Beyond Standard Discovery: Drafting, Objecting, and Responding

April 9, 2019

6:00 p.m. – 8:00 p.m.

CBA Law Center

New Britain, CT

CT Bar Institute Inc.

CT: 2.0 CLE Credits (General)
NY: 2.0 CLE Credits (Skills)

Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging I acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

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Beyond Standard Discovery: Drafting, Objecting, and Responding (EYL190409)

Tuesday, April 9, 2019

Agenda

6:00 p.m. – 6:20 p.m.	**General Principles of Discovery** – Goals, limits, ethics, and evaluating the discovery needs of a case
	Speaker: **Christopher P. Kriesen**, The Kalon Law Firm LLC, Hartford
6:20 p.m. – 6:40 p.m.	**Drafting Discovery** – Types of discovery, when applicable, requests for admission, motions for permission to serve non-standard, and third-party discovery
	Speaker: **Anthony J. Interlandi**, Monarch Law, Hartford
6:40 p.m. – 7:00 p.m.	**Responding and Objecting to Discovery** – Document production, working with the client, State vs. Federal, types of objections, and duties when responding
	Speaker: **John P. D'Ambrosio**, Cowdery & Murphy LLC, Hartford
7:00 p.m. – 8:00 p.m.	**Panel Discussion** and **Q&A**
	Speakers: **John P. D'Ambrosio**, Cowdery & Murphy LLC, Hartford; **Anthony J. Interlandi**, Monarch Law, Hartford; **Christopher P. Kriesen**, The Kalon Law Firm LLC, Hartford
	Moderator: **Ronald J. Houde**, The Kalon Law Firm LLC, Hartford

Faculty Biographies

John P. D'Ambrosio is a partner at Cowdery & Murphy, LLC in Hartford. His practice focuses on defending individuals and businesses in white collar criminal matters, and in complex enforcement matters involving the False Claims Act, RICO, securities laws, healthcare fraud, and antitrust laws. He is a graduate of the College of the Holy Cross and St. John's University School of Law.

Attorney **Ronald J. Houde** is a trial and appellate lawyer practicing in the areas of municipal liability, Connecticut tribal law, premises liability, insurance coverage, personal and commercial auto, and uninsured and underinsured motorist coverage. He practices in state, federal, and Connecticut tribal courts. He is member of the founding team at Kalon Law Firm in Hartford, Connecticut.

At Kalon, Attorney Houde serves as the firm's Diversity and Inclusion Officer. Outside of Kalon, Attorney Houde is active in state, local, and affinity bar associations. He is also a pro bono attorney for the Connecticut Institute for Refugees and Immigrants. In 2018, the Connecticut Law Tribune recognized him as a "New Leader in the Law" and Super Lawyers recognized him as a "Rising Star".

Prior to joining Kalon, Attorney Houde was an associate at an insurance defense firm in Hartford. He also served as a clerk to the Honorable Judges of the Hartford Superior Court.

Tony Interlandi, Esq., is the owner of Monarch Law, a modern law firm helping people with legal issues related to their employment or the employment of others. Tony represents individuals and employers in a broad range of legal matters including both consulting work and litigation. He has litigated cases in Connecticut's superior and federal courts. Tony also represents clients in administrative hearings before Connecticut and federal agencies. When he's not helping clients, Tony enjoys time with family and friends. He listens to podcasts, meditates, follows the Ketogenic diet and plays with his children. Tony lives in Kensington, Connecticut with his wife Elsa, and their son Anthony Jr. and daughter Liviana. You can learn more about Tony and his law firm at MonarchLawCT.com.

Attorney **Christopher P. Kriesen** is the founder and principal of the Kalon Law Firm, LLC. He formed the firm in 2017 to fulfill his vision of a better way to practice law, serve clients, and promote social good through entrepreneurship. He leads the firm and serves as the ethics officer.

Attorney Kriesen has tried cases in State and Federal Court, has argued appeals before Connecticut's Appellate and Supreme Courts, and has helped prepare amicus briefs on issues raising cases of first impression before the Supreme Court.

He is a trained mediator (Harvard Law School, Advanced Mediation Workshop, Program on Negotiation and the Quinnipiac School of Law Center on Dispute Resolution). He serves as an Attorney Trial Referee, Fact Finder, and Arbitrator in the Hartford Superior Court.

He has taught advocacy to students at the University of Connecticut School of Law. He is an active presenter at legal seminars for other lawyers and a mentor to law students and young lawyers.

He established the Kalon Fellowship, the Kalon Human Rights Clinic, Salons, Workshops, the Cicero Advocacy Project, and the Kalon ADR Center (which, as of September 1, 2018, donates 10% of its revenue to fund a scholarship for a graduate of the Hartford Youth Scholars Steppingstone Academy to help with their continuing education) making Kalon unique among peer firms in promoting social good.

He lives in West Hartford with his wife and his daughter attends Brandeis University.

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Kalon. A Law Firm Like No Other.

Beyond Standard Discovery: Drafting, Objecting, and Responding CLE

By Christopher P. Kriesen
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THE BIG PICTURE

Discovery in a civil case is designed to allow each party to learn information that is relevant and material to the proof and challenging of the causes of action, special

defenses, and any cross claims, under the control of others, including opposing parties, fact witnesses, and expert witnesses.

The purpose of this discovery is to not only allow parties to prove or disprove these issues; the purpose is also to eliminate issues of fact, so the factfinder spends its time only on finding facts that are reasonably disputed.

Your discovery practice should be guided by these fundamental principles.

If the information is not relevant to these issues, you are not entitled to the information and should not spend your time seeking such discovery, with the exception that you can seek information (usually in a deposition) that is reasonably likely to lead to the discovery of admissible evidence.

If your opponent seeks information not not relevant to these issues (and not reasonably likely to lead to the discovery of admissible evidence) you should object on that basis.

The Rules of Contesting Facts

A civil case is not like a criminal case where you can deny (or even leave to proof) that which you know is a fact. In a civil case, if you know the assertion is a fact (meaning, it's true, you are supposed to admit it).

We have a Rule of Professional Conduct that says so:

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established. (P.B. 1978-1997, Rule 3.1.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change. The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument

for an extension, modification or reversal of existing law. The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

So, you have an ethical obligation to admit that which you have no basis to deny.

We have a statute to adds a sanction if you do deny a fact for a frivolous reason:

Sec. 52-99. Untrue allegations or denials; costs.

Any allegation or denial made without reasonable cause and found untrue shall subject the party pleading the same to the payment of such reasonable expenses, to be taxed by the court, as may have been necessarily incurred by the other party by reason of such untrue pleading; provided no expenses for counsel fees shall be taxed exceeding ten dollars for any one offense.

These provisions are designed to eliminate unnecessary discovery and unnecessary hearings.

How You Should Begin Discovery

What should you do if your opponent will not admit that which she should admit?

We have a provision for that in our Practice Book and you should begin discovery with it.

Sec. 13-22. Admission of Facts and Execution of Writings; Requests for Admission

(a) A party may serve in accordance with Sections 10-12 through 10-17 upon any other party a written request, which may be in electronic format, for the admission, for purposes of the pending action only, of the truth of any matters relevant to the subject matter of the pending action set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the existence, due execution and genuineness of any documents described in the request. The party serving a request for admission shall separately set forth each matter of which an admission is requested and unless the request is served electronically as provided in Section 1013 and in a format that allows the recipient to electronically insert the answers in the transmitted document, shall leave sufficient space following each request in which the party to whom the requests are directed can insert an answer or objection. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the judicial authority, be served upon any party at any time after the return day. Unless the judicial authority orders otherwise, the frequency of use of requests for admission is not limited. (b) The party serving such request shall not file it with the court but shall instead file a notice with the court which states that the party has served a request for admission on another party, the name of the party to whom the request has been directed and the date upon which service in accordance with Sections 10-12 through 10-17 was made. (P.B. 1978-1997, Sec. 238.) (Amended June 30, 2008, to take effect Jan. 1, 2009.)

