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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

ROB QUIST, and BONNI QUIST,
wife,

Plaintiffs,

vs.

ROCH R. BOYER, M.D.,

Defendant.

Cause No. DV-94-526A

**DEFENDANT'S BRIEF IN RESPONSE TO PLAINTIFFS' CONTINUING
REFUSAL TO PRODUCE PLAINTIFFS' BUSINESS RECORDS AND
PLAINTIFFS' OBJECTION TO DEFENDANT'S MUSIC EXPERTS**

Plaintiffs are doing everything they can not to produce detailed financial records. That is interesting in light of the fact that the Plaintiffs claim that as a result of Rob Quist's surgery, he lost work and lost income. That is going to be an important issue at the time of trial.

Furthermore, in the listing of exhibits which the Plaintiffs intend to use at the time of trial, the Plaintiffs list, among other things, financial records of business pre- and post-surgery, and income tax returns.

Finally, when Rob Quist was deposed, he testified among other things, that:

1. He had an office manager prior to his surgery. (Depo. of R. Quist, p. 26, l. 15). He also now has an officer manager.

1 2. Most of the bookings for his performances came from his office (Depo.
2 of R. Quist, p. 29, l. 6).

3 3. He keeps a calendar for each year and his own working calendar to show
4 what his engagements were and where they were. (Depo. of R. Quist, p. 31, ll. 7-10).

5 4. He says he keeps pretty goods notes on how much money was lost
6 because of cancellations. (Depo. of R. Quist, p. 31, l. 13).

7 5. He claims there was a significant drop in his income because of how he
8 felt following his surgery. (Depo. of R. Quist, p. 37, ll. 19-20).

9 6. He has always had an accountant, first in Wyoming, then in Idaho, and
10 now in Bigfork. (Depo. of R. Quist, p. 38, ll. 12-14; p. 39, ll. 2-4).

11 7. He claims he can't find his tax returns for the years 1985, 1986, and
12 1987. (Depo. of R. Quist, p. 54, ll. 10-17).

13 Plaintiffs clearly have access to the best evidence in terms of pre- and post-
14 income and expenses, pre- and post-earnings, and the engagements that Rob Quist had
15 pre- and post-surgery. Even though Plaintiffs want to use that information as exhibits at
16 the time of trial, they do not want to produce that information on the technical objection
17 that they didn't have the full thirty (30) days to respond to Defendant's interrogatories
18 before discovery closed. Interestingly enough, much of the discovery which has been
19 completed in this case has in fact been completed since the technical close of discovery on
20 December 27, 1995. That is so because the case is not set for trial until May 13, 1996,
21 and it should be the intention of counsel to comply with the intent of discovery which is
22 to disclose information, rather than to refuse to disclose it.

23 Plaintiffs also object to the two music experts identified by the Defendant.
24 There is no question that those experts were identified late for the reasons previously
25 stated in an earlier brief by the Defendant. However, on February 7, 1996, the Defendant
26 got a brand new glimpse of why the Plaintiffs don't want the Defendant to be able to call
27

1 music experts. The Plaintiffs' expert is named Ron Baird. It turns out he has been a
2 long-time personal friend of Rob Quist. Ron Baird is a booking agent in Nashville,
3 Tennessee. While Ron Baird had contact with Rob Quist as a musician in the early
4 1970's, since Rob Quist has gone solo, in the mid-1980's, Ron Baird has never seen Quist
5 perform and has only personally visited with him on two or three occasions.

6 Plaintiffs are claiming that but for Dr. Boyer's surgery, Rob Quist had the
7 opportunity of becoming a national recording artist. Ron Baird testified that Rob Quist
8 was well known in Nashville and met one hundred percent (100%) of the standards to
9 become a national recording artist. However, Ron Baird's business is to book acts that
10 have great potential---the exact thing that he said Rob Quist has. Never, at any time, did
11 Ron Baird try to book Rob Quist---and Ron Baird is not aware of any national booking
12 agent who ever tried to book Rob Quist---even though Rob Quist is well known in
13 Nashville.

14 Finally, at the time of Dr. Boyer's surgery on April 21, 1992, Rob Quist was
15 44 years of age. When Ron Baird was asked if he could name one solo male recording
16 artist who became a national recording artist beginning at age 44, he could not name one
17 in the history of the music business in the United States.

