written document or material concerning Plaintiffs' alleged personal injuries and damages as a result of the incident which is the subject matter of this suit.

On March 30, 1983, Plaintiffs responded as follows:

> All medical and other bills have been forwarded to your client. Attached hereto are the records from The Children's Hospital. Further medical bills as received and narrative medical reports will be forwarded to you.

Subsequently, on April 18, 1983, the narrative report of Dr. Vary was sent to the Defendant. Such report met the requirements of Rule 26(b)(4)(A)(i) of the Colorado Rules of Civil Procedure in that Dr. Vary stated the subject matter on which he is expected to testify,

the substance of the facts and opinions to which he is expected to testify and the grounds for each opinion.

It should be noted that no specific request was made until now by the Defendant for detailed notes and records of patient visits.

3. Plaintiffs' proposed compromises.

The Plaintiffs do not argue with the fact that the Defendant has a right to discovery of facts concerning their mental health since the Plaintiffs have themselves raised that issue as part of their suit, and, aside from the highly personal and detailed notes of members of The Foothills Clinic, the Plaintiffs have offered the Defendant full discovery.

First, the Plaintiffs have agreed to submit to an evaluation by a psychiatrist of the Defendant's choice. Dr. Vary believes that the Plaintiffs will be up to such an evaluation some time this fall if all goes as expected.

Second, Dr. Vary has offered to meet with that same psychiatrist of the Defendant's choosing to thoroughly discuss the diagnosis of the Bonds and the treatment plan devised for them by members of the Foothills Clinic. To date, the Defendant has not accepted Dr. Vary's offer.

Third, Wendell and Eileen Bond were to have their depositions taken by the Defendant on July 14, 1983, but such depositions were cancelled by the Defendant.

Fourth, the Defendant has not submitted interrogatories to the Plaintiffs or Dr. Vary which it has a right to do, and has not used any other discovery method to follow up on Dr. Vary's narrative report or

to further obtain information concerning the Bond's psychological damages.

4. Other requests are moot.

The Plaintiffs have agreed to provide negatives of photographs of themselves to the Defendant for a period of one year prior to the date of the accident, rather than for their entire lives, as per paragraph 2 of its Request which is acceptable to Defendant.

The Plaintiffs also have agreed to provide the Defendant with their 1978 and 1979 tax returns in addition to their 1980 and 1981 returns as per paragraph 3 of Defendant's request.

CONCLUSION

The Plaintiffs have shown good cause for the Court to issue a protective order pursuant to Rule 26(c) of the Colorado Rules of Civil Procedure for the reason that it would cause them serious and irreparable harm to produce the detailed personal notes and records of their psychiatric visits to The Foothills Clinic. The Defendant cannot be heard to complain that such notes are necessary for its defense since it has not followed up on the discovery it has already received nor has it made use of other available discovery methods to prepare its defense. In fact, it has cancelled depositions it had scheduled for Mr. and Mrs. Bond. It has made no use of interrogatories or the conference offered by Dr. Vary with a psychiatrist of its choice. The Plaintiffs have provided the Defendant with a narrative report. They have agreed to a mental examination.

Therefore, Plaintiffs urge the court to grant their motion for protective orders, and to deny the Defendant's motion for an order compelling discovery.

Respectfully submitted,
FRASCONA, McCLOW and JOINER

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DISTRICT COURT COUNTY OF DENVER STATE OF COLORADO	Case No. 83CV932	REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR ORDER COMPELLING DISCOVERY AND RESPONSE TO PLAINTIFFS' MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDERS

ERIN LUCELE BOND; her parents, WENDELL ANSON BOND and EILEEN MARIE BOND; her brother, RYAN RALPH BOND: and her sister, SYDNEY NOTERMANN BOND,

Plaintiffs,

vs.

YMCA OF THE ROCKIES, a Colorado non-profit corporation,

Defendant.

COMES NOW the Defendant, YMCA OF THE ROCKIES, by and through its attorneys of record, GREENGARD, BLACKMAN & SENTER, and hereby submits its Reply to Plaintiffs' Response to Motion for Order Compelling Discovery and Response to Plaintiff's Memorandum Brief in Support of Motion for Protective Orders. As grounds therefor, the Defendant submits the following Summary of Relevant Facts, Legal Argument and Authorities, and Conclusion.