The admission is conclusive of the issue:

Sec. 13-24. Effect of Admission

(a) Any matter admitted under this section is conclusively established unless the judicial authorityonmotionpermitswithdrawaloramendment of the admission. The judicial authority may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the judicial authority that withdrawal or amendment will prejudice such party in maintaining his or her action or defense on the merits. Any admission made by a party underthissectionisforthepurposeofthepending action only and is not an admission by him or her for any other purpose nor may it be used against him or her in any other proceeding. (b)The admission of any matter under this section shall not be deemed to waive any objections to its competency or relevancy. An admission of the existence and due execution of a document, unless otherwise expressed, shall be deemed to include an admission of its delivery, and that it has not since been altered. (P.B. 1978-1997, Sec. 240.)

What if your opponent denies your request to admit and has no basis to do so?

We have a provision for that too.

Sec. 13-25. Expenses on Failure To Admit

If a party fails to admit the genuineness of any document or the truth of any matter as requested herein, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, such party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in

making that proof, including reasonable attorney's fees. The judicial authority shall make the order unless it finds that such failure to admit was reasonable. (P.B. 1978-1997, Sec. 241.)

How Discovery Should then Proceed

Hopefully, if everyone has followed the rules above, all that remains is discovery directed to learn information that is relevant and material to the proof and challenging of the causes of action, special defenses, and any cross claims, under the control of others, including opposing parties, fact witnesses, and expert witnesses.

Of course, there may be reasonable debate over what is a frivolous denial and a reasonable denial, so your discovery issues may be broader than you think they should be, but at least you will have narrowed the issues.

Enter the world of interrogatories, requests for production, interviewing witnesses not covered by any privilege, and depositions.

Attorney Kriesen is the founder and principal of The Kalon Law Firm, LLC. He has been practicing law as a trial lawyer for over twenty years. He has tried cases in state and federal court and has argued appeals before the Connecticut Appellate and Supreme Courts. He holds a Juris Doctor from The University of Connecticut School of Law.

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DEVELOP A DISCOVERY PLAN

- State or Federal Court
- Create your discovery plan before filing the lawsuit
- Type of Case / Number of Parties / Summary Judgment
- Have v. Need – Why do you need it?
- Joint Scheduling Order / Status Conference / FRCP 16 & 26

DEVELOP A DISCOVERY PLAN

- Time is your enemy
  - Document Production
  - Deadlines / Calendar Response Deadlines
    - State Court - 60 days (Rogs & RFP) v. 30 days (RFA)
  - Protective Orders
  - Serve Requests ASAP
- Requests for Admission Are Your Friends
- Precision is Key
- Footnote Your Requests

Scope of Discovery

- Practice Book § 13-2
  - ✓ "[M]aterial to the subject matter involved in the pending action "
  - ✓ "[N]ot privileged"
  - ✓ "[W]hether the discovery or disclosure relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party"
  - ✓ "[W]ithin the knowledge, possession or power of the party or person to whom the discovery is addressed"
  - ✓ "[Assist] in the prosecution or defense of the action" + "provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure"

- FRCP 26(b)(1) – "Proportionality"
  - "[A]ny nonprivileged matter that is relevant to any party's claim or defense and *proportional* to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable."

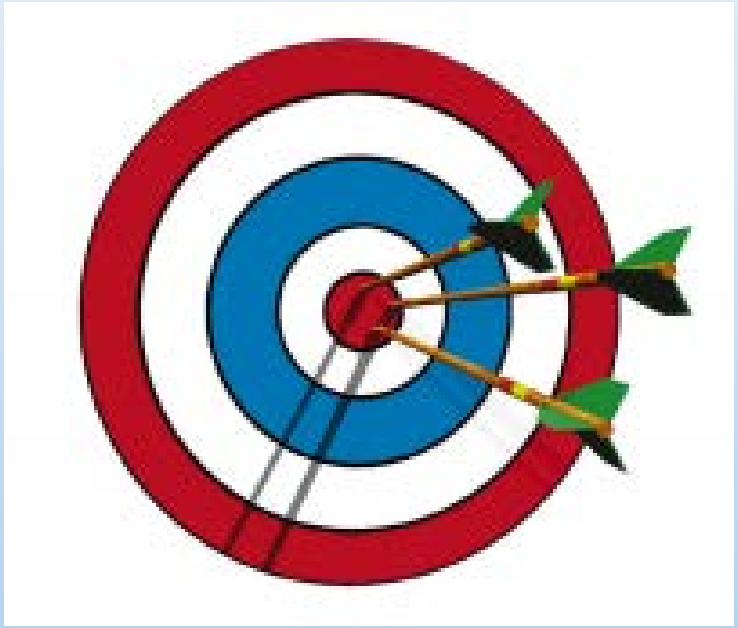
Tools of the Trade

Tools of the Trade

- Interrogatories
  - Practice Book §§ 13-6 (in general), 13-7 (answering), 13-8 (objecting)
  - FRCP 33
- Requests for Production of Documents
  - Practice Book §§ 13-9 (in general), 13-10 (responding/objecting)
  - FRCP 34
- Requests for Admission
  - Practice Book §§ 13-22 (how/when made), 13-23 (answering/objecting), 13-24 (effect)
  - FRCP 36

Rogs

RFP



RFA

- Common Uses -
  - To narrow inferential gaps
  - To admit genuineness of any document that might conceivably be used in the case as evidence or impeachment
  - To admit collateral facts about the documents that are evidentiary, foundational, or doctrinal significance
- Samples –
  - *When defendant's Director of HR wrote the 5/14/05 letter (Exhibit A hereto), she knew that plaintiff had filed a Charge of Discrimination with the EEOC against defendant.*
  - *Admit that documents [Bates Range] are true copies of the genuine original documents.*
  - *Ms. Smith composed the letter dated 5/14/05 (Exhibit A hereto) in the scope of her employment as defendant's HR Director.*

Case Law / Other Considerations

- Vidal, et al v. Metro-North Commuter RR Co., 2013 WL 1310504 (D. Conn. 2013) ("The frustration expressed by plaintiff with respect to defendant's non-specific objections is shared by this Court and, quite frankly, only serves to increase litigation expenses on motion practice, potentially extend deadlines for completion of discovery unnecessarily and delay resolution of cases.")

- Booth Oil Site Admin Group v. Safety-Kleen Corp., 194 F.R.D. 76 (W.D.N.Y 2000) ("Documents do not speak, rather, they represent factual information from which legal consequences may follow.")