18 Ron Baird testified that to become a national recording artist, a performer
19 would need a good attorney, a good manager, and have label people (record company
20 executives) and regional promotional people see his performances. Even though Rob
21 Quist is well known in Nashville, Ron Baird was not aware of whether any label people
22 or regional promotional people had ever seen Rob Quist perform---or made an effort to
23 see him perform. When Rob Quist was deposed, he testified that from 1984 to 1987, he
24 performed solo and went to Nashville to live. (Depo. of R. Quist, p. 11, ll. 17-20). In
25 three years of living in Nashville, Rob Quist certainly had ample opportunity to be seen
26 by record company people.

1 As previously mentioned, Ron Baird testified that to become a national
2 recording artist, a performer would need an attorney and a good manager and that he
3 would need a national booking agent. Baird is a national booking agent. Defendant's
4 expert Steve Dahl is a national booking agent. Defendant's expert James Harris is a
5 music attorney. Harris and Dahl are not personal friends of Rob Quist. They are,
6 however, experienced people who live and work in Nashville, which is the center of
7 country music in the United States.

8 Plaintiffs' counsel complains that he has not been able to "check out" Harris
9 and Dahl. He has had the opportunity to depose them and has chosen not to depose them.
10 The "checking out" of Harris and Dahl implies that there is something sinister or dishonest
11 about them. What more "checking out" does a person need to do than to go and take their
12 deposition and find out what their qualifications are and what their opinions are. That is
13 the process by which we "check out" experts in any case. Plaintiffs' counsel and I were
14 in Nashville, Tennessee from Tuesday, February 6 to Friday, February 9, 1996. Both
15 Harris and Dahl were in Nashville at that time and Plaintiffs' counsel had previously been
16 advised that they would both be available for deposition during that time.

17 Plaintiffs want the jury to hear only from a long-time personal friend of Rob
18 Quist as to Rob Quist's ability to become a national recording star. Plaintiffs do not want
19 the jury to hear from a national booking agent and a music attorney with approximately
20 forty (40) years of experience between the two of them, as to Rob Quist's opportunity to
21 become a national recording star.

22 CONCLUSION

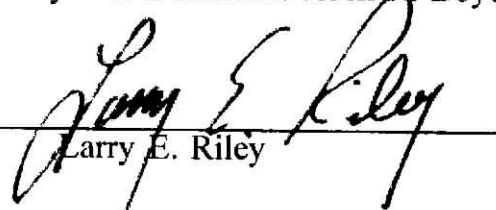
23 The spirit and intent of the discovery rules is to get the facts out on the table
24 before a case goes to trial, and if the case goes to trial, to allow full disclosure to the jury.
25 It is submitted that Plaintiffs are doing everything they can not to allow that to happen on
26 two of the most critical portions of their lawsuit. Even though they have the financial
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1 records, and have always had an accountant, they don't want to produce that information.
2 And on the critical question of Rob Quist's opportunity to become a national recording
3 star, they don't want to hear from fair and impartial experts, but rather a long-time
4 personal friend of Rob Quist's. The jury needs to hear all of the facts in this case---not
5 just those which Plaintiffs' counsel would like them to hear.

6 DATED this 14 day of February, 1996.

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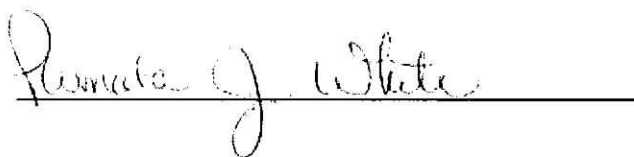
12 By


Larry E. Riley

13 **CERTIFICATE OF MAILING**

14 I, the undersigned, hereby certify that on the 14th day of February, 1996, I
15 mailed a copy of the foregoing **DEFENDANT'S BRIEF IN RESPONSE TO**
16 **PLAINTIFFS' CONTINUING REFUSAL TO PRODUCE PLAINTIFFS' BUSINESS**
17 **RECORDS AND PLAINTIFFS' OBJECTION TO DEFENDANT'S MUSIC EXPERTS,**
18 postage prepaid, to the following:

19 Monte D. Beck, Esq.
20 BECK LAW OFFICES
21 1700 W. Koch, Ste. 2
22 Bozeman, MT 59715

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