SUMMARY OF RELEVANT FACTS

The Complaint initiating this action on behalf of the five members of the Bond family was filed on approximately November 15, 1982. The Bond family is comprised of the parents, Wendell and Eileen Bond, and their three children, Erin, Ryan, and Sydney. The Complaint alleges that Erin Bond suffered severe physical injuries when she fell off of the truck being used for a hay ride conducted by the YMCA of the Rockies.

The Complaint also alleges that the various members of the Bond family have suffered and will continue to suffer emotional injury and harm due to the fact that they were present at the site of the accident and/or due to the fact that the accident has caused damage to the family unit. Specificially, paragraphs 9, 10, 11, and 12 of the Complaint make these allegations. These paragraphs are set out below in their entirety:

> 9. As a result of being run over by the wheel of the wagon, Erin suffered severe and permanent injury, including, but not limited to, a fractured pelvis, internal injuries, scarring, physical pain and suffering, mental pain and suffering, loss of earning capacity, future medical expenses, loss of enjoyment of life and other damages yet to be determined.

10. As a result of the above-described injuries to their daughter, Erin, the Bonds have incurred medical expenses and will incur medical expenses in the future, have rendered nursing care and other assistance to Erin as a result of her injuries and will render such care and assistance to her in the future, and have suffered in the past and will suffer in the future emotional trauma and damage to the family unit.

11. As a result of being present at and viewing the above-described accident to his sister, Plaintiff Ryan Ralph Bond has suffered emotional fright, trauma and anguish.

12. As a result of being present at and viewing the above-described accident to her sister, Plaintiff Sydney Notermann Bond has suffered emotional fright, trauma and anguish.

The Plaintiffs pray that judgment be entered in their favor against YMCA of the Rockies for past and future mental pain and suffering, past and future psychiatric and other similar expenses, and past and future loss of enjoyment of life. These demands are set out separately for each individual member of the Bond family. Although the Plaintiffs state that the amount of such damages are "to be proven at trial," projected costs for psychological evaluation and psychiatric care of the Bond family have been alleged by Dr. Marshall G. Vary in a report dated February 28, 1983. A copy of this report is attached hereto as Exhibit "A." The report states that the total projection of costs for psychiatric care for the family will be the sum of $353,980.

The report listed in Exhibit "A," as submitted by Dr. Vary and by Julie Anne Brody, Ph.D., states that the members of the Bond family have been visiting the Foothills Clinic since October, 1982. The report, in paragraph 1, states that "the entire family system itself has experienced massive psychological disruption following Erin's traumatic injury on 20 August 1982." The particulars of the psychological disruption are that Mr. and Mrs. Bond have experienced acute despair, resulting in disruption of their marriage and separation. Eileen Bond has reported overwhelming stress and anxiety, which has been manifest in an abdominal biopsy and geographical and "other external changes" in her life. Wendell Bond has experienced Erin's accident and its effects as a personal failure, and he has been seriously depressed. He left his job in Denver in order to have more time to spend with his family. It is also stated that "the events of Erin's trauma have activated unresolved issues concerning his earlier life and led to considerable personality fragmentation." For Mr. Bond alone, the estimated need for psychotherapy is 3 sessions per week for 5.3 years. The total projected cost for his psychotherapy is $79,040.

In regard to Erin Bond, the report states that she is experiencing herself as "empty, powerless, massively deformed and mutilated." The report also states that the accident has had an enormous impact upon her development, and that Erin's psychopathic behavior did not previously exist. Psychotherapy is deemed imperative due in part to "the continuing disruption of her home environment and family relationships." Psychotherapy for Erin is projected through the age of 25, at a total cost of $166,400.

Ryan Bond is reported to be suffering from severe depression following Erin's injury and is behaving aggressively towards Erin. The total projected cost of psychotherapy for Ryan is in the amount of $23,760.