- *Follow up depositions with written discovery*
- *Request entry upon land or other property for the purpose of inspection, measuring, etc. – See Practice Book § 13-9*
- *Personal injury cases – move for permission to serve additional discovery as may be necessary – See Practice Book § § 13-6(c) & 13-9(b)*
- *Privilege logs – See Practice Book § 13-3*

SAMPLE REQUESTS FOR ADMISSION

Pursuant to Federal Rule of Civil Procedure 36(a)(1)(B)

FOR RECORDS OF A REGULARLY CONDUCTED ACTIVITY

REQUEST FOR ADMISSION No. ___ : Admit that documents **[Bates Range]** are true and authentic copies of the genuine original documents.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** were made at or near the time of the regularly conducted activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** were made by a person with knowledge of the activity to which the documents pertain or were made from information transmitted by a person with knowledge of the activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** were prepared and kept by _____ in the course of regularly conducted activity of a business, organization, occupation, or calling.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** were made in the regular practice of the activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that all foundational requirements for the admission of documents **[Bates Range]** have been satisfied.
ANSWER:

ADDITIONAL REQUEST FOR MEDICAL RECORDS

REQUEST FOR ADMISSION No. ___: Admit that the statements contained in documents **[Bates Range]** are statements made for purposes of medical diagnosis or treatment and that such statements describe medical history, past or present symptoms or sensations, or the inception or general cause of such symptoms.
ANSWER:

FOR OTHER RECORDS

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** are copies of official records.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents [**Bates Range]** are certified as correct by the custodian or other person authorized to make the certification.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** are self-authenticated within the meaning of Federal Rule of Evidence 902.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** are self-authenticated within the meaning of Federal Rule of Evidence 901.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** are records or reports of, or contain statements of, a public office or agency.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** set forth matters observed pursuant to duty imposed by law as to which matters there was a duty to report.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** set forth the activities of a public office or agency.
ANSWER:

REQUEST FOR ADMISSION No. ___: Admit that documents **[Bates Range]** set forth factual findings resulting from an investigation made pursuant to authority granted by law.
ANSWER:

2013 WL 1310504
Only the Westlaw citation is currently available.
United States District Court,
D. Connecticut.

Robert VIDAL, Holger Ocana
v.
METRO–NORTH COMMUTER
RAILROAD COMPANY.

Civil No. 3:12CV248 (MPS).
|
March 28, 2013.

Attorneys and Law Firms

Anthony J. Interlandi, Law Office of Anthony J. Interlandi, LLC, East Berlin, CT, Jeffrey J. Tinley, Tinley, Nastri, Renehan & Dost, Waterbury, CT, for Robert Vidal, Holger Ocana.

Karen Kantor West, Marc L. Zaken, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Stamford, CT, for Metro–North Commuter Railroad Company.

RULING ON PLAINTIFFS' MOTION TO COMPEL [DOC. # 47]

HOLLY B. FITZSIMMONS, United States Magistrate Judge.

***1** This action is brought by plaintiffs Robert Vidal and Holger Ocana, alleging discrimination in employment on the basis of their Hispanic ethnicity, when they were denied acceptance into the Maintenance of Equipment Promotion–To–Foreman Training Program (the "FIT Program"), by their employer Metro–North Commuter Railroad Company, an alleged violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. Pending is plaintiffs' Motion to Compel responses to their First Set of Interrogatories and Requests for Production of Documents [Doc. # 47].

A telephone conference was held on January 23, 2013, at the request of plaintiffs, seeking an interim ruling on discovery objections to Interrogatory Nos. 7, 8 and 9 in advance of the settlement conference. The Court overruled defendant's objections to interrogatories 7 and 8, as follows. Defendant was ordered to state the number of people accepted into the FIT Program in 2007 and the number of Foreman positions filled in 2007. The ruling was without prejudice to plaintiffs' requesting further information if defendant asserts a more extensive lack of mitigation affirmative defense. Objections to interrogatory 9 were overruled as follows. Defendant was ordered to state the number of people who completed the FIT Program for the years 2003–06 and the number of Foreman positions filled in 2003–06.

A settlement conference was held on January 31, 2013. At the conclusion of the conference the parties met with the Court to resolve the remaining discovery issues raised in the motion to compel. This ruling and order memorializes the order of the Court and the agreement of the parties.

1. *General Objections Incorporated in Each Response*
Defendant's interrogatory responses to Nos. 2, 7, 8, 9 and 13 incorporate by reference all of the substantive general objections (eight in total), stating, "In addition to the General Objections, Defendant objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence." [Doc. # 47–2, Defendant's Supplemental Objections and Responses dated December 3, 2012]. Defendant will specify which of the "General Objections" it relies on for Interrogatories 2, 7, 8, 9, 13 and 14. Defendant will provide supplemental responses within seven (7) days.

Before defendant files its supplemental responses the Court is compelled to comment generally on the use of "General Objections" and other boilerplate discovery objections. Defendant repeats the same verbiage into each interrogatory response, using the familiar boilerplate phrase that each and every request is "overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence" and further that it relies on an unspecified "General Objection." The frustration expressed by plaintiff with respect to defendant's non-specific objections is shared by this Court and, quite frankly, only serves to increase litigation expenses on motion practice, potentially extend deadlines for completion of discovery unnecessarily and delay resolution of cases. "[T]he scope of discovery under Fed.R.Civ.P. 26(b) is very broad, 'encompass[ing] any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or

may be in the case.' " *Maresco v. Evans Chemetics Div. of W.R. Grace & Co.,* 964 F.2d 106, 114 (2d Cir.1992) (quoting *Oppenheimer Fund, Inc. v. Sanders,* 437 U.S. 340, 351, (1978)). "A party seeking discovery may move for an order compelling an answer, designation, production, or inspection." Fed.R.Civ.P. 37(a)(3)(B). "Motions to compel made pursuant to Fed.R.Civ.P. 37 are "entrusted to the sound discretion of the district court." *United States v. Sanders,* 211 F.3d 711, 720 (2d Cir.2000). "The grounds for objecting to any interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. Fed.R.Civ.P. 33(b)(4). "[B]oilerplate objections that include unsubstantiated claims of undue burden, overbreadth and lack of relevancy," while producing "no documents and answer[ing] no interrogatories ... are a paradigm of discovery abuse." *Jacoby v. Hartford Life & Accident Ins. Co.,* 254 F.R.D> 477, 478 (S.D.N.Y.2009). A party resisting discovery has the burden of showing "specifically how, despite the broad and liberal construction afforded the federal discovery rules, each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive, ... submitting affidavits or offering evidence revealing the nature of the burden." *Compagnie Francaise d'Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co.,* 105 F.R.D. 16, 42 (S.D.N.Y.1984) (citation omitted).

***2** Defendant is cautioned that continued failure to follow the Federal Rules of Civil Procedure with respect to making specific objections to discovery demands may result in the imposition of sanctions and/or payment of costs.

2. *Interrogatory Nos. 13 & 14*

> *Interrogatory 13:* State the factual basis for the assertion that the CHRO "unreasonably delayed in acknowledging its lack of jurisdiction."
>
> *Interrogatory 14:* State the factual basis of the assertion that "[t]he EEOC and Department of Justice unreasonably delayed processing plaintiffs' administrative charges after the CHRO finally acknowledged that it lacked jurisdiction."

Defendant provided identical responses to these interrogatories as follows:

> Subject to and without waiving the General Objections, Defendant states that Plaintiffs improperly filed charges with the CHRO, an agency which statutorily lacked jurisdiction over their claims, pursuant to Conn. Gen.Stat. 16–344(a). Since the CHRO never had jurisdiction over Plaintiffs' claims, Plaintiffs' filings with the CHRO were void ab initio. Plaintiffs' failure to timely and diligently pursue their appropriate administrative remedies solely before the EEOC resulted in extraordinary delays in the administrative processing of their charges of discrimination to Defendant's detriment.
>
> Defendant's ability to defend itself in this action has been damaged by the delay caused by Plaintiffs' defective filing with the CHRO which led directly to further delays before the EEOC and Department of Justice. Plaintiffs failed to request right-to-sue letter in a timely manner, so it has now been over six years since the events occurred about which plaintiffs claim.

