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RICHARD K. MCGHEE, MICHAEL STANDI and JULIAN TRADER	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	DOCKET NO. ATL-L-2459-08
Plaintiffs	:	
	:	Civil Action
v.	:	
	:	
PATHMARK STORES, INC., THE GREAT ATLANTIC & PACIFIC TEA COMPANY INC (A&P), JOE SERVIS and AJohn Doe(s) Nos. 1-15" being fictitious and unknown, jointly, severally, and/or in the alternative,	:	
Defendants.	:	

BRIEF IN SUPPORT OF PLAINTIFFS' R. 4:19 MOTION TO BAR MENTAL
EXAMINATIONS AND PSYCHOLOGICAL TESTING

On the Brief:

LAW OFFICES OF RICHARD E. YASKIN
Attorney for Plaintiff

By: Richard E. Yaskin, Esquire

Dated: March 30, 2010

INTRODUCTION

The primary events underlying this racial workplace harassment case took place in 2007. Thus, psychiatric interviews and testing of plaintiffs in April 2010 cannot, by their nature, provide a competent and unbiased psychiatrist any basis for testifying about plaintiffs' mental conditions at the time of the March - April 2007 hanging noose incidents. The MMPI psychological test requested as part of plaintiffs' psychiatric examinations, by its nature, determines the current mental status of the person being tested. Plaintiffs thus object under R.4:19 to undergoing a series of intrusive, unreliable and invalid examinations.

FACTUAL BACKGROUND

On or about March 20, 2007, an offensive "hanging noose" was hung in the Store Managers' office of the Ventnor, NJ Pathmark supermarket. See Plaintiffs' First Amended Complaint at ¶9, attached as Exhibit "C" to March 30, 2010 Certification of Richard E. Yaskin, Esq. (the "Yaskin Certif.") On or about April 6, 2007, a second "hanging noose" was hung in the produce department's back room. Id. at ¶10. Both nooses were hung in areas of the Ventnor Pathmark store that were regularly frequented by the four African American plaintiffs. Id. at ¶11.

On or about March 20 and April 6, 2007, plaintiff Richard

McGhee took photographs of the nooses with his cell phone. He e-mailed the photographs to, among others, Pathmark's Customer Service Department. Id. at ¶12. Feeling violated by placement of the two hanging nooses and in fear for their lives, the four plaintiffs walked out of the PTMK Ventnor, NJ Store within an hour after the start of their shifts on April 6, 2007. Id. at ¶13.

Plaintiffs allege that Pathmark's and Store Manager Joe Servis' failure to promptly condemn, issue appropriate discipline or remediate the racially hostile nooses could make a reasonable black man believe that the conditions of their employment were altered and that the working environment was hostile and abusive. See Id. at ¶38-39. Plaintiffs seek compensatory damages under the LAD for their pain, suffering, humiliation, emotional distress, economic loss and personal hardships. Id. at ¶42.

Plaintiffs' Amended Complaint and deposition testimony reveal that plaintiffs are not complaining of definable psychological symptoms, nor have they put their mental status at issue. Rather, they are seeking compensatory damages for the basic emotional distress resulting from defendants' offensive display and failure to promptly condemn, issue appropriate discipline or remediate its manager's, supervisor's and/or employees' racially hostile actions. See Id.

In response to deposition questioning, plaintiffs answered

in the negative when asked if they had ever been diagnosed as suffering from any mental disorder, or had the intention of seeing, or had actually seen a psychiatrist. See excerpts from the deposition testimony of Richard McGhee, Michael Standi, Julian Trader and Shawn Johnson, attached as Yaskin Certif. Exhibits "D", "E", "F" and "G".

A summary of plaintiffs' pertinent deposition testimony follows:

July 9, 2009 Deposition of Richard McGhee

pp. 65, 23 - 66, 25.

By Ms. Clemons:

Q. Have you ever been to a psychiatrist, a counselor or a therapist?

A. No.

Q. How about a psychologist?

A. No.

Q. Have you ever suffered from any problems with depression?

A. To my knowledge, no.

Q. Lack of concentration?

A. Occasionally.

Q. Tell me what you mean.

A. Um, sometimes I'll be driving and I'll just, you know, just drift off.

Q. Have you ever sought any treatment for that?

A. No.

Q. Insomnia?

A. No.

Q. Nervousness or anxiety?

A. No.

Q. Nightmares?

A. No.

July 7, 2009 Deposition of Mike Standi

pp. 26, 3 - 28, 10; 44, 10 - 52, 5.

by Ms. Clemons

Q. You said you had to go to anger management. Was that a class?

A. Actually it was with a, I guess he was a

professor or a psychiatrist. It was at Martin Luther King School. He has his office in there and he saw me I think it was once a week and he released me early because he felt like I didn't need the anger management.