Defendant's Request for Production of Documents was filed with the Court on approximately February 25, 1983. That this Request for Production of Documents particularly included all notes and materials from the Foothills Clinic was clarified by a letter dated April 28, 1983, from Richard D. Greengard to Nancy Alden Bragg, although it is stated by the Plaintiffs in their Response to Defendant's Motion for Order Compelling Discovery and Memorandum Brief in Support of Plaintiffs' Motion for Protective Orders Pursuant to Rule 26(c) of the Colorado Rules of Civil Procedure (hereinafter "Response") that "no specific request was made until now by the Defendant for detailed notes and records of patient visits."

The Response also indicates that in order to compromise the conflicts regarding discovery, the Plaintiffs have been made available for evaluation by a psychiatrist of Defendant's choice (see Response, page 2). It is important to note that by letter dated July 29, 1983, from the Plaintiffs' attorney, it is stated that the Bonds are available for independent medical exam only upon Dr. Vary's approval that they are "emotionally stable enough to go through one." Such approval from Dr. Vary has not been received. It is important to note, also, that throughout the controversy regarding discovery of records from the Foothills Clinic, bills incurred by the Bonds for their treatment at the clinic have been forwarded for payment by the YMCA of the Rockies. The billings so forwarded are presently at least in the amount of approximately $3,000.

Trial on this matter has been set for five days commencing March 19, 1984.

LEGAL ARGUMENT AND AUTHORITIES

By virtue of filing the Complaint which alleges damages due to emotional suffering resulting from Erin's accident, the Plaintiffs have put their existing mental conditions at issue. Once mental condition is at issue and a Complaint seeking damages for this condition has been filed, a patient-litigant may not preclude the other party from preparing its own case by foreclosing inquiry into relevant matters.

Although the Colorado courts have not addressed the particular question of disclosure of psychiatric records when a patient has filed suit for mental and emotional damages, the existing law is clear that there is a right to compel such disclosures. The case of Curtis, Inc., v. District Court in and for the City and County of Denver, 186 Colo. 226, 526 P.2d 1335 (1974), interprets the need for and the scope of protective orders pursuant to C.R.C.P. 26(c). In upholding the trial court's allowance of discovery involving alleged trade secrets, the court stated that the rule did not bar disclosure of trade secrets; rather, it permitted disclosure to be carried out in a designated manner. As the defendant had to know the exact nature of the trade secrets in order to adequately defend the charge that it had stolen those secrets, the court allowed discovery while protecting the plaintiff from unnecessary disclosure by issuing a Protective Order basically stating that the information be kept confidential. Just as the court deemed that this protection was as broad as the circumstances of the case allowed, an agreement to keep information obtained from the Foothills Clinic strictly confidential is what the circumstances in this case allow. This offer has been made to the Plaintiffs and it has been rejected.

Fields v. McNamara, 189 Colo. 284, 540 P.2d 327 (1975) also clearly states that full disclosure of all relevant information is mandated by the rules of procedure governing discovery. In ruling on a request for production of documents brought under C.R.C.P. 34, the court found that such interpretation would facilitate prompt and just disposition of litigaiton.

The question of when psychiatric records are discoverable has been expressly discussed in several jurisdictions. The most thorough review of the weighing of a necessity for protection of the patient-litigant as compared to the necessity for discovery regarding the litigant's claims is stated in In Re Lifschutz, 85 Cal. Rptr. 829, 467 P.2d 557 (1970). This matter was heard upon the application of a psychiatrist for a writ of habeas corpus to secure his release from custody after he had refused to obey an order of court instructing him to answer certain questions and to produce records relating to communications with a former patient. The trial court had initially compelled the discovery as based upon an exception to California Code of Civil Procedure, Section 2034, Subdivsiion (a), stating that a privilege did not apply wherein the patient-litigant had put into issue the status of his mental and emotional condition. After discussing the patient's right to and need for privacy, and after addressing certain constitutional issues as raised by the psychiatrist, the Court held that any privilege not to disclose records of treatment had been waived by the patient-litigant simply by putting the matter in issue in a court dispute. This waiver of the privilege was limited, however, to those mental conditions which the patient-litigant had specifically put in issue, although the Court realized that in some situations the patient's pleadings might clearly demonstrate that his entire history of the psychotherapy and mental treatment were in issue. In this latter case, the patient's entire mental history would be discoverable. Lifschutz, supra, at 569 and 570. The petition for writ of habeas corpus was denied.