Plaintiffs seek further clarification regarding the alleged conduct by plaintiffs, the CHRO, the EEOC and the DOJ that supports defendant's laches defense. Defendant contends that it has answered the interrogatories and that plaintiffs are aware of the timeline associated with the administrative process. If there is anything further, defendant may supplement the responses and provide further information regarding the "factual basis" for its defense within seven days.

3. *Request for Production 10*

On January 8, 2013, defendant stated in response to plaintiffs' motion to compel that it had produced all responsive documents and referenced the Bates numbered documents produced. [Doc. # 57]. On reply, plaintiffs stated that defendant's response was "improper and confusing." [Doc. # 60 at 3]. At the conference, plaintiffs did not explain how the production was insufficient under the Federal Rules. If there are no other responsive documents, after a good faith effort to locate them, defendant will so state under oath and withdraw its objection.

Accordingly, plaintiff's motion to compel request for production 10 is moot on this record.

CONCLUSION

Accordingly, plaintiffs' Motion to Compel **[Doc. # 47]** is **GRANTED** as set forth in this ruling and the Court's interim ruling dated January 23, 2013. [Doc. # 62]. Defendant's supplemental discovery responses are due in seven (7) days. Defendant's response to Request for Production 10 is due in fourteen (14) days.

***3** Plaintiff's Motion to Compel request for production 10 is moot on this record.

The parties are reminded of their on-going duty to supplement or correct disclosures or responses under Fed.R.Civ.P. 26(e). [1]

The parties are encouraged to contact chambers to schedule a conference, if any issues arise that may impact the deadlines set in this ruling/order.

This is not a recommended ruling. This is a discovery ruling and order which is reviewable pursuant to the "clearly erroneous" statutory standard of review. 28 U.S.C. § 636(b)(1)(A); Fed.R.Civ.P. 6(a), 6(e) and 72(a); and Rule 2 of the Local Rules for United States Magistrate Judges. As such, it is an order of the Court unless reversed or modified by the district judge upon motion timely made.

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2013 WL 1310504

Footnotes

1 Fed. R. Civ. P 25(e) Supplementing Disclosures and Responses.
(1) In General. A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:
(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing;

194 F.R.D. 76 (W.D.N.Y. 2000), 98-CV-696AF, Booth Oil Site Administrative Group v. Safety-Kleen Corporation /**/ div.c1 {text-align: center} /**/ /**/ div.c1 {text-align: center} /**/
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194 F.R.D. 76 (W.D.N.Y. 2000)
BOOTH OIL SITE ADMINISTRATIVE GROUP, Plaintiff,
v.
SAFETY-KLEEN CORPORATION, Joseph Chalhoub, Breslube Industries Limited, George T. Booth, Jr., George T. Booth, III, Booth Oil Company, Inc., Defendants.
No. 98-CV-696AF.
United States District Court, W.D. New York.
June 7, 2000
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Suit was brought under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) seeking contribution for response costs incurred in the investigation, removal and remediation of hazardous substances released at a waste oil reclamation facility. On plaintiff's motion to compel, the District Court, Foschio, United States Magistrate Judge, held that: (1) requests to admit calling upon defendants to admit or deny that quoted material was the actual text of relevant documents could not be ignored on the ground that requests sought an interpretation of the text or that the document " speaks for itself" ; (2) requests to admit seeking party's understanding of the meaning or intent of a document are were permissible; (3) defendant could not object to a request to admit on ground it sought an opinion; (4) that a requested admission may involve hearsay is not disqualifying; and (5) there was no basis to object that request to admit asking for pointed responses as to particular text within uncomplicated and straightforward business letter was predicated on speculative elements rendering it incapable of response.

Motion granted.

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Raichle, Banning, Weiss & Stephens, R. William Stephens, of Counsel, Buffalo, NY, for Plaintiff.

Blair & Roach, Robert R. Radel, of Counsel, Tonawanda, NY, for Joseph Chalhoub and Breslube Industries Limited.

DECISION and ORDER

FOSCHIO, United States Magistrate Judge.

JURISDICTION

This matter was referred to the undersigned for all pretrial matters by order of Hon. Richard J. Arcara dated February 19, 1999. It is presently before the court on Plaintiff's motion to compel filed March 30, 2000 (Doc. # 45).

BACKGROUND

In this action, pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (" CERCLA"), 42 U.S.C. § 9601, *et seq.,* and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.,* Plaintiff seeks contribution for response costs incurred in the

investigation, removal and remediation of hazardous substances released at a waste oil reclamation facility operated by Defendant Booth Oil Company, Inc. (" Booth Oil"), located at 76 Robinson Street in North Tonawanda, New York (" the Site"). As relevant, Plaintiff alleges Defendants Chalhoub and Breslube Industries (" Breslube") are liable to it under 42 U.S.C. § 9613 as successors in interest to Booth Oil which owned and operated the Site as a waste oil reclamation and refining business for over 40 years prior to being acquired by Chalhoub, Breslube, and Defendant Safety-Kleen. Additionally, Plaintiff claims Defendant Chalhoub is liable as an owner and operator of the Site and all Defendants, including Chalhoub, are also liable as successors in interest based on continuity of enterprise. Plaintiff also asserts claims based on negligence and strict liability under the New York Navigation Law.

Following service of Plaintiff's Requests to Admit on January 4, 2000 (" the Requests"), Defendants Chalhoub and Breslube served, on February 15, 2000, their responses and objections to the Requests. As noted, Plaintiff's motion to compel was filed on March 30, 2000 along with an Affidavit of R. William Stephens, Esq., dated March 28, 2000, in Support (" Stephens Affidavit") and a Memorandum of Law in Support (Doc. # 46); Defendants' response, an Affidavit of Robert R. Radel, Esq., dated May 4, 2000 (Doc. # 57), and a Memorandum of Law (Doc. # 58), were filed May 5, 2000. By order dated April 6, 2000, the court dismissed the motion, without prejudice, for failure to comply with Local R.Civ.P. 37. In response to the court's action, on April 7, 2000, Plaintiff filed an affidavit of R. William Stephens, Esq. demonstrating that voluntary resolution had been attempted but could not be achieved (Doc. # 46). The motion was recalendared and oral argument was conducted on May 17, 2000 at which time the court granted Plaintiff's motion in part and reserved decision as to the remaining objections.

FACTS

On January 4, 2000, Plaintiff served Defendants with 39 Requests for Admission pursuant to Fed.R.Civ.P. 36(a). At issue are Requests Nos. 4-11, 13, 15-22, 27, 29-31, 33, 34, 36, and 38. These Requests direct themselves to provisions of three agreements by which Defendant Safety-Kleen, through its acquisition subsidiaries, and Defendant Breslube Enterprises, allegedly acquired the assets of Defendant Booth Oil. The agreements include a May 29, 1987 Asset Purchase Agreement among Safety-Kleen, as purchaser, and Speedy Oil Services, Inc., a business entity controlled by Defendant Chalhoub which Plaintiff claims assumed operations of Booth Oil at Chalhoub's direction, as seller, Defendant Breslube Enterprises, and 707895 Ontario Limited, an acquisition subsidiary of Safety-Kleen; a June 23, 1987 Bill of Sale, Assignment, and Assumption Agreement between Safety-Kleen and Speedy Oil Services; and a February 27, 1987 Option Agreement between Safety-Kleen and Speedy Oil relating

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to the purchase of Booth Oil's facilities. According to Plaintiff, as a result of a series of inter-corporate transactions as reflected, in part, by these agreements, Safety-Kleen and Breslube Enterprises succeeded to the ownership of Booth Oil, and Chalhoub became an owner and operator of Booth Oil.

