2017

Intermountain Surgical, LLC, Petitioner / Appellant, vs. Whitney A. Nesbitt, Jacob C. Loveland, Ignacio Buenrostro, Ester Buenorostro, and Hon. Ryal I. Hansen Respondents / Appellees.

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

INTERMOUNTAIN SURGICAL, LLC, Petitioner / Appellant, vs. WHITNEY A. NESBITT, JACOB C. LOVELAND, IGNACIO BUENROSTRO, ESTER BUENROSTRO, and HON. ROYAL I. HANSEN Respondents / Appellees.	Case No. 20170701-CA

REPLY BRIEF OF PETITIONER/APPELLANT

On Petition for Writ of Extraordinary Relief from the Order of the Honorable Royal I. Hansen, Third District Court Judge, Utah Case No. 160902137

Karra J. Porter, No. 5223
Scott T. Evans, No. 6218
Kristen C. Kiburtz, No. 12572
CHRISTENSEN & JENSEN, P.C.
257 East 200 South, Suite 1100
Salt Lake City, Utah 84111
karra.porter@chrisjen.com
scott.evans@chrisjen.com
kristen.kiburtz@chrisjen.com
Telephone: (801) 323-5000

Attorneys for Petitioner-Appellant

Lloyd R. Jones
LAW OFFICE OF LLOYD R. JONES
P.O. BOX 258829
Oklahoma City, OK 73125
lloyd.jones@farmers.com

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 North Third Avenue, 2nd Floor
P.O. Box 4229
Pocatello, ID 83205
gary@cooper-larsen.com

Attorneys for Respondents-Appellees

IN THE UTAH COURT OF APPEALS

INTERMOUNTAIN SURGICAL, LLC, Petitioner / Appellant, vs. WHITNEY A. NESBITT, JACOB C. LOVELAND, IGNACIO BUENROSTRO, ESTER BUENROSTRO, and HON. ROYAL I. HANSEN Respondents / Appellees.	Case No. 20170701-CA

REPLY BRIEF OF PETITIONER/APPELLANT

On Petition for Writ of Extraordinary Relief from the Order of the Honorable Royal I. Hansen, Third District Court Judge, Utah Case No. 160902137

Karra J. Porter, No. 5223
Scott T. Evans, No. 6218
Kristen C. Kiburtz, No. 12572
CHRISTENSEN & JENSEN, P.C.
257 East 200 South, Suite 1100
Salt Lake City, Utah 84111
karra.porter@chrisjen.com
scott.evans@chrisjen.com
kristen.kiburtz@chrisjen.com
Telephone: (801) 323-5000

Attorneys for Petitioner-Appellant

Lloyd R. Jones
LAW OFFICE OF LLOYD R. JONES
P.O. BOX 258829
Oklahoma City, OK 73125
lloyd.jones@farmers.com

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 North Third Avenue, 2nd Floor
P.O. Box 4229
Pocatello, ID 83205
gary@cooper-larsen.com

Attorneys for Respondents-Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

ARGUMENT

I. A Petition for Extraordinary Relief is the Appropriate Procedure under the Facts of this Case.

Farmers argues that, based on the Utah Supreme Court's holding in *Snow, Christensen & Martineau v. Lindberg*, 2013 UT 15, 299 P.3d 1058, Intermountain cannot demonstrate that its entitled to have its petition for extraordinary relief granted. That is incorrect. Indeed, *Lindberg* actually supports Intermountain's position. In that case, the court held that whether to grant a petition for extraordinary relief is within the sound discretion of the appellate court. Some factors that the court considers in determining whether to grant such a petition are "the egregiousness of the alleged error, the significance of the legal issue presented by the petition, the severity of the consequences occasioned by the alleged error, and additional factors." *Id*, ¶ 22 (internal quotation marks omitted). None of these factors are dispositive or limit the court's discretion. *Id.*

In *Lindberg*, the court concluded that the petitioner had "appropriately utilized a petition for extraordinary writ [to] challenge[] the district court's order" because, as a nonparty to the litigation, the petitioner had "no other plain, speedy, or adequate remedy to challenge the district court's order." *Id*, ¶ 23 (internal quotation marks and ellipsis omitted). Moreover, the court found that the district court's order that required disgorgement of privileged information could result in irreparable injury to the petitioner because, once released, an appellate court cannot always un-ring the bell and repair the harm occasioned by the dissemination of that information.