Q. And for how long did you attend that?

A. Oh, wow. Three months or so. I think he released me before the time.

Q. Have you ever sought counseling for emotional issues?

A. Besides the anger management, no. . .

Q. In the last ten years have you had any problems with depression?

A. With depression?

Q. Correct.

A. I get depressed at times, yes.

Q. Have you ever sought treatment for depression?

A. No.

Q. When you say you get depressed what do you mean?

A. I get bummed out, down, worry about certain situations like work problems, stuff that's going on at the job, am I going to have a job, do I got to keep walking on pins and needles, just normal day life stuff that gets you depressed.

. . . .

Has a doctor ever diagnosed you with depression?

A. No.

Q. And you have never sought treatment for when you're feeling sad or in the dumps?

A. No.

Q. Insomnia?

A. Lack of sleep?

Q. In the last ten years?

A. Lack of sleep, right, insomnia?

Q. Yes.

A. Yes, I have a problem with lack of sleep. I toss and turn a lot, stuff on my mind, hard to sleep, worrying.

Q. Have you ever sought treatment for insomnia?

A. No.

Q. Have you ever taken sleeping pills?

A. No.

Q. In the last ten years when have you had trouble sleeping?

A. I guess it started maybe three years ago, but recently, the past year, I have been having more and more problem sleeping.

Q. Why have you had problems sleeping?

A. Like I said, I worry a lot about my job. I'm working on pins and needles over there and I just worry that if I say or do something wrong will I have a job, plus the stress of the job itself keeps me up at night. . .

Q. The same question with respect to anxiety or nervousness in the last ten years?

A. No.

Q. Nightmares?

A. I've had nightmares. I've had nightmares.

Q. How often do you have nightmares?

A. Not too often.

Q. Have you ever sought treatment for nightmares?

A. No.

Q. Have there been any changes in your emotional state in the last three years?

A. Yes.

Q. Describe.

A. Like I said, I walk around my job constantly worried, looking over my shoulder, what am I going to do or what am I going to say to get me yelled at or in trouble, stuff like that.

Q. Anything else specifically?

A. Nothing specific.

Q. Any changes in your relationship with friends?

A. Yes.

Q. Tell me about that.

A. I tend to look at my white friends differently now.

Q. What do you mean?

A. Just with the situation and, you know, it's hard to explain. It's like I was very trustworthy of white people, you know. I grew up being in the military, everybody is green, and now it's just I try to watch what I say, you know, are they going to do something to hurt me, that type of stuff.

Q. Who are the friends who you say you look at differently?

A. Do you want specific names?

Q. Yes.

A. Marc Toussaint is one, a good friend of mine. Lee Jillard used to be a friend of mine. Kenny Mosley used to be a friend of mine. Tony Yaeger, which is my landlord, he's a friend of mine. That's about it, I guess. I mean, I can give you a

list a mile long, but those are pretty much my main friends that I deal with now that are white.

Q. Tell me again why you look at them differently.

A. Just I'm scared. It's like being that what happened at the job and most of them work at the job, I'm sort of like, I don't -- I'm not as outgoing with them as I used to be. I sort of hold back words. I try not to joke as much no more because I don't want to hurt nobody's feelings, stuff like that.

July 8, 2009 Deposition of Julian Trader

pp. 40, 22 - 42, 16; 47, 3 - 50, 18.

by Ms. Clemons:

Q. Would you tell me the names of each medical doctor, psychiatrist, psychologist, therapist or counselor that you've consulted in the last five years?

