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CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: December 17, 2007
Decided: February 7, 2008

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Re: *Ryan, et al. v. Gifford, et al.*
Civil Action No. 2213-CC

Dear Counsel:

Counsel for the defendants James Bergman, Michael J. Byrd, Tunc Doluca, B. Kipling Hagopian, Eric P. Karros, M.D. Sampels, and Frank Wazzan (collectively, the "individual defendants") who remain parties to this action[1] have renewed their motion to compel, which I denied without prejudice on November 30, 2007.

[1] Frederick G. Beck, Charles G. Rigg, Alan Hale, Richard C. Hood, Pirooz Parvarandeh, and Vijaykumar Ullal were parties to the individual defendants' original motion to compel but were dismissed from this action by the Court's November 21, 2007 Opinion and Order.

By this renewed motion, the individual defendants seek to compel plaintiffs to fully respond to interrogatory Nos. 1 through 61 of their first set of interrogatories (the "Interrogatories").[2] The individual defendants contend that plaintiffs' responses to the Interrogatories fail to enable the individual defendants to ascertain the factual basis for plaintiffs' claims against each of them. The individual defendants assert that the deficiency of plaintiffs' original responses was not remedied by their supplemental responses. Plaintiffs contend that they remedied any alleged deficiency by providing descriptions and/or Bates numbers for each document on which they rely, but defendants maintain that the responses remain inadequate under Rule 33(d).

In their opposition to this motion, plaintiffs declare that they intend to supplement their fact responses after fact discovery is complete and that they will supplement their responses at an "appropriate time." Pursuant to the fourth amended scheduling order, fact discovery must be completed by February 27, 2008. Given this looming deadline and the other discovery-related motions that this Court has had to resolve, the Court expects that plaintiffs have already completed substantial discovery and should have a sufficient basis upon which to augment their responses. The appropriate time, therefore, has arrived to require plaintiffs to fulfill their pledge to update their responses[3] to the extent that plaintiffs have acquired knowledge since serving their June 26, 2007 responses on the individual defendants. The Court anticipates that these updated responses will remedy any perceived deficiency in plaintiffs' original and supplemental responses so as to provide the individual defendants with information sufficient to enable each individual defendant to understand the factual basis for the claim against him.

Under Rule 33(c), this Court may permit a party to defer answering a contention interrogatory until after the completion of discovery or some later

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[2] Individual defendants state that the Interrogatories were first served on plaintiffs on May 15, 2007 and that plaintiffs served their objections on May 21, 2007. On May 30, 2007, plaintiffs responded to the Interrogatories and amended those responses on June 5, 2007. The individual defendants moved to compel plaintiffs to fully respond to the interrogatories on June 15, 2007. On June 26, 2007, plaintiffs both served supplemental responses to the Interrogatories and filed their opposition to the motion to compel.

[3] *See* Pls.' Opp'n to Defs.' Mot. to Compel, at 3 ("Plaintiffs plan to fully supplement their responses after fact discovery is complete."); *id.* at 4 ("Plaintiffs have made perfectly clear to Defendants that this response will be supplemented based on newly found documents and deposition testimony."); *id.* at 6 ("Plaintiffs have clearly articulated to Defendants that they will supplement their Interrogatory responses at an appropriate time.").

time.[4] Cognizant of the briefing schedule currently in place for the summary judgment motions, the Court orders that service of plaintiffs' updated responses must be accomplished by three days after the close of discovery. The individual defendants have shown no need, such as the need for response before a scheduled deposition,[5] for plaintiffs' responses before the close of fact discovery.[6] Therefore, by March 3, 2008, plaintiffs are directed to supplement and update their responses to reflect any knowledge acquired since their June 26, 2007 responses that would assist the individual defendants in understanding the factual basis for the claims against each one.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

WBCIII:mpd

[4] "An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time." Ct. Ch. R. 33(c).

[5] *See In re Walt Disney Co.*, No. 15452-NC, 2003 WL 22682621, at *1 (Oct. 30, 2003) (granting defendant's motion to compel plaintiffs' answers to interrogatories because defendant was "entitled to understand, before his deposition, the factual basis for the claim against him").

[6] In fact, the Court is rather puzzled by the renewal of this motion to compel. The individual defendants moved for summary judgment in mid-October 2007 and filed a revised brief in support of that motion at the end of December 2007. Summary judgment is appropriate only where there are no genuine issues of material fact. Ct. Ch. R. 56(c). To the extent that moving for summary judgment signals to the Court that the moving party believes that there are no undisputed issues of material fact, filing such a motion would seem to moot or eclipse the need for discovery, as the Court suggested in its November 30, 2007 Opinion and Order.