In this case, just as in *Lindberg*, Intermountain is a nonparty. Therefore, it has no other means to challenge the District Court's order. Moreover, this is not the first time that Intermountain has been subject to a similar discovery request from Farmers or someone similar to Farmers. However, this is the first time that a court has allowed such broad discovery into Intermountain's pricing formula. Much of the information sought constitutes trade secrets. Additionally, the Order seeks to have Intermountain disclose this information to the in-house counsel of one of Intermountain's adversaries in the marketplace. Once this information is disclosed, the bell cannot be un-rung and the proprietary nature of the information is put at risk for future inadvertent disclosure and use by Farmers in other litigation. *See* discussion *infra*. Additionally, Intermountain is subject to the burden of repeatedly having to produce the same or similar information and analyze the same or similar issues regarding Rule 26 in other litigation. The questions presented by the petition are therefore subject to reputation but evasion of review. There is minimal case law regarding the interpretation of Rule 26's proportionality standard under the new discovery rules adopted in 2011. A petition for extraordinary relief is an appropriate procedure to both challenge the District Court's order interpreting and applying this rule and request further guidance on the same.[1] This Court, therefore, should exercise its discretion and review whether Intermountain is entitled to the relief that it requests.

[1] Indeed, Farmers admitted to the District Court that "until there's some established precedence perhaps by the Utah Supreme Court or whatever, that these Intermountain bills are not admissible evidence, we're going to go through this fight and we are going to have different judges that are going to view this differently." (*See* Opp., Addendum 1, pp., 24-25 ln 25-4.)

II. The Information Farmers Seeks is Irrelevant and Disproportional to the Needs of the Personal Injury Action.

Intermountain's opening brief argued that the District Court abused its discretion when it failed to properly analyze under Utah Rule of Civil Procedure 26(b) whether the discovery sought by Farmers is relevant to any claim or defense and proportional to the needs of the case. In response, Farmers does not dispute the test set forth by Rule 26. Instead, Farmers makes two arguments. First, it alleges that the District Court correctly applied Rule 26(b) when it held that information regarding Intermountain's pricing formula and business model is relevant and proportional "to determine if [Intermountain] is a collateral source." (Opp. p., 21.) Second, it argues that information regarding Intermountain's relationship with doctor Kade T. Huntsman is relevant and proportional to determine whether this relationship "limits his objectivity as an expert witness for the [Plaintiffs]." (*Id.*) Neither of these arguments has merit.[2]

[2] Farmers contends that discovery issues will not be overturned unless there is no evidentiary basis for a district court's decision. That argument misstates Intermountain's position. Intermountain is not simply arguing that there is no evidentiary basis for the District Court's decision. Rather, it is arguing that the District Court did not correctly apply Utah R. Civ. P. 26. (*See* Intermountain Br., 14-24.) As acknowledged by Farmers, as well as the cases cited by Farmers, whether a district court correctly applied the rules of civil procedure is reviewed for correctness. (*See* Opp., pp. 6, 23 (citing *Williams v. Anderson*, 2017 UT App 91, ¶ 13, 400 P.3d 1071 (holding that a district court's interpretation of Utah R. Civil Procedure is reviewed for correctness and reversing when district court misapplied that rule); *see also Chatterton v. Walker*, 938 P.2d 255 (Utah 1997) (reversing district court for failure to properly analyze the relevance and proportionality of a discovery request under Utah R. Civ. P. 26).

A. Discovery regarding whether Intermountain is a collateral source is not relevant or proportional under Utah Rule of Civil Procedure 26(b) given the facts in this case.

1. Whether Intermountain is a collateral source is not relevant to any determination to be made in this case.

Farmers does not dispute that under Rule 26(b), the court should have analyzed the test for determining future medical expenses under Utah law and then analyzed whether the information sought was relevant to the determination of that issue. Farmers also does not dispute that, under Utah law, the reasonable value of a plaintiff's medical expenses are determined by the price that those services sell for in the marketplace in the relevant community. Additionally, Farmers does not dispute that patients who receive medical services at one of Intermountain's surgical suites are billed for those services in the same manner that other facility providers bill for their services, i.e., the services are billed by reference to CPT codes.