A. Juan Belmonte.

Q. I'm sorry?

A. Juan Belmonte.

Q. Juan Belmonte?

A. Yes.

Q. What kind of a doctor is Dr. Belmonte?

A. He was a therapist for anger management.

Q. Okay. When did you consult him?

A. I think this was about maybe 2007.

Q. Was this a requirement of your parole?

A. No. It was a requirement -- it wasn't a requirement. It was suggested by my probation officer.

Q. And how long did you treat with Dr. Belmonte?

A. For six months.

Q. Did he ever provide you with a diagnosis?

A. It was more so to help better channel your anger.

Q. So did he ever give you a diagnosis? Did he ever say you have a problem that he diagnosed?

A. That was determined before. I actually went to him on two separate occasions. I went to him prior to that, which was court ordered for me to do, and the diagnosis was yes, I did have an anger problem.

Q. And you said you went to see him for six months in 2007. When did you see him before that?

A. I believe that was 2005.

Q. And you said that was court ordered?

A. Yes. . . .

. . . .
Q. In the last five years have you had any problems with any of the following things, and I'm going to ask you a series of things.

Depression?

A. No.

Q. Lack of concentration?

A. Yes.

Q. Tell me about that.

A. It's hard for me to concentrate like while I'm at work on my job assignment because I'm constantly thinking if or when there is going to be something else that I have to worry about at this job.

Q. Have you sought any treatment for that?

A. No.

Q. Anxiety and nervousness?

A. No.

Q. Insomnia?

A. Insomnia is a problem sleeping?

Q. Yes.

A. No.

Q. Nightmares?

A. No.

Q. Have there been any changes in your emotional state in the last five years?

A. I don't know. . . .

Q. Relationships with your friends?

A. No.

August 10, 2009 Deposition of Shawn Johnson

pp. 46, 1 - 49, 21.

by Ms. Clemons:

Q. No. I'm talking since 2005 have you consulted with any doctors at all?

A. No.

Q. So you haven't been to the doctor for any reason since 2005?

A. I been to the dentist.

Q. Other than the dentist?

A. ER, emergency room a couple of times.

Q. Okay. For what?

A. Toothache, eyelaceration at work. That's it.

Q. So you said you've been to the dentist, you've been to the ER twice?

A. Yes.

Q. Have you ever seen a psychologist, psychologist, therapist or counselor?

A. No.

Q. Have you ever had any problems with depression?

A. Depression, no.

Q. Lack of concentration?

A. No.

Q. Short-term memory loss?

A. No.

Q. Insomnia?

A. No.

Q. Anxiety or nervousness?

A. No.

Q. Your ability to sleep?

A. Yes, I lost some sleep.

Q. Tell me about that.

A. Due to the incident that happened at Pathmark, the first couple of weeks I was losing sleep wondering if I had a job, wondering how I'm going to be able to support my family and I basically lost a lot of sleep over it, and trying to get back on the right track is kind of hard.

Q. So was it for the first couple weeks you mean after when you were suspended?

A. Up to being that I was suspended and the fact that when I went back it was basically the same hostile environment it was before we left.

Q. I'm asking about your sleep. How long did you have trouble sleeping?

A. I'll say about a half a year.

Q. So about six months?

A. About six months.

Q. Okay.

Q. When did it begin?

A. Right after the incident.

Q. And when did it end?

A. I'll say after Joe Servis retired.

Q. How many hours would you sleep at night?

A. I wouldn't get maybe four and a half, maybe five I was asleep.

Q. And how is that different from how you normally sleep?

A. It's a lot different because now I can't afford the day care now so I have to keep my kids

Q. So you're sleeping about the same now as you did then?

A. Yes.

ARGUMENT

POINT I

DEFENDANTS FAIL TO MEEET THE "GOOD CAUSE" AND "IN CONTROVERSY" REQUIREMENTS OF R. 4:19 TO COMPEL MENTAL EXAMINATIONS AND PSYCHOLOGICAL TESTING OF PLAINTIFFS.

1. Rule 4:19 Requires a Showing That Plaintiff's Mental Condition Is "In Controversy" and That "Good Cause" Exists.

R. 4:19 "PHYSICAL AND MENTAL EXAMINATION OF PERSONS" states in pertinent part:

In an action in which a claim is asserted by a party for personal injuries or in which the mental or physical condition of a party is **in controversy**, the adverse party may require the party whose physical or mental condition is **in controversy** to submit to a physical or mental examination by a medical or other expert by serving upon that party a notice stating with specificity when, where, and by whom the examination will be conducted and advising, to the extent practicable, as to the nature of the examination and any proposed tests. A party who receives such notice and who seeks a protective order shall file a motion therefor, returnable within said 45-day period.

