

WILLIAM B. CHANDLER III
CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: April 21, 2005

Decided: April 21, 2005

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Re: *Korn, et al. v. New Castle County, et al.*
Civil Action No. 767-N

Dear Counsel:

Before the Court is Plaintiffs' Second Motion to Compel and for Leave to Take Depositions (the "Motion"). Having carefully considered the parties' submissions in regards to the Motion and the exhibits thereto, the Motion is granted in part and denied in part. In addition, as the defendants have waived their right to oppose plaintiffs' Motion to Amend their Complaint (because defendants did not file a timely brief in opposition to

the amendment), I hereby grant plaintiffs' leave to file an amended complaint.

With respect to Plaintiffs' Second Set of Interrogatories Directed to Defendants, defendants shall supplement their response to Interrogatory No. 5 in such a way as to detail whether those expenditures were included in the County's budget for the fiscal year in which the particular expenditure was made. No further response is required for Interrogatory Nos. 7 or 8. Interrogatory No. 7 states:

For Fiscal Years 2000, 2001, 2002, 2003, 2004 and 2005, identify the sources (e.g., property tax, real estate transfer tax, federal funds, state funds) of all Non-Sewer Revenues employed by the County to provide for the expenses of operation and maintenance of the County's sewerage systems, including reserves therefore. (For each such source, identify the approximate amount of funds so employed in each Fiscal Year.)

Contrary to plaintiffs' argument in the Motion, this Interrogatory does not require defendants to identify the source of reserve funds used to balance the sewerage budget. Exhibit F to the Motion contains the pertinent information in response to Interrogatory No. 7. The two pages of that Exhibit are sufficiently detailed to respond to Interrogatory No. 7. As such, no further response is required. Interrogatory No. 8 is similar, and Exhibit F to the Motion again provides a sufficiently detailed response, and no further response is required.

As to Interrogatory No. 10, Mr. Singleton will be testifying, “based upon his experience as Secretary of Finance of the State of Delaware,” among other bases, “as to the budgetary processes of the State of Delaware.” There is no indication that defendants intend to offer Mr. Singleton as an expert witness or that he will be providing expert testimony. To the extent that Mr. Singleton’s testimony, based on his personal observations, is relevant, it will be helpful to the Court. The providing of relevant testimony from personal knowledge, however, does not convert Mr. Singleton’s testimony into expert testimony. Plaintiffs, therefore, are not entitled to an interrogatory answer pursuant to Court of Chancery Rule 26(b)(4)(A)(i). Defendants, accordingly, are not permitted to offer Mr. Singleton as an expert unless they first comply with the strictures of Rule 26(b)(4).

Defendants are hereby ordered to amend their answer to Plaintiffs’ Second Request for Admissions Directed to Defendants Nos. 1 and 6. The answers provided do appear to be contradicted by Exhibit F to the Motion and, therefore, are obfuscatory and incomplete, necessitating an amended answer.

With respect to Plaintiffs’ Second Request for Production of Documents Directed to Defendants, defendants shall produce all

documents, including drafts, furnished by NachmanHaysBrownstein, Inc. to the defendants as contemplated in Request No. 1. As to Request No. 3, defendants' production is responsive to the Request and sufficient (compare Exhibits F and I to the Motion). Exhibit I does identify the various sources of the funds deposited in the Sewer Fund. No further production as to Request No. 3 is required.

Finally, plaintiffs have asked for leave to take depositions of Messrs. Finnigan and Singleton because defendants intend to have them provide affidavits in this action. This request is in accordance with the parties' Scheduling Stipulation and Order granted April 13, 2005, which states that further discovery shall be with leave of the Court unless the parties come to a mutual agreement. Depositions of affiants are not prohibited or restricted by the Rules, which allow for broad discovery. Defendants have not argued that permitting the depositions of these two individuals would cause "annoyance, embarrassment, oppression, or undue burden or expense."¹ Plaintiffs, therefore, may take the depositions of Messrs. Finnigan and Singleton upon reasonable notice as contemplated in Rule 30(b)(1).

All supplemental responses, answers and productions contemplated by this Order shall occur by 12:00 noon on April 28, 2005. The depositions

¹ CT. CH. R. 26(c).

may occur on a schedule agreeable to the parties. Finally, plaintiffs' Motion to Amend their Complaint is granted.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive style with a distinct "III" at the end.

William B. Chandler III

WBCIII:amf