Despite these apparent concessions, Farmers claims that information regarding Intermountain's pricing formula and business model is relevant because Plaintiffs "persist in presenting the [Intermountain] estimates as medical bills" and therefore it is "necessary to expose the estimate for what it really is, namely what [Intermountain] would charge to finance the surgeries for the [Plaintiffs] in exchange for a lien in their lawsuit." (Opp., 25.) Farmers, therefore, claims that the District Court correctly determined that the evidence sought is "clearly relevant" to "determine whether [the estimate] is inadmissible evidence of collateral source or admissible evidence of future anticipated medical expenses." (*Id.*) There are several problems with this argument.

First, this argument is based on an incorrect presumption that there is allegedly some confusion regarding whether Intermountain is acting as a collateral source or medical service provider in this case. There is no dispute that Intermountain is not acting as either in this case. Intermountain does not have a lien in this case and has not agreed to provide any services (medical or collateral) to the Plaintiffs.

Nor could the estimate constitute a collateral source. A collateral source is an independent source that has or will compensate a plaintiff for or in part for a specific loss. *Wilson v. IHC Hosps., Inc., 2012 UT 43, ¶ 31, 289 P.3d 369*; *Mahana v. Onyx Acceptance Corp.*, 2004 UT 59, ¶ 37, 96 P.3d 893. Thus, under the collateral source rule, a plaintiff is entitled seek full recovery from a tortfeasor even though an independent source has compensated the plaintiff in full or in part for the loss. The rationale for the rule is two-fold: "First, public policy favors giving the plaintiff a double recovery rather than allowing a wrongdoer to enjoy reduced liability simply because the plaintiff received compensation from an independent source." Second, by assuring "a plaintiff's payment from a collateral source will not be reduced by a subsequent judgment," the "rule encourages the maintenance of insurance." *Id.*, ¶ 31 (internal quotation marks omitted).

In this case, there is no dispute that the estimate is not an agreement between Intermountain and Plaintiffs to compensate Plaintiffs for any past or future losses. Moreover, even in cases where there exists such an agreement between Intermountain and a plaintiff, Farmers does not dispute that the agreement is not for compensation of medical bills and is not akin to insurance. Rather, a plaintiff who obtains a surgery in Intermountain's medical suite remains liable to pay the full amount for the medical

services billed by Intermountain. (Intermountain Br., p. 8.) Therefore, unlike collateral source evidence, a plaintiff who obtains a surgery at an Intermountain surgical suite is not faced with the possibility of gaining a double recovery. Farmers' continued argument regarding the relevancy of determining whether Intermountain is a collateral source or a medical service provider is not at issue in this case, and the District Court erred in holding otherwise.

Second, even if there was some confusion regarding whether the estimate constitutes a collateral source, Farmers provides no analysis or argument how this information is in any way relevant to determining the reasonable value and necessity of Plaintiffs' future surgeries. The estimate is an approximation of what Intermountain charges for the Plaintiffs to obtain a specific surgery at Intermountain's surgical suite. Although unclear, it appears that Farmers' main concern is that the charges are high compared to that in the community, and therefore, according to Farmers, the price must reflect the risk associated with Intermountain's business practice of allowing its clients to defer payment of their bill until the completion of their lawsuit.

But this argument assumes that, under Utah law, a company's profit margins and risk assessment is relevant to the determination of the reasonable value of a plaintiff's medical services. That is not the correct starting point under Rule 26. Rather, the correct starting point is the determination of how the reasonable value of medical services is determined under Utah law. Then the court is required to analyze how the information sought is relevant to that determination. If the test for determining the reasonable value of a plaintiff's medical expenses was costs plus reasonable profit margin, then Farmers'

argument might have some merit. However, as already explained in Intermountain's opening brief and not disputed by Farmers, the reasonable value of a plaintiff's medical expenses is determined by examining the prices that those services sell for in the community. A needless excursion into determining a company's profit margins and how that company sets its profit margins does not answer that question.[3] Rather, the question is answered by comparing the prices charged for similar surgical services in the marketplace. Likewise, a needless discussion of whether a plaintiff can pay for his medical expenses, whether a service provider can take a lien out on a judgment, or when a plaintiff's payment on his medical bills is due is an independent determination irrelevant to the question of the reasonable value of a plaintiff's medical expenses. *Wilson v. IHC Hosps., Inc.*, 2012 UT 43, ¶ 38 ("How a plaintiff satisfies his medical expense obligations presents a separate issue that is irrelevant to the calculation of his damages.")