Requests Nos. 4-10, 13, 15-19, 27, 29, and 33 include a statement of what purports to be the verbatim text of various provisions of the agreements as quoted in each Request and ask

Defendants to admit that the quoted material is in fact the text of each such provision. For example, Request No. 4 seeks Defendants' admission that the June 23, 1987 agreement includes a provision, as quoted in the Request, in which the parties to that agreement agreed, pursuant to the May 1987 agreement, to transfer all of Speedy Oil's interest in its assets as defined in the quoted provision. Stephens Affidavit at 5. Defendants failed to admit or deny each of these Requests, rather, Defendants objected that the Requests seek " an improper admission to the interpretation of a document" and that " [t]he document speaks for itself." Stephens Affidavit at 5-17.

Requests 11, 20-22, 30, 31, 34, 36, and 38, while not providing verbatim quotation of the relevant text, refer to specific provisions within the agreements and, in most instances, reference the Bates numbers of copies of particular pages of documents obtained through discovery where the referenced provisions were reproduced, and request Defendants to admit that such provisions carry a particular meaning as stated in the Request. For example, Request No. 11 asks Defendants to admit that " under Schedule 3.12 of the 5/29/87 Asset Purchase Agreement Bres-Op Corp. expressly assumed and agreed to faithfully pay, perform or otherwise discharge any liabilities and obligations of Speedy Oil Services, Inc. for the Booth Oil Robinson Street Site." Stephens Affidavit at 18. In response, Defendants Chalhoub and Breslube refused to admit or deny, or explain why neither an admission nor a denial could be made. Instead, Defendants objected that the Requests " improperly call for an opinion, a conclusion of law and seek an admission to the interpretation of the document." Stephens Affidavit at 18-21. In Request No. 34, Plaintiff sought Defendants' admission that a certain letter sent by an attorney for Booth Oil to Breslube advised that the Booth Oil Site was the " focus of State Superfund concern." Stephens Affidavit at 20. Defendants also refused to respond to this Request on the ground that it " improperly calls for hearsay, opinions, and speculation." *Id.* None of the objections have merit.

DISCUSSION

The purpose of Fed.R.Civ.P. 36 is " for facilitating the proof at trial by weeding out facts and items of proof over which there is no dispute." 4A Moore's Federal Practice, ¶ 36.02 (2d ed.1982). *See also Dubin v. E.F. Hutton Group, Inc.,* 125 F.R.D. 372, 375 (S.D.N.Y.1989) (Rule 36 allows " narrowing or elimination of issues in a case" through obtaining admissions of facts conceded by parties). A request to admit covers the full range of information discoverable under Fed.R.Civ.P. 26(b), including matters of facts as well as the application of law to the facts. Fed.R.Civ.P. 36(a); *Moore, supra,* at ¶ ¶ 36.04(2), (4). However, " requests for admissions of law unrelated to the facts of the case" are not authorized. 1970 Advisory Committee Notes.

Provided the demand is understandable and straightforward, calls for relevant information, and does not violate a recognized privilege, an objection to a request to admit is improper and a mere statement that the responding party is unable to admit or deny, or lacks knowledge is insufficient. *See Moore, supra,* at ¶ 36.05[4]. Ambiguous and vague requests which cannot be fairly answered will not be enforced. *Dubin, supra.* Absent a statement " that the party has made a reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny," the request is to be answered by its admission or denial. *See* Fed.R.Civ.P. 36(a).

" A denial must be forthright, specific and unconditional." Wright & Miller, Federal Practice & Procedure § 2260 at 729. Further, " denial of the accuracy of a statement is not a denial of its essential truth and

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certainly a refusal to admit does not amount to a denial." *Southern Ry. Co. v. Crosby,* 201 F.2d 878, 880 (4th Cir.1953) (Parker, C.J.) Moreover, a refusal to admit, without detailed reasons why the responder cannot truthfully admit or deny is the equivalent of an admission. *Fuhr v. Newfoundland-St. Lawrence Shipping, Ltd.,* 24 F.R.D. 9, 13 (S.D.N.Y.1959). The court may reject unjustified objections and order answers, and determine that, as to answers deemed non-compliant, either the matter be deemed admitted or an amended answer be served. *O'Connor v. AM General Corp.,* 1992 WL 382366 at *2 (E.D.Pa.1992).

As noted, Defendants objected to the Requests on the grounds that they seek an " opinion," " the interpretation of a document," and that the document which is the object of the request " speaks for itself." In response to Request No. 34, Defendants argue the Request called for " hearsay," " opinion," and " speculation."

First, as amended in 1970, Rule 36 specifically authorizes a request for the admission or denial of an " opinion of fact or the application of law to fact." Fed.R.Civ.P. 36(a). Second, as a statement of a document's text is a matter of fact, a request calling upon a party to admit or deny that such quoted material is the actual text of an identified document, relevant to the case, may not be ignored on the ground that the request seeks an interpretation of the text or that the document in question " speaks for itself." Documents do not speak, rather, they represent factual information from which legal consequences may follow. The existence of a referenced document and whether it contains a particular provision may well present factual issues of importance to the case. Thus, just as a Rule 36 request may seek to remove the issue of a document's " genuineness" or authenticity, *id.,* whether a particular document contains textual material as described in a request equally seeks to eliminate an unnecessary issue of fact for trial. It is therefore permissible to request that a party admit or deny a Rule 36 request as to the accuracy of quoted textual material from a particular document relevant to the case.

Third, it is generally held that questions of contractual meaning or intent are questions of fact at trial. *Bourne v. Walt Disney Co.,* 68 F.3d 621, 629 (2d Cir.1995). A statement of a party's understanding of the meaning or intent of a document is therefore a statement of fact, and where the question of the meaning of the document is at issue in the case, a request directed to another party seeking an admission or denial of a document's meaning or intent by that party as stated in the request relates to a statement fact, and is authorized by Rule 36. *See Langer v. Monarch Life Insurance Co.,* 966 F.2d 786, 805 (3d Cir.1992) (responses to Rule 36 requests containing statements of party's intent and understanding of disputed contract " could be read as admissions of the facts of what was intended" by the agreement at issue); *Diederich v. Department of Army,* 132 F.R.D. 614, 617 (S.D.N.Y.1990) (" objections that documents ... ‘ speak for themselves' ... also are also improper."). Nor are such requests objectionable because the request may call for an admission as to an interpretation of a contractual provision which could otherwise require a judicial determination. " Rule 36 would cover an admission by [a party] as to what its obligations

were as a matter of law, because the text of the rule specifically authorizes requests for admissions of propositions of law as applied to fact." *Langer, supra,* at 803. Moreover, the fact that an admission, provided in response to a request, may prove decisive to the case is no ground for refusal to respond. *Langer, supra,* at 803 (a party served with a Rule 36 request " must admit [the requested] fact even if it will gut its case and subject it to summary judgment.").

Even if the meaning of a document or the intent of the parties as to a contractual provision is the issue ultimately to be decided, such questions do not raise a valid objection to a request to admit a party's understanding of a document's meaning or the intent of the parties as otherwise a party that does not intend to dispute such matters could refuse to answer thus requiring needless proof. Such a result is contrary to the purpose of Rule 36 which is " to eliminate from controversy matters that will not be disputed."