Arguments regarding the same or similar matters have been discussed in other jurisdictions, and the courts in those jurisdictions have found records and communications to be discoverable material. Cases wherein this discussion is particularly relevant include Goldenberg v. Wolfe, 44 F.R.D. 33 (D.Conn. 1968), Mattison v. Poulen, ____ Vt. ____, 353 A.2d 327 (1976), and Mancinelli v. Texas Eastern Transmission Corp., 34 A.D.2d 535, 308 N.Y.S.2d 882 (1970).

Whether the disclosure of information regarding a patient-litigant is said to be in violation of a statutory privilege or is said to be mandated by C.R.C.P. 26(c) is in this action immaterial, as the scope of protection sought by the Plaintiffs is so broad that it is tantamount to a claim of privilege. The ultimate discussion leads to the balancing of a need for protection against the need for information necessary to pursue or defend a lawsuit. If the Plaintiffs are not willing to permit full and complete discovery, the action for damages arising from mental and emotional conditions should be abandoned.

In their Response, the Plaintiffs assert both that the Defendant's requested discovery has been substantially satisfied and that they have repeatedly proposed discovery compromises in order to supply the information needed. Here the only discovery which the Plaintiffs have provided regarding mental and emotional conditions is the attached report of the Foothills Clinic. This report is merely a

conclusionary statement prepared by two members of the Foothills Clinic regarding statements as made to them or made to other members of the staff by the Plaintiffs and regarding their assessment of continuing necessity for treatments. In addition to being one of the treating doctors for the Bond family, Dr. Vary will also be the expert called at trial by the Plaintiffs. As such, the report provided by the Foothills Clinic may satisfy C.R.C.P. 26(b)(4)(A)(i); however, it has nothing to do with the scope of permissible discovery pursuant to C.R.C.P. 26(b)(1).

The discovery compromises proposed in the Response cannot and do not provide the Defendant with adequate information regarding the Plaintiffs' claims. As stated in the Summary of Relevant Facts above, no evaluation of the Plaintiffs by a psychiatrist of Defendant's choice has taken place, and there is no assurance that such an evaluation will in fact take place. Even if such an evaluation were done, it suffers from the same defect as the proposed conference between Dr. Vary and a psychiatrist chosen by the Defendant; that defect being that the expert may be able to reiterate to Defendant's attorneys facts within his professional expertise, but he has no ability to decipher and to determine legal issues which may appear through the discovery. As the expert does not represent the clients, background material must be furnished to Defendant's attorneys so that they may determine the existence of any issues which warrant further discovery and so they may determine whether the emotional damages claimed by the Plaintiffs were proximately caused by Erin's accident. Although the Plaintiffs also state that depositions of the Plaintiffs were cancelled by the Defendant, these depositions were in fact never set and thus were never cancelled. In order to take effective depositions of the Plaintiffs or to draft effective Interrogatories to the Plaintiffs' expert, it is necessary to first review all relevant information surrounding the claims as made by the Plaintiffs. These are the notes, records, and materials as held by the Foothills Clinic.

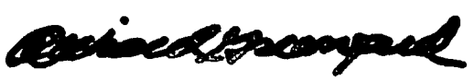
CONCLUSION

Clearly, the Protective Order as sought by the Plaintiffs is both premature and overbroad. The Defendant has offered to keep all information obtained strictly confidential, and to use it only for purposes of defense of the matters asserted. As Plaintiffs will necessarily testify at trial regarding their emotional injuries, a Protective Order prohibiting discovery of the very matters to which they will testify is not warranted under C.R.C.P. 26(c). In the event that specific matters should not be made public at trial in order to protect the emotional stability of the Plaintiffs, a much more limited Protective Order could be sought at an appropriate time.

The Defendant respectfully prays that this Honorable Court enter its Order compelling discovery regarding the psychiatric care of the Plaintiffs by the Foothills Clinic, and that the Court award attorneys fees and costs to the Defendant for expenses incurred in obtaining this discovery.

Respectfully submitted,

GREENGARD, BLACKMAN & SENTER



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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR ORDER COMPELLING DISCOVERY AND REPSPONSE TO PLAINTIFFS' MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDERS was mailed this 4th day of August, 1983, postage prepaid, addressed to:

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