

RECEIVED

FEB - 8 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 OFFICE OF SECRETARY

In the Matter of) WT DOCKET NO. 94-147
)
JAMES A. KAY, JR.)
)
Licensee of one hundred sixty four Part 90)
Licenses in the Los Angeles, California, Area)

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge
Richard L. Sippel

**WIRELESS TELECOMMUNICATIONS BUREAU'S
CONSOLIDATED RESPONSE**

1. By Order, FCC 96M-10 (released February 2, 1996), the Presiding Judge directed the Bureau to file, by February 9, 1996, responses to: (a) a Bench Memorandum, filed January 31, 1996, by James A. Kay, Jr. ("Kay"); and (b) Kay's Motion to Strike, filed January 26, 1996. The Bureau hereby submits this consolidated response.

Kay's Bench Memorandum

2. The Bureau continues to believe that Kay's Bench Memorandum, which requests relief from the Presiding Judge, is an unauthorized filing for which permission was neither requested nor granted. Nevertheless, in the interest of ensuring that the Presiding Judge has a complete *and accurate* record before him on the very serious matters in question, the Bureau offers the following comments on the arguments advanced by Kay.

No. of Copies rec'd
List ABCDE

DATE

3. Initially, Kay sets forth a procedural history. Bench Memorandum, pp. 2-3. Remarkably, even Kay's recitation of the chronological events in this case omits information of decisional significance. The Bureau's Interrogatory No. 4 was among a number of written interrogatories that the Bureau properly served on Kay in February 1995. Kay served his answers to the Bureau's interrogatories in March 1995. His answer to Interrogatory No. 4 was succinct:

ANSWER See Kay's response to Document Requests 4 and 5 of the Bureau's First Request for Documents.

Kay did *not* object to Interrogatory No. 4 when he served his answer on the Bureau.¹ To the contrary, Kay's answer clearly implied that all of the information sought by the Bureau in Interrogatory No. 4 could and would be found somewhere among the documents that Kay had already produced and/or would produce.

4. Thereafter, in good faith reliance on Kay's representation, the Bureau diligently and painstakingly examined the thousands of documents that Kay ultimately produced in an effort to ascertain the information sought in Interrogatory No. 4. In May 1995, after having failed to locate the loading information from among the documents that Kay had provided,

¹ Generally, the failure to timely object to an interrogatory constitutes a waiver of any objection. See, e.g., Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981). See also, § 1.323(b) of the Commission's Rules, which states in pertinent part:

Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.

the Bureau filed its motion to compel, seeking a full and complete answer to Interrogatory No. 4. Unaware of Kay's duplicity, however, the Bureau afforded Kay the benefit of the doubt when it stated in its motion to compel at ¶ 3:

The Bureau requests the Presiding Judge to direct Kay to provide the requested accounting of the loading of his stations. If in fact Kay has already provided such a comprehensive listing among the many documents that he has heretofore submitted to the Bureau, then [the] Bureau respectfully requests, in the alternative, that the Presiding Judge order Kay to simply reference the Bates numbers where the requested listing was produced.

5. It was not until Kay filed his opposition to the Bureau's motion to compel in June 1995 that he *revealed for the first time* that the documents upon which he had relied in answering Interrogatory No. 4 did *not* contain the station-specific loading information responsive to Interrogatory No. 4. Given Kay's belated claim that he does not even possess or maintain documents containing station-specific loading information, the only conclusion that can be drawn is that Kay dissembled in his answer to Interrogatory No. 4. This conduct unquestionably constitutes evidence of bad faith and is abusive to the entire discovery and hearing processes. Furthermore, despite the fact that he had already waived his right to object to the interrogatory, Kay fabricated new and meritless defenses in his opposition to the Bureau's motion to compel, including one -- repeated now in his Bench Memorandum -- that the Commission has somehow deregulated away his discovery and statutory § 308(b) obligations.

6. Kay's gamesmanship and chicanery should not be rewarded with a further opportunity to turn over his loading information. Kay has made it exceedingly clear by his

actions since the commencement of this hearing that he cannot be relied upon to comply with the Commission's discovery processes or deal candidly with the Bureau or Presiding Judge. Under the circumstances, and given the Faith Center,² Carol Music,³ and Warren L. Percival⁴ cases and their progeny, no reviewing authority would dispute a conclusion by the Presiding Judge that Kay is basically unfit to be a licensee.