The seminal case Schlagenhauf v. Holder, 379 U.S. 104, 110-111 (1964), held that Fed.R.Civ.P.35 requires a district court to order mental and physical examinations of a party only after a showing that (1) the petitioner's mental and physical condition is "in controversy" and (2) "good cause" exists. The Schlagenhauf Court began by clarifying that these two prerequisites of Rule 35 are not a "mere formality." These requirements "are not met by mere conclusory allegations of the pleadings—nor by mere relevance to the case—but require an affirmative showing by the movant that each condition as to which the examination is sought is really and genuinely in controversy and that good cause exists for ordering each particular examination." Id. at 118.

2. Good Cause for Ordering a Rule 4:19 Examination Cannot Be Based on a Claim for Emotional Distress Damages Alone.

A claim for emotional distress damages, by itself, is not

sufficient to place the plaintiff's mental condition "in controversy" for purposes of FRCP 35(a). See Turner v. Imperial Stores, 161 F.R.D. 89, 98 (S.D.Cal.1995) (thoroughly surveying the relevant case law). The Turner court disagreed with the minority view holding that "a claim for damages for emotional distress, without more, is sufficient to put mental condition 'in controversy' within the meaning of the Rule. If this were the law, then mental examinations could be ordered whenever a plaintiff claimed emotional distress or mental anguish. Rule 35(a) was not meant to be applied in so broad a fashion." Id. at 97.

Ford v. Contra Costa County, 179 F.R.D. 579 (N.D. Cal. 1998), involved a gender discrimination claim which included a claim for emotional distress damages. As in the instant case, plaintiff did not plead a separate claim for intentional or negligent infliction of emotional distress, did not allege a specific mental or psychiatric injury, did not plead a claim for unusually severe emotional distress, did not seek to offer expert testimony to quantify her claim for emotional distress and did not concede that her mental condition was "in controversy." Based on these facts, the district court denied the defendants' motion to compel a psychiatric examination, holding that a claim for emotional distress damages, by itself, is not sufficient to place the plaintiff's mental condition in controversy within the meaning of Rule 35. Id. at 579-80.

Courts generally require the party seeking to compel the

evaluation to establish an additional element. In Bridges v. Eastman Kodak Co., 850 F. Supp. 216, 222 (S.D. N.Y. 1994), the defendants were held to not be entitled to a mental status examination, although the court allowed "limited" discovery into matters relevant to issue of whether defendants' harassment caused the plaintiffs to suffer emotional harm. In Robinson v. Jacksonville Shipyards, Inc., 118 F.R.D. 525, 531 (N.D. Fla. 1988), the employee's claim, based on a hostile work environment, was held to not place the plaintiff's mental condition "in controversy" within the meaning of Rule 35.

Although a minority of courts have held that a plaintiff puts his/her mental condition "in controversy" by making a claim for emotional distress damages as part of an employment discrimination lawsuit, the vast majority of courts will not require a plaintiff to submit to a psychiatric examination unless, in addition to a claim for emotional distress damages, one or more of the following factors is also present: (1) plaintiff has asserted a specific cause of action for intentional or negligent infliction of emotional distress; (2) plaintiff has alleged a specific mental or psychiatric injury or disorder; (3) plaintiff has claimed unusually severe emotional distress; (4) plaintiff has offered expert testimony in support of his/her claim for emotional distress; and (5) plaintiff concedes that his/her mental condition is "in controversy" within the meaning of FRCP 35(a). See Fox v. Gates Corp., 179 FRD 303, 307 (D.Colo. 1998). Accord, Turner, 161 F.R.D. at 98;

Ford, 179 F.R.D. at 579-80.

R. 4:19 similarly requires "good cause" to compel a mental examination. Devito v. Devito, 136 N.J. Super. 580, 583 (Ch. Div. 1975). In Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 360 N.J. Super. 265, 280-81 (App. Div. 2003), aff'd, 181 N.J. 70 (2004), our Supreme Court held "that in discrimination cases, which by definition involve willful conduct, the victim may recover all natural consequences of that wrongful conduct, including emotional distress and mental anguish damages arising out of embarrassment, humiliation, and other intangible injuries." Id., 181 N.J. at 82.

