

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 9005286

NOTIFY

THOMAS SHAY, Individually and  
As Parent and Next Friend of  
KRISTEN FLANAGAN,  
Plaintiffs

vs.

JEFFREY BERRY, Individually  
and, with LOUIS R. GIAMMARCO,  
as TRUSTEES Of The BER-GIAM,  
REALTY TRUST, BER-GIAM, INC.,  
and ANTHONY GIAMMARCO,  
Defendants

*Filed 10/24/91*  
*After hearing Denied*  
*10/31/91*

PLAINTIFFS' MOTION FOR ORDER OF  
IMPOUNDMENT AND PROTECTIVE ORDER

*Native sent*  
*11-5-91*  
*D.A. Jr.*  
*11-11-91*  
*r.f.*  
*S.G.*  
*11-11-91*  
*(mb)*

Now come the plaintiffs in the above-entitled action and moves that pursuant to trial Court Rule VIII-Uniform Rules on Impoundment Procedure - for an Order of Impoundment of certain pleadings and records filed with the Court in the above-captioned case and also for a Protective Order pursuant to Rule 26(c) of the Massachusetts Rules of Civil Procedure.

This is an action seeking to recover for personal injuries sustained by the plaintiff as a result of an explosion which occurred on October 30, 1987 in Dedham, Massachusetts. This action was filed with this Court in 1990 and discovery has been ongoing since that time. Various medical records and reports containing medical expert opinion relating to Thomas Shay have been filed with the pleadings in this case or referred to therein. It has come to the attention of plaintiffs' counsel that there is an imminent and immediate danger of public

disclosure of medical information, medical history and opinion relating to personal matters to Thomas Shay.

The plaintiff submits that he is entitled to a right of privacy with regard to the information contained in such records pursuant to Massachusetts General Laws c. 214, sec. 1B which states as follows:

"A person shall have a right against unreasonable, substantial or serious interference with his privacy. The Superior Court shall have jurisdiction in equity to enforce such a right ..."

The plaintiff submits that his privacy concerns outweigh any public interest or disclosure of his personal medical history and records.

In addition, the plaintiff submits that pursuant to Rule 26(c) of the Massachusetts Rules of Civil Procedure, this Court should issue a Protective Order prohibiting the disclosure of medical or psychiatric records, reports or information all of which are personal to Thomas Shay and submits that justice requires the issuance of a Protective Order to protect Thomas Shay from annoyance, embarrassment and oppression.

For the above reasons, the Plaintiff respectfully requests that this Court issue an Order of Impoundment of all papers on file in this action which constitute medical or psychiatric records, reports and all information contained in the pleadings specifically relating to the medical or psychiatric condition of Thomas Shay. The plaintiff further requests that this motion also be subject to the Order of Impoundment. Finally, the plaintiff requests that this Court issue a Protective Order prohibiting the parties in this case and their counsel and experts or members of their staff from disclosure or dissemination of medical or psychiatric records or reports and

information therefrom which specifically relates to Thomas Shay from disclosure of the same to the public, until further order of this Court.

THOMAS SHAY  
By his Attorney,



F. Jay Flynn, Jr., Esquire  
BBO # 172280  
McNAMARA, DeSIMONE & FLYNN, P.A.  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing document on all parties by <sup>hand</sup> mailing same, postage prepaid, to all counsel of record.  
Signed under the pains and penalties of perjury.



DATED: 10/31/91