Farmers complains that, under Utah law, medical bills are often admitted into evidence to prove the reasonable value of a plaintiff's medical expenses with minimum foundation. (Opp., p. 22). That argument lacks merit. An estimate is not a medical bill. Moreover, a medical bill is not even admissible unless a plaintiff can demonstrate that the bill represents the reasonable value of the medical services in the marketplace.

[3] Presumably other facility providers' prices include some risk assessment, especially as pertains to clients who do not have insurance. *See, e.g., Howell v. Hamilton Meats & Provisions, Inc.*, 257 P.3d 1130, 1145 (Cal. 2011) (noting that the price for medical services for people who have insurance and the price for medical services for people who do not have insurance is different).

Gorostieta v. Parkinson, 2000 UT 99, ¶¶ 35-36 and n.8, 17 P.3d 1110 (collecting cases). Therefore, it is not the medical bill that establishes the reasonable value of the services.

Moreover, Farmers' continued inference throughout its brief that the estimate is the equivalent to a "medical bill" is perplexing and obfuscates the issue in this case. (*See* Opp., pp. 2, 22, 25, 26 (referring to the estimate as a medical bill).) The manner for proving whether a bill constitutes the reasonable value of medical services in the community is inherently different than that for an estimate. For medical bills, a plaintiff can prove that the bill represents the reasonable value for services by virtue of assuming liability for its payment. *Stevenett v. Wal-Mart Stores, Inc.*, 1999 UT App 80, ¶ 31-32, 977 P.2d 508; *Gorostieta*, 2000 UT 99, ¶ 35 n.8. The rationale being that a plaintiff would not have paid or otherwise become liable for the bill if the price did not represent a reasonable market price. *See id.* The same does not hold true for an estimate for which a plaintiff never becomes liable.

Farmers also speculates that the estimate may come in through expert testimony. There are only two experts identified by Plaintiffs who could provide such testimony—Intermountain and Dr. Huntsman. Intermountain has already stated multiple times that it is not providing any expert opinions and is not qualified to provide expert testimony in this case. The only other expert identified as potentially proving the reasonable value of the medical services stated that his opinion as relates to this issue is based on his experience in the industry in general, not on any particular documents or bills.

> Q: All right. So to come up with this amount, you didn't go pull particular bills; this is just something that you had off the top of your head; am I following correct?

A: Yes. With some experience.
Q: Well, I understand that. But I mean, if we wanted to see the source of this, I can't go have you pull the same bills that you used; these are just numbers that you kind of came up with over time; is that right?
A: Yes.

(Huntsman Depo., p. 40; *see also* Opp., p. 13 (quoting the same).)

In other words, the estimate itself does not and cannot prove the reasonable value of Plaintiffs' medical expenses. Indeed, more likely than not, the document will not even be admitted into evidence. Farmers should not be given access to Intermountain's proprietary pricing information or be forced to go through the burden of submitting 30(b)(6) testimony and documents so that Farmers can allegedly prove a non-issue. Intermountain is not a collateral source in this case, and its estimate does not and cannot prove the reasonable value of medical services in the community.

Farmers argues in a footnote that the information it seeks (the first three topics that Judge Hansen ordered to be produced) is relevant to the determination of whether Intermountain is a "health care facility" as that term is referred to under Utah Code § 26-21-2. (Opp., p. 8, n. 13.) Farmers offer no argument or analysis why this is relevant or proportional to the determination of the reasonable value of Plaintiffs' medical expenses. Intermountain has already given Farmers this information in other litigation. Intermountain does not have licenses or accreditations to operate an ambulatory surgical facility. The relevant licenses and accreditations are held by Canyon Crest Surgical. Intermountain leases a surgical suite from Canyon Crest Surgical and supplies that suite with all of the equipment, supplies, etc. to perform the necessary surgeries. Intermountain then charges the patient for his/her use of the surgical suite and supplies.

The charges to the patient, including those for facilities and supplies, are done just like any other medical bill by reference to CPT code. (Intermountain Br., 7.) The bill that Intermountain sends its clients are what it charges for a particular medical procedure to be performed in its medical suite. If these prices are allegedly not reflective of the marketplace price, like any other litigation, Farmers can support its defense by reference to relevant information (i.e., the prices charged in the community for the medical procedure in question). Intermountain's profit margins or its risk assessment in determining what it charges for the use of its suite and equipment are irrelevant to the determination of the reasonable value of the medical services provided.[4]