The New Jersey Law Against Discrimination ("LAD") requires no medical proof of emotional distress. This is analogous to 1970s revised statutory language which broadened the concept of "extreme cruelty" to no longer require a showing of danger to the health or safety of the plaintiff to constitute a cause of action for divorce. See Devito v. Devito, 136 N.J. Super. at 583 (citations omitted). As with the Tarr Court's construction of the LAD, the test in Devito as to whether there is sufficient evidence to support an "[extreme] cruelty" allegation was a subjective one. The Chancery Division held "[t]herefore...in light of the statutory revision, a medical examination, even if it showed no serious mental or physical condition, would not negate the extreme cruelty ground [for divorce]". Id. at 583. "Since proofs less than medical testimony are sufficient to constitute a cause of action based on extreme cruelty, the

requested [physical and/or mental] examination is irrelevant and without "good cause" as required by R. 4:19." Id.

New Jersey courts have long held that employment litigation should not turn into a free-for-all, where every aspect of the plaintiff's private life is invaded whenever a claim is made for emotional distress damages. See Harmon v. Great Atlantic & Pacific Tea Co., 273 N.J. Super. 552 (App. Div. 1994). The court there held that plaintiff's private financial information could be disclosed only if there was a showing of a "compelling need." Id. at 558-59.

Plaintiffs here have no psychiatric or psychologist expert, offer no psychiatric or psychological evidence, have never sought any psychiatric treatment, and claim no psychiatric, psychological or mental disorder.

Pleading emotional distress as an element of damages does not constitute placing one's mental condition in controversy. In Jackson v. Chubb Corporation, 193 F.R.D. 216, 219 (D.N.J. 2000) and Bowen v. The Parking Authority of the City of Camden, 214 F.R.D. 188, 195 (D.N.J. 2003), the New Jersey district court acknowledged that when a plaintiff puts her mental condition in controversy at issue, she waives the privilege, but the court recognized in both cases that the larger question that a court must answer is **what does it mean to put one's mental condition in controversy?**

In both Bowen and Jackson, the district court noted that the answer hinges closely on the specific claims that a plaintiff has alleged. In both cases, the court agreed that a

claim for ordinary emotional distress does not place a plaintiff's mental condition in controversy.

In Bowen, the court held that where a plaintiff has not alleged present, ongoing, or permanent mental injury, has not asserted an independent cause of action for intentional or negligent emotional distress, has not identified an expert at trial on the issue of his mental status, and has not conceded that his mental status was at issue, he has not placed his mental status in controversy. Bowen, 214 F.R.D. at 195. A similar analysis of the discrete factors that constitute placing one's mental condition in controversy is found in Jackson, 193 F.R.D. at 225-26.

3. Any Probative Value Of MMPI Testing At This Stage Is Far Outweighed By The Intrusive Nature Of The Examination.

Additionally, the intrusive psychological testing and psychiatric interviews proposed cannot accurately apportion plaintiffs' compensatory damages. MMPI testing can, at most, assess plaintiffs as they are now three years after the racial/workplace harassment occurred. Whether certain events occurred in the past and whether plaintiffs suffered emotional pain and suffering as claimed, are issues of fact which must be determined at trial based on the jury's assessment of the admissible evidence and the credibility of the witnesses.

Defendants ask the Court to require plaintiffs to take the intrusive Minnesota Multiphasic Personality Inventory (MMPI). The MMPI is a 70-year-old test, originally derived from a normative group from 1930s-era (primarily small town or farm

based) Minnesota. Because it was outmoded, it was updated in 1989. See F.R. Fraschingbauer, "The Future of the MMPI" in MMPI Clinical and Research Trends, C.S. Newmark (ed.) (1991).

The MMPI-II has proven to be so problematic that many clinicians continue to use the 1930s version. The updated version consists of 567 questions answered by the individual using a pencil and paper, and scored by a psychologist or trained test administrator by computer. The MMPI-II is designed to detect symptoms of psychological disorders by measuring responses in ten clinical areas called scales. Yet, these scales are intended to aid the professional in diagnosing and treating mental and psychological problems, not to determine forensically what the person's mental state is or was. See Ziskin, "Coping with Psychiatric and Psychological Testing", fourth Ed. (1983) at 775.

The MMPI-II contains a series of questions passing as "scientific" that are degrading, anti-religious and gender-biased and/or which are inadmissible under our Rules of Evidence. Without "good cause" shown, this testing is intrusive upon a right of privacy found in Article I, paragraph 1 of the New Jersey Constitution. See Stengart v. Loving Care Agency, Inc., (N.J. Mar. 30, 2010) slip op. at 16 n.3 (citation omitted).