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8A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD C. MARCUS, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2256 at 538. Conversely, if both sides agree as to the meaning and intent of particular contractual provisions, there will be no issue as to their meaning on summary judgment or at trial and the purpose of Rule 36 will have been served. In this case, if Defendants do not admit to a proffered interpretation, Plaintiff will be on notice as to which provisions remain at issue thereby facilitating the orderly preparation of the case for submission to the court and furthering the purposes of Rule 36.

Moreover, in this case, the Requests at issue do not relate to material which, like a line of lyrical poetry, may be subject to multiple interpretations. Rather, they are directed to business agreements, involving the parties to the instant litigation, using standard acquisition clauses applied to the particulars of the transactions, and routine business correspondence. As such, the range of interpretative possibilities is fairly limited thus constituting straightforward requests within the purview of Rule 36.

Finally, in response to Request No. 34, Defendants objected that the request calls improperly for hearsay, opinions, and speculation. As discussed, such an objection based on the fact that a request seeks an opinion is excluded by the express terms of Rule 36. Further, that a requested admission may involve hearsay is not disqualifying as statements of fact even if based on hearsay nevertheless present issues which if not admitted will require admissible evidence for their proof at trial. Further, it is well established that objections to hearsay are waivable. Accordingly, Rule 36 requests seeking an admission of fact or the application of law to fact, even if the response may be based on hearsay, is authorized by Rule 36. Finally, if the request as stated cannot be answered in a straightforward manner because it contains speculative elements, an objection may be interposed on that basis. Here, however, Request No. 34 asks for pointed responses as to particular text within an uncomplicated and straightforward business letter. There is no basis therefore to find that the Request is predicated on speculative elements rendering it incapable of response. Accordingly, Defendants' objections to Request No. 34 are overruled.

Defendants cite *Lakehead Pipe Line Company, Inc. v. American Home Assurance Company,* 177 F.R.D. 454 (D.Minn.1997) and *Bausch & Lomb v. Alcon Laboratories,* 173 F.R.D. 367 (W.D.N.Y.1995) in support of their position. However, *Lakehead* is inapposite as in that case

the requested party, unlike Defendants Chalhoub and Breslube, responded to 373 Rule 36 requests with admissions, denials or qualifications. *Lakehead, supra,* at 457. Further, in refusing to find some of the responses so deficient as to be deemed admitted, the court stated that the requests at issue were " prolix, argumentative and ambiguous," *Lakehead* at 458 n. 3, and an attempt to obtain " in essence legal conclusions." *Lakehead, supra,* at 458. The court therefore found the requests at issue to be both improper in form as well as constituting a request for an admission concerning a " a pure matter of law" beyond the reach of Rule 36. *See LaForte v. Horner,* 833 F.2d 977, 982 (Fed.Cir.1987) (admission as to statute's meaning which mirrored statute's wording not determinative as to congressional intent as such interpretation was a legal conclusion for the court). Thus, regardless of whether the court in *Lakehead* also found the requests sought admissions of a pure proposition of law unrelated to the case, compare Advisory Committee Note to 1970 Amendment to Rule 36, *supra,* none of the requests at issue here seek purely legal propositions unrelated to the issues presented in the case.

In *Bausch & Lomb, supra,* as the factual nature of the requests at issue are not revealed in the court's opinion, whether the Requests are similar to those at bar thereby giving the decision precedential effect on the issues in this case cannot be determined. Additionally, a review of the cases cited in *Bausch & Lomb, id., supra,* at 377, indicates they do not necessarily exclude the determination reached here. For example, in *Naxon Telesign Corporation v. GTE Information Systems, Inc.,* 89 F.R.D. 333, 335 (E.D.Ill.1980) the court did not find a Rule 36 request

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as to a document's meaning proscribed in all cases, rather, the court found the requests at issue to be redundant to the plain text of the patent document to which they were directed. Accordingly, neither case is controlling on the questions presented on the instant motion.

Defendants' objections are also undermined by the well accepted approval of contention interrogatories, pursuant to Fed.R.Civ.P. 33(a), forcing an opponent to state with reasonable clarity the precise nature of its contentions in support of its claims or defenses and their respective bases in fact and law. *Wechsler v. Hunt Health Systems, Ltd.,* 1999 WL 672902, *1 (S.D.N.Y.1999). If interrogatories may require a party to state the nature and basis of a contention regarding the existence or meaning of a document at issue, the court fails to see why a request for admission may not seek to limit the need for proof regarding the text and meaning of a particular provision of a document.

At oral argument, Defendants also asserted the majority of the requests seek irrelevant information. However, as discussed, Plaintiff's objective is to establish that Defendants succeeded through a series of corporate transactions to the liabilities of Booth Oil, including response costs under CERCLA, and thus are liable to Plaintiffs for contribution in this action. As the documents at issue all appear on their face to be connected to Defendants Chalhoub and Breslube and their relationship to and Booth Oil's business operations and facilities, it cannot be reasonably concluded that the Requests seek inadmissible evidence and are not reasonably calculated to lead to the discovery of admissible evidence. Moreover, Defendants admitted that Defendant Chalhoub executed the May 1987 Agreement on behalf of Breslube Enterprises. Exhibit 3 to Stephens Affidavit at 16.

Accordingly, the court finds Defendants' objections to be without merit and are therefore overruled. Defendants shall within 20 days of the service of this Decision and Order serve responses to these Requests in accordance with the foregoing.

CONCLUSION

Based on the foregoing, Plaintiffs' motion (Doc. # 45) is GRANTED.

SO ORDERED.

Beyond Standard Discovery: Drafting, Objecting, and Responding

Objections and Responses

I. Objecting

a. Goals

b. General Objections vs. Specific Objections

c. Boilerplate vs. Explanatory
   i. Consider Judge Moukawsher's Standing Order on Complex Litigation Docket:
      1. "The parties may not assert boilerplate discovery objections. A short plain statement of reasons must be given. Objections must explain why things are vague, present undue burdens, are overbroad, or are not reasonably calculated to lead to the discovery of admissible evidence."

d. Objecting to Definitions and Rules

II. Responding

a. Considerations with Client
   i. Cost
   ii. Complexity of Causes of Action
   iii. Headaches
      1. Motions for Protective Order under Practice Book § 13-5

b. e-Discovery
   i. Complexity and Expense
   ii. *See* SEC's Data Delivery Standards (attached)

c. Ethical Duties
   i. Duty of Candor – RPC 3.3
   ii. Duty of Fairness – RPC 3.4
   iii. Confidentiality of Information – RPC 1.6
   iv. Continuing Duty to Disclose – Practice Book § 13-15
   v. Inadvertent Disclosure of Privileged Materials or Attorney Work Product
      1. Practice Book 13-33 and FRCP 26(b)(5)(B)
         a. Disclosing party must: Give notice of the claim, and basis for it.
         b. Recipient must:
            i. Immediately sequester all copies, return or destroy them, and not use or disclose them, except under seal to the court to resolve the claim; and
            ii. Take "reasonable steps to retrieve" the information if provided to another party or otherwise circulated.

III. Privilege Logs

a. *See* Practice Book § 13-3(d)
    i. Effective January 1, 2018.
    ii. Requires, within 45 days of responses to discovery, the production of a privilege log listing, for each document or ESI withheld on the basis of privilege:
        1. Type of document or ESI;
        2. General subject matter;
        3. Date;
        4. Author;
        5. Each recipient;
        6. Nature or the privilege or protection asserted.
    iii. Need not include privileged information in individual entries on the privilege log.
    iv. Does not include "written or electronic communications after commencement of the action between a party and the firm or lawyer appearing for the party in the action or as otherwise ordered by the judicial authority."
b. FRCP(b)(5) includes a similar requirement.