2. The determination of whether Intermountain is a collateral source is not proportional to the needs of this case.

To determine whether the discovery requested by Farmers is proportional, the District Court was required to analyze (1) the importance and need for the information compared to (2) the burden imposed on Intermountain. Farmers argues that the District Court did not err in this analysis because "medical bills carry more weight than an academic evaluation of market place economics and that is why it is relevant and proportional to subject [Intermountain] to discovery for purposes of proving that the surgical cost estimate is not a medical bill." (Opp., p. 26.) Farmers also suggests that

[4] Farmers also suggests that Intermountain does not have a license from the American Medical Association to use copyrighted CPT codes in its bills, and therefore, Farmers intends to ask questions regarding Intermountain's license to use such codes in its 30(b)(6) deposition. Notably, Farmers never sought discovery on this issue, and therefore, the District Court did not order discovery on this issue. *See* Order *passim*. In any event, Intermountain has not provided any medical services to the Plaintiffs and there is no bill or use of CPT codes in this case.

such discovery is not burdensome because "[Intermountain] cannot show severe adverse consequences to its business" when a protective order that "amounts to an 'attorney eyes only' restriction [] prohibits the disclosure of the information to anyone other than the attorneys representing the parties and limits the use of the information to this case only." (Opp., pp., 24-25). None of these arguments has merit.

First, as relates to Farmers' alleged important need to "prove[] that the surgical cost estimate is not a medical bill," this argument has already been addressed above. There is no dispute that the estimate is not a medical bill. Farmers' continued arguments as relates to the estimate allegedly constituting a medical bill is a red herring, and the District Court erred in relying on it.

Second, as regards to Farmers' arguments regarding the burden imposed on Intermountain, Farmers misstates the requirement of Utah Rules of Civil Procedure 26 and 45. Nowhere in those rules does it state that information is discoverable unless the party subject to the discovery request or subpoena request demonstrates "a severe adverse consequence to its business." *See* Utah R. Civ. P. 26 & 45. Rather, Rule 26 states that a discovery request is proportional if:

> (b)(2)(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;
>
> (b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or expense;
>
> (b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;
>
> (b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

(b)(2)(E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and

(b)(2)(F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

Utah R. Civ. P. 26(b)(2).

The theme underlying all of these factors is that discovery is considered proportional if the moving party demonstrates that there is a legitimate need for the information to prove an important issue and that similar information cannot be obtained from another source. Moreover, in relation to Rule 45, the court "may order compliance with a subpoena request" only "if the party or attorney responsible for issuing the subpoena shows a substantial need for the information that cannot be met without undue hardship." Utah R. Civ. P. 45(e)(5). Thus, contrary to Farmers' position, it was Farmers' burden, not Intermountain's, to prove that its subpoena request is proportional and that it could not, without undue hardship, obtain similar information from another source.

Farmers' argument regarding a protective order being in place also ignores other burdens associated with its subpoena request. These burdens include, among other things, pulling the requested information for this particular case, marking the confidential information, hiring an attorney to attend the deposition, paying an employee and attorney to attend the deposition, and diverting resources from its business operations. Additionally, Intermountain is being subject to similar burdens over and over again in relation to other litigation in which Farmers, or entities similar to Farmers, are involved. Moreover, the fact that the information is designated as protected does not alleviate Intermountain's concerns that its proprietary information may inadvertently find its way

into the public domain. As already stated in Intermountain's opening brief, Farmers' in-house counsel has already attempted to use information that was protected by an "attorney eyes only" designation for purposes of performing discovery. (Intermountain, Br., 25.)

For this reason, other courts have held that an "attorney's eyes only" designation is not sufficient protection when there is risk that counsel may inadvertently disclose or use confidential information in other litigation. *See, e.g., United States v. Aetna, Inc.*, No. 1:16-cv-01494, 2016 U.S. Dist. LEXIS 191730, *18-26, 2016 WL 8738420 (collecting cases and holding that in-house counsel should not have access to confidential information regarding costs negotiated by medical providers because counsel was often involved in other litigation in which he may inadvertently disclose the confidential information provided).

