

08, October 2008

Fax.: 257-7215

TODD TURNBLOM, Esq.
Kidman & Assoc.
POB 45-7000
Salt Lake, UT 84145

Re: Flygare v. Gause
T.J.D.C. No.: 08-0912925

Subject: Objections to SDTs

Dear Mr. Turnblom:

I am in receipt [10/06] of an example of the SDTs you expect to serve on various custodians of records. I write to fulfill my “meet and confer” obligations under the **Rule 37(a)(2)(B)** of the U.R.C.P. to try to secure an agreement over a discovery dispute before requesting the court’s intervention. I object to the subpoenas for the following reasons:

- 1-** The SDTs requested records without any time limit - effectively going back over Plaintiff’s entire 37 years.

- 2-** Language that I object to is underlined:
 - a-** You should produce all records in any way;

This is overbroad and without reasonable limitation in time and overbroad and without reasonable limitation in the types of records requested. Only records of injuries or medical conditions like or similar to those Plaintiff has alleged were caused by, or aggravated in, the underlying crash are relevant.

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As worded the SDT encompasses mental health and other like records. But Plaintiff has not put her mental health in issue. Accordingly, such records are irrelevant. Additionally, it is a violation of his constitutional rights to privacy to be requesting records that are not relevant.

I will not object to going back 10 years from the date of the crash. If you find a relevant record within that 10 year period, I will permit you to go back another 10 years from the date of entry on the discovered record. This additional search for records is restricted to the specific condition reflected in the discovered record.

- b-** ... any records of prior or subsequent substantial injuries and treatment of the same.

Again, this language is overbroad in time and in the scope of the records requested. Additionally, the word “substantial” to define an injury is vague and ambiguous and calls for speculation. The word “same” is also ambiguous.

- c-** ... pathology reports, ... speech pathology records, occupation therapy records, social worker records, ... letters to and from other health care providers correspondence and any other documents of any kind regarding treatment provided to patient regardless of the date of the same and not merely those that pertain to any one accident or injury.

None of these records are relevant. Requesting records forever is objectionable for said records are irrelevant and impermissibly invade my client’s rights of privacy.

Additionally, the records requested in the first full paragraph of page two, commencing with “The types of records,” is objectionable because each of the categories of records requested must be limited to records of physical injuries and/or medical conditions like, or similar to, those Plaintiff complains about in his Complaint.

- d-** If you have in your possession are **any records**

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Again, this request is overbroad in time and in the subject matter of the documents requested. As worded, it would include many irrelevant documents on injuries and/or medical conditions not in issue and thus, impermissibly invades my client's constitutional privacy rights.

In addition to the changes mandated by these objections, I would request the insertion into each SDT language to the effect that:

- A- *Plaintiff Flygare specifically request that the records provider not talk to the anyone associated with Kidman & Assoc.*
- B- *The provider should provide records only going back 10 years from the date of the crash. [I agree that if you find a relevant entry in the records provided, I will sign [my client] an authorization going back 10 years from the date of the relevant entry on that medical condition.]*

I believe the sample SDT is overbroad in both the scope of the documents requested, i.e., "all documents" and in the time period covered by the subpoenas, i.e., for my client's entire life. I believe the SDT violates the discovery relevancy rules as it is not addressed to any specific "injury" claim Plaintiff claims he suffered in the crash which underlying his Complaint, nor is it addressed to any specific defense to a specific claim. See **Rule 26(b)(1), U.R.C.P.** Likewise, it violates the **U.R.E. - Rule 402** addressed to "relevance" and **Rule 506 (d)(1)** addressed to "limited waivers."

Additionally, I believe the SDT violates the case law holdings and mandatory requirements of:

- 1- **Debry v. Goates**, 999 P.2d 582, 586 (UT. App., 2000) wherein the court said: Generally, no privilege exists to discover all communications or records. Generally a communication [record] is discoverable if relevant to an issue in any proceeding **in which that communication, condition or record is an element of any claim or defense.**
- 2- **State v. Petty**, 17 UT 2nd, 382; 412 P.2d 914 [1966] which prohibits discovery that would be characterized as a "fishing expedition."

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- 3- **Debry**, supra & **Penn v. Ritchie, 480 U.S. 39,59 [1987]** where a party does not have a right to examine all of the confidential information or to search through files without supervision. Rather a party [defendant] must show with reasonable certainty that some evidence favorable to his/her claims exists. ***Debry*** at 587.
- 4- **Sorenson v. Barbuto**, 2008 UT 8, the Court said a physician is permitted to provide information, interviews, reports, records, statements, memoranda or other data relating to the patient's medical condition ***when a patient places a [particular] medical condition at issue in a court proceeding.*** Page 3

The prohibition on discovering un-related medical records is because they are not relevant to any issue in contest.

Todd, please let me know in writing by **5:00 P.M. on Friday, October 10th**, if you will tailor your SDTs as I request. For time passes swiftly and if you decline my request, I will need to timely notify the providers and file a motion to quash.

Lastly, I trust you will not open any records provided to Kidman & Ass. while this issue remains in dispute. That is, on occasion a provider will send records immediately, i.e., before he/she/it gets notice that no records are to be provided until we are able to iron-out our differences or until the court rules on the motion to quash.

Call with questions. Thank you and I remain,

Very truly ours;

JOHN F. FAY

Hard copy this date U.S.P.S.

JFF/agb

****DC-ObjetsSDTs-10-8-8**