IV. Additional Considerations For Federal Practice

a. FRCP 26 Requires Initial Disclosures
    i. Before receiving a discovery request, must provide:
        1. Name, address, and phone number of anyone likely to have discoverable information, and "the subject of that information;"
        2. Copies (or descriptions) of all documents, ESI, and tangible things that a party will use to support its claims or defenses;
        3. Itemized damages computation, along with access to all materials on which the computation is based;
        4. Any insurance or indemnification agreement that may be used to satisfy all or part of a possible judgment (for inspection and copying).
b. Proportionality in FRCP 26(b)(1):
    i. "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and **proportional** to the needs of the case, considering the **importance of the issues** at stake in the action, the **amount in controversy**, the parties' **relative access** to relevant information, the **parties' resources**, the **importance of the discovery** in resolving the issues, and whether the **burden or expense** of the proposed discovery outweighs its likely benefit."

V. Creativity

a. Other ways to get relevant evidence without formal, written discovery:
    i. FOIA
    ii. Witnesses' cell phone
    iii. Any others?

U.S. Securities and Exchange Commission

Data Delivery Standards

This document describes the technical requirements for paper and electronic document productions to the U.S. Securities and Exchange Commission (SEC). ***Any questions or proposed file formats other than those described below must be discussed with the legal and technical staff of the SEC Division of Enforcement prior to submission.***

General Instructions

Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. *(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)*

In the event produced files require the use of proprietary software not commonly found in the workplace, the SEC will explore other format options with the producing party.

The proposed use of file de-duplication methodologies or *computer-assisted review* or *technology-assisted review* (TAR) during the processing of documents must be discussed with and approved by the legal and technical staff of the Division of Enforcement (ENF). If your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production to the SEC.

General requirements for **ALL** document productions are:

1. A cover letter should be included with each production and include the following:
   a. A list of each piece of media included in the production with its unique production volume number
   b. A list of custodians, identifying the Bates range for each custodian.
   c. The time zone in which the emails were standardized during conversion.
2. Data can be produced on CD, DVD, thumb drive, etc., using the media requiring the least number of deliverables and labeled with the following:
   a. Case number
   b. Production date
   c. Producing party
   d. Bates range
3. All submissions must be organized by **custodian** unless otherwise instructed.
4. All document family groups, i.e. email attachments, embedded files, etc., should be produced together and children files should follow parent files sequentially in the Bates numbering.
5. All load-ready collections should include only one data load file and one image pointer file.
6. All load-ready text must be produced as separate text files.
7. All load-ready collections should account for custodians in the custodian field.
8. Audio files should be separated from data files if both are included in the production.
9. Only alphanumeric characters and the underscore character are permitted in file names and folder names. Special characters are not permitted.
10. All electronic productions submitted on media must be produced using industry standard self-extracting encryption software.
11. Electronic productions may be submitted via Secure File Transfer. The SEC **cannot** accept productions made using file sharing sites.
12. Productions containing BSA or SARs material must be delivered on encrypted physical media. The SEC **cannot** accept electronic transmission of BSA or SARs material. Any BSA or SARs material produced should be segregated and appropriately marked as BSA or SARs material, or should be produced separately from other case related material.
13. Passwords for electronic documents, files, compressed archives and encrypted media must be provided separately either via email or in a separate cover letter from the media.
14. All electronic productions should be produced free of computer viruses.
15. Additional technical descriptions can be found in the addendum to this document.

Please note that productions sent to the SEC via United States Postal Service are subject to Mail Irradiation, and as a result electronic productions may be damaged.

Delivery Formats

I. *Concordance*® Imaged Productions

The SEC prefers that all documents and data be produced in a structured format prepared for Concordance. All scanned paper and electronic file collections should be converted to TIFF files, Bates numbered, and include fully searchable text files.

1. Images

a. Black and white images must be 300 DPI Group IV single-page TIFF files.
b. Color images must be produced in JPEG format.
c. File names cannot contain embedded spaces or special characters (including the comma).
d. Folder names cannot contain embedded spaces or special characters (including the comma).
e. All TIFF image files must have a unique file name, i.e. Bates number.
f. Images must be endorsed with sequential Bates numbers in the lower right corner of each image.
g. The number of TIFF files per folder should not exceed 500 files.
h. Excel spreadsheets should have a placeholder image named by the Bates number of the file.
i. AUTOCAD/photograph files should be produced as a single page JPEG file.

2. *Concordance Image*® **OR Opticon Cross-Reference File**
The image cross-reference file (.LOG or .OPT) links the images to the database records. It should be a comma-delimited file consisting of seven fields per line with a line in the cross-reference file for every image in the database with the following format:

ImageID, VolumeLabel, ImageFilePath, DocumentBreak, FolderBreak, BoxBreak, PageCount

3. *Concordance*® **Data File**
The data file (.DAT) contains all of the fielded information that will be loaded into the *Concordance*® database.

a. The first line of the .DAT file must be a header row identifying the field names.
b. The .DAT file must use the following *Concordance*® default delimiters:
Comma ¶ ASCII character (020)
Quote þ ASCII character (254)
c. Date fields should be provided in the format: mm/dd/yyyy
d. Date and time fields must be two separate fields.
e. If the production includes imaged emails and attachments, the attachment fields must be included to preserve the parent/child relationship between an email and its attachments.
f. An OCRPATH field must be included to provide the file path and name of the extracted text file on the produced storage media. The text file must be named after the FIRSTBATES. Do not include the text in the .DAT file.
g. For productions with native files, a LINK field must be included to provide the file path and name of the native file on the produced storage media. The native file must be named after the FIRSTBATES.
h. BEGATTACH and ENDATTACH fields must be two separate fields.
i. A complete list of metadata fields is available in **Addendum A** to this document.

4. **Text**
Text must be produced as separate text files, not as fields within the .DAT file. The full path to the text file (OCRPATH) should be included in the .DAT file. We require document level ANSI text files, named per the FIRSTBATES/Image Key. Please note in the cover letter if any non-ANSI text files are included in the production. Extracted text files must be in a separate folder, and the number of text files per folder should not exceed 1,000 files. There should be no special characters (including commas in the folder names). For redacted documents, provide the full text for the redacted version.

5. **Linked Native Files**
Copies of original email and native file documents/attachments must be included for all electronic productions.
a. Native file documents must be named per the FIRSTBATES number.
b. The full path of the native file must be provided in the .DAT file for the LINK field.
c. The number of native files per folder should not exceed 1,000 files.

II. Native File Production without Load Files

With prior approval, native files may be produced without load files. The native files must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. When approved, Outlook (.PST) and Lotus Notes (.NSF) email files may be produced in native file format. A separate folder should be provided for each custodian.

III. Adobe PDF File Production

With prior approval, Adobe PDF files may be produced in native file format.
1. PDF files should be produced in separate folders named by the custodian. The folders should not contain any special characters (including commas).
2. All PDFs must be unitized at the document level, i.e., each PDF must represent a discrete document.
3. All PDF files must contain embedded text that includes all discernible words within the document, not selected text or image only. This requires all layers of the PDF to be flattened first.
4. If PDF files are Bates endorsed, the PDF files must be named by the Bates range.

IV. Audio Files

Audio files from telephone recording systems must be produced in a format that is playable using Microsoft Windows Media Player™. Additionally, the call information (metadata) related to each audio recording MUST be provided. The metadata file must be produced in a delimited text format. Field names must be included in the first row of the text file. The metadata must include, at a minimum, the following fields:

1) Caller Name: Caller's name or account/identification number
2) Originating Number: Caller's phone number
3) Called Party Name: Called party's name
4) Terminating Number: Called party's phone number
5) Date: Date of call
6) Time: Time of call
7) Filename: Filename of audio file

V. Video Files

Video files must be produced in a format that is playable using Microsoft Windows Media Player™.