That Intermountain has had to produce some proprietary information in other cases likewise does not mean that this request is not burdensome. Indeed, as Farmers itself admits, each case is different so the cost information provided in association with another plaintiff's medical procedures does not equate to the same cost information associated with the surgical procedures quoted to the Plaintiffs in this case. *See* Opp., p. 24; *see, e.g., Chatterton v. Walker*, 938 P.2d 255 (Utah 1997) (holding that costs for other people's injuries is not relevant to determine the costs associated with a particular plaintiff's medical procedure). Moreover, the discovery into the cost information in this case is extraordinarily broad. *See Order*. Additionally, each time that Intermountain has to disclose information to Farmers, or any other entity like Farmers, it is risking that its

information will inadvertently be disclosed in the public domain and lose its proprietary nature. Farmers conceded below and to this Court that it has other means to defend against the reasonableness and necessity of Plaintiffs' medical expenses. It therefore does not have a substantial need to discover Intermountain's proprietary business information to determine the reasonable value and necessity of Plaintiffs' future surgeries. The District Court erred in holding otherwise.

B. The information sought is not relevant or proportional to determining whether Dr. Huntsman is allegedly biased.

Farmers asserts that the District Court correctly determined that information regarding "the contractual and financial relationship between [Intermountain] and Dr. Huntsman is relevant to whether Dr. Huntsman is conflicted and biased as an expert." It is unclear what specific subpoena requests Farmers is referring to as being relevant to this determination. The only subpoena requests relating to Dr. Huntsman are as follows:

> 4. The number of surgeries Dr. Huntsman performed in 2016 for which he or his business entity was paid by Intermountain Surgical LLC;
>
> 5. The total fees [Intermountain] paid Dr. Huntsman performed in 2016 for which he or his business entity was paid by Intermountain Surgical, LLC.

(Order, p. 4.)

Although unclear, Farmers appears to argue that, without this information, it will be unable to prove that Dr. Huntsman has a financial incentive to provide a favorable causation opinion to Intermountain clients who are generally plaintiffs. But why is this relevant? As already described above, Intermountain does not have a contract to provide any surgical services to the Plaintiffs and does not have a lien in this case. It is therefore

unclear how the number of surgeries performed by Dr. Huntsman for Intermountain or Intermountain's relationship with Dr. Huntsman could be relevant. It is not even clear why Intermountain's name would be mentioned at all in this litigation.

Moreover, even if his financial relationship with Intermountain was somehow relevant, it is not proportional. Farmers can demonstrate Dr. Huntsman's alleged biased causation opinions by other means. Specifically, just as it does with any other expert, Farmers could ask Dr. Huntsman the number of favorable consults he gives in plaintiff's cases. It could also ask Dr. Huntsman the fees associated with such consults. Additionally, although not relevant, nothing precludes Farmers from asking Dr. Huntsman what his financial relationship is with Intermountain. Indeed, Farmers already admits that it has done so in this case and that its discovery request merely "adds certainty to the numbers Dr. Huntsman estimated." (Opp., p. 19.) There is no substantial need to have Intermountain reiterate what Farmers has already learned from Dr. Huntsman, and the District Court erred.

CONCLUSION

For the foregoing reasons, this Court should grant Intermountain's petition for extraordinary relief, reverse the decision of the District Court, and direct the District Court to issue a protective order prohibiting Farmers from seeking additional information from Intermountain.

DATED this 27th day of November, 2017.

CHRISTENSEN & JENSEN, P.C.

Karra J. Porter
Scott T. Evans
Kristen C. Kiburtz
Attorneys for Petitioner

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of November, 2017, a copy of the foregoing **REPLY BRIEF OF PETITIONER/APPELLANT** was emailed to the following and also two true and correct copies were mailed to:

Lloyd R. Jones
LAW OFFICE OF LLOYD R. JONES
P.O. BOX 258829
Oklahoma City, OK 73125
lloyd.jones@farmers.com

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 North Third Avenue, 2nd Floor
P.O. Box 4229
Pocatello, ID 83205
gary@cooper-larsen.com

Brent M. Johnson
Administrative Office of the Courts
450 South State Street, 3rd Floor
Salt lake City, Utah 84111
brentj@utcourts.gov

Brett R. Boulton
FLICKINGER SUTTERFIELD & BOULTON
3000 North University Avenue, #300
Provo, Utah 8404
brett@fsutah.com

Karra J. Porter
Scott T. Evans
Kristen C. Kiburtz
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to U.R.A.P. 24(f), Counsel for Petitioner/Appellant hereby certifies that the foregoing brief contains a proportionally spaced 13-point typeface and contains 4,262 words, as determined by an automatic word count feature on Microsoft Word 2010, including headings and footnotes, and excluding the table of contents, table of authorities, and the addendum.

Karra J. Porter
Scott T. Evans
Kristen C. Kiburtz
Attorneys for Petitioner/Appellant