The MMPI-II asks the following questions, among others:

#1 I like mechanics' magazines.

#20 I am very seldom troubled by constipation.

- #24 Evil spirits possess me at times.
- #25 I would like to be a singer.
- #51 I do not read every editorial in the newspaper every day.
- #67 I like poetry.
- #121 I have never indulged in any unusual sexual practices.
- #198 I often hear voices without knowing where they come from.
- #263 I am disgusted with the law when a criminal is freed through the arguments of a good lawyer.
- #398 I frequently ask people for advice.
- #427 I have never seen a vision.
- #510 Others tell me I eat too fast.

See Manual for Administration and Scoring MMPI-2, S.R, Hataway and J.C. McKinley, University of Minnesota Press. This manual cautions that:

The ease with which the MMPI-II can be administered and scored may lull some individuals into using this instrument in ways that may compromise the ethical and professional safeguards which all psychological assessment measures demand. Any administration of the MMPI-II must be carried out in a way that guarantees the test subject or client privacy, freedom from distraction and intrusions, and full assurance that the **results of the examination will be respected, protected and used for the benefit and enhancement of his or her welfare.**

Id. p. 2 (emphasis added) According to the MMPI's own testing guide and manual, the test fails to correctly predict the proper clinical diagnosis in close to 40% of new cases. See Ziskin supra. at 785.

4. Mental Status Examinations Are Only Justified Where Defendants Can Demonstrate Extraordinary LAD emotional Distress Claims Due To Discrimination Or Harassment.

In Hardy v. Essoc Materials, Inc., 97-CV-0459, 1998 U.S. Dist. LEXIS 2390, at *4-*5 (E.D. Pa. Feb. 18, 1998), the defendant argued that plaintiff's mental condition was put in issue because she alleged anxiety and loss of sleep, but the court held "such afflictions are not so severe as to warrant an order compelling a mental examination." See also Curtis v. Express, Inc., 868 F. Supp. 467, 468 (N.D.N.Y. 1994) (denying a mental exam where plaintiff alleged "difficulty sleeping, loss of appetite and difficulty concentrating").¹

Presumably, any allegation of emotional distress could be a symptom of some specific psychiatric disorder, as people with psychiatric disorders sometimes experience emotional distress. If defendants' position were accepted, however, it would lead inevitably to the conclusion that mental exams would be compelled in every LAD workplace harassment case where the plaintiff alleges emotional distress. Yet, this is precisely the holding rejected by R. 4:19's twin requirements of "good cause" and "in controversy" and by the vast majority of courts to consider this issue.

Our Legislature's specific provision states that damages for emotional distress and personal hardships are readily available to victims of discrimination. N.J.S.A. 10:5-3; Assembly Judiciary, Law and Public Safety Committee, Statement

¹Likewise, courts have repeatedly rejected defendants' related argument that a large claim for emotional distress damages warrants compelling a mental exam. See, e.g., Turner v. Imperial Stores, 161 F.R.D. 89, 97 (S.D. Cal. 1995) (rejecting argument that exam should be compelled because plaintiff claimed over \$1,000,000.00 in emotional distress damages); Fox v. Gates Corp., 179 F.R.D. 303, 308 (D. Colo. 1998).

to Bills Nos. 2872, 2118 and 2228 -- L. 1990, c.12, reprinted at N.J.S.A. 10:5-3; see also Craig v. Suburban Cablevision, 274 N.J. Super. 303, 309 (App. Div. 1994), aff'd, 140 N.J. 623 (1995). The attempt to conscript every LAD plaintiff into the mental health care system has been rejected by the New Jersey Supreme Court, which have held that no expert or medical evidence is required to support a claim for emotional distress under the LAD. Rendine v. Pantzer, 276 N.J. Super. 398, 442 (App. Div. 1994), aff'd, 141 N.J. 292, 312 (1995); Tarr v. Ciasulli's, supra. 181 N.J. at 82.

CONCLUSION

For the foregoing reasons, plaintiffs, Richard McGhee, Michael Standi, Julian Trader, and co-plaintiff, Shawn Johnson respectfully request that defendants' R. 4:19 request for mental examinations and psychological testing of plaintiffs be denied.

Respectfully submitted,

Richard E. Yaskin, Esquire

DATED: March 30, 2010