VI. Electronic Trade and Bank Records

When producing electronic trade and bank records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

VII. Electronic Phone Records

When producing electronic phone records, provide the files in the following format:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details. Data must be formatted in its native format (i.e. dates in a date format, numbers in an appropriate numerical format, and numbers with leading zeroes as text).
    a. The metadata that must be included is outlined in **Addendum B** of this document. Each field of data must be loaded into a separate column. For example, Date and Start_Time must be produced in separate columns and not combined into a single column containing both pieces of information. Any fields of data that are provided in addition to those listed in **Addendum B** must also be loaded into separate columns.

VIII. Audit Workpapers

The SEC prefers for workpapers to be produced in two formats: (1) With Bates numbers in accordance with the SEC Data Delivery Standards; and (2) in native format or if proprietary software was used, on a standalone laptop with the appropriate software loaded so that the workpapers may be reviewed as they would have been maintained in the ordinary course of business. When possible, the laptop should be configured to enable a Virtual Machine (VM) environment.

ADDENDUM A

The metadata of electronic document collections should be extracted and provided in a .DAT file using the field definition and formatting described below:

Field Name	Sample Data	Description
FIRSTBATES	EDC0000001	First Bates number of native file document/email
LASTBATES	EDC0000001	Last Bates number of native file document/email **The LASTBATES field should be populated for single page documents/emails.
ATTACHRANGE	EDC0000001 - EDC0000015	Bates number of the first page of the parent document to the Bates number of the last page of the last attachment "child" document
BEGATTACH	EDC0000001	First Bates number of attachment range
ENDATTACH	EDC0000015	Last Bates number of attachment range
PARENT_BATES	EDC0000001	First Bates number of parent document/Email **This PARENT_BATES field should be populated in each record representing an attachment "child" document
CHILD_BATES	EDC0000002; EDC0000014	First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments **The CHILD_BATES field should be populated in each record representing a "parent" document
CUSTODIAN	Smith, John	Email: Mailbox where the email resided Native: Name of the individual or department from whose files the document originated
FROM	John Smith	Email: Sender Native: Author(s) of document **semi-colon should be used to separate multiple entries
TO	Coffman, Janice; LeeW [mailto:LeeW@MSN.com]	Recipient(s) **semi-colon should be used to separate multiple entries
CC	Frank Thompson [mailto: frank_Thompson@cdt.com]	Carbon copy recipient(s) **semi-colon should be used to separate multiple entries
BCC	John Cain	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple entries
SUBJECT	Board Meeting Minutes	Email: Subject line of the email Native: Title of document (if available)
FILE_NAME	BoardMeetingMinutes.docx	Native: Name of the original native file, including extension
DATE_SENT	10/12/2010	Email: Date the email was sent Native: (empty)
TIME_SENT/TIME_ZONE	07:05 PM GMT	Email: Time the email was sent/ Time zone in which the emails were standardized during conversion. Native: (empty) **This data must be a separate field and cannot be combined with the DATE_SENT field
TIME_ZONE	GMT	The time zone in which the emails were standardized during conversion. Email: Time zone Native: (empty)

LINK	D:\001\EDC0000001.msg	Hyperlink to the email or native file document **The linked file must be named per the FIRSTBATES number
MIME_TYPE	MSG	The content type of an Email or native file document as identified/extracted from the header
FILE_EXTEN	MSG	The file type extension representing the Email or native file document; will vary depending on the email format
AUTHOR	John Smith	Email: (empty) Native: Author of the document
DATE_CREATED	10/10/2010	Email: (empty) Native: Date the document was created
TIME_CREATED	10:25 AM	Email: (empty) Native: Time the document was created **This data must be a separate field and cannot be combined with the DATE_CREATED field
DATE_MOD	10/12/2010	Email: (empty) Native: Date the document was last modified
TIME_MOD	07:00 PM	Email: (empty) Native: Time the document was last modified **This data must be a separate field and cannot be combined with the DATE_MOD field
DATE_ACCESSD	10/12/2010	Email: (empty) Native: Date the document was last accessed
TIME_ACCESSD	07:00 PM	Email: (empty) Native: Time the document was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSD field
PRINTED_DATE	10/12/2010	Email: (empty) Native: Date the document was last printed
FILE_SIZE	5,952	Size of native file document/email in KB
PGCOUNT	1	Number of pages in native file document/email
PATH	J:\Shared\SmithJ\October Agenda.doc	Email: (empty) Native: Path where native file document was stored including original file name.
INTFILEPATH	Personal Folders\Deleted Items\Board Meeting Minutes.msg	Email: original location of email including original file name. Native: (empty)
INTMSGID	<000805c2c71b75977050cb8306d1@MSN>	Email: Unique Message ID Native: (empty)
MD5HASH	d131dd02c5e6eec4693d9a0698aff95c2fcab58712467eab4004583eb8fb7f89	MD5 Hash value of the document.
OCRPATH	TEXT/001/EDC0000001.txt	Path to extracted text of the native file

Sample Image Cross-Reference File:

```
IMG0000001,,E:\001\IMG0000001.TIF,Y,,,
IMG0000002,,E:\001\IMG0000002.TIF,,,,
IMG0000003,,E:\001\IMG0000003.TIF,,,,
IMG0000004,,E:\001\IMG0000004.TIF,Y,,,
IMG0000005,,E:\001\IMG0000005.TIF,Y,,,
IMG0000006,,E:\001\IMG0000006.TIF,,,,
```

ADDENDUM B

For Electronic Phone Records, include the following fields in separate columns:

For Calls:

1) Account Number
2) Connection Date – Date the call was received or made
3) Connection Time – Time call was received or made
4) Seizure Time – Time it took for the call to be placed in seconds
5) Originating Number – Phone that placed the call
6) Terminating Number – Phone that received the call
7) Elapsed Time – The length of time the call lasted, preferably in seconds
8) End Time – The time the call ended
9) Number Dialed – Actual number dialed
10) IMEI Originating – Unique id to phone used to make call
11) IMEI Terminating– Unique id to phone used to receive call
12) IMSI Originating – Unique id to phone used to make call
13) IMSI Terminating- Unique id to phone used to receive call
14) Call Codes – Identify call direction or other routing information
15) Time Zone – Time Zone in which the call was received or placed, if applicable

For Text messages:

1) Account Number
2) Connection Date – Date the text was received or made
3) Connection Time – Time text was received or made
4) Originating Number – Who placed the text
5) Terminating Number – Who received the text
6) IMEI Originating – Unique id to phone used to make text
7) IMEI Terminating– Unique id to phone used to receive text
8) IMSI Originating - Unique id to phone used to make text
9) IMSI Terminating- Unique id to phone used to receive text
10) Text Code – Identify text direction, or other text routing information
11) Text Type Code – Type of text message (sent SMS, MMS, or other)
12) Time Zone – Time Zone in which the call was received or placed, if applicable

For Mobile Data Usage:

1) Account Number
2) Connection Date – Date the data was received or made
3) Connection Time – Time data was received or made
4) Originating number – Number that used data
5) IMEI Originating – Unique id of phone that used data
6) IMSI Originating - Unique id of phone that used data
7) Data or Data codes – Identify data direction, or other data routing information
8) Time Zone – Time Zone in which the call was received or placed, if applicable