7. Following his recitation of the procedural history, Kay advances five arguments in his Bench Memorandum, none of which has any merit. First, Kay attempts to justify his failure to fully respond to Interrogatory No. 4 on the basis of a 1992 deregulatory ruling which relieved land mobile licensees of the need to regularly file end user information with the Commission. See Bench Memorandum, p. 3. As noted above, Kay made this *same argument* in June 1995 when he opposed the Bureau's motion for an order compelling Kay to respond to Interrogatory No. 4. Furthermore, the Presiding Judge thoroughly considered the argument and rejected it in Order, FCC 95M-203 (released October 31, 1995)("Therefore, it is concluded that the elimination of the end user list requirement through a deregulatory rulemaking does not relieve Kay as a licensee from producing the information pertaining to customer-end users that is sought by the Bureau in a proceeding to show cause why there

² 82 FCC 2d 1 (1980), aff'd, Faith Center, Inc. v. FCC, 679 F.2d 261 (D.C. Cir. 1982), cert. denied, 459 U.S. 1203 (1983).

³ Carol Music, Inc., 37 FCC 379 (1964).

⁴ 8 FCC 2d 333, 334 (1967).

should be no revocation.").⁵ Kay is essentially trying to seek reconsideration of the Presiding Judge's interlocutory Order, without any legal basis for doing so. His argument is as meritless now as it was when he first made it.

8. Kay next argues that he cannot be compelled to create records that he is not required to maintain. Bench Memorandum, p. 6. This is a new argument and one that is fatally flawed. First, Kay is mixing apples and oranges by confusing an interrogatory request with a document request. Thus, there is no basis for Kay's claim, at ¶ 19, that all he need produce in response to Interrogatory No. 4 are documents in his possession, control, or custody.⁶ Furthermore, Kay grossly misstates the prevailing law on the subject of

⁵ Nor did the deregulatory rulemaking relieve Kay from producing his loading information, *regardless of how he opts to maintain his records*, upon request made pursuant to § 308(b) of the Act. Amendment of Part 90 of the Commission's Rules Pertaining to End User and Mobile Licensing Information, 7 FCC Rcd 6344 (1992), at 6345, n. 21.

⁶ Kay presumably is attempting to rely on Rule 33(d) of the Federal Rules of Civil Procedure which provides that where the answer to an interrogatory may be derived or ascertained from documents, the party being interrogated may identify with particularity such documents in lieu of an answer. But Kay has conceded that the information sought in Interrogatory No. 4 cannot be derived or ascertained from the documents that he has provided. Kay cannot legitimately claim that he has answered an interrogatory by producing documents that he knows are unresponsive. This is a deliberate distortion of Rule 33(d) and abusive in the extreme.

interrogatories.⁷ Kay erroneously asserts that he cannot be required to create a compilation of information in response to an interrogatory, citing as authority the cases of Hicks v. Arthur, 159 F.R.D. 468 (E.D.Pa. 1995), and Chronicle Broadcasting Co., 20 FCC 2d 774, 17 R.R. 2d 1189 (Rev. Bd. 1969). However, neither of these cases holds that there is some mandatory principle of law relating to interrogatories which excuses Kay from compiling a station-by-station list of his loading. In Hicks, the presiding judge, relying on Wright and Miller's treatise on Federal Practice and Procedure,⁸ sustained an objection to a particular interrogatory because the interrogatory *would have placed an undue burden* on the responding party to compile the information sought. Indeed, with respect to analyzing whether a party should be compelled to do research and compile information in response to an interrogatory, Wright and Miller clearly state at pp. 306-308 of their treatise:

It would be a mistake, however, to suppose that the fact that answering an interrogatory would require research by the interrogated party is enough to bar the interrogatory in every case. It is not. In order to justify sustaining an objection to an interrogatory on this ground, it must be shown that the research required is unduly burdensome and oppressive. [footnotes omitted]

⁷ There is no basis for Kay's representation, at n. 3 of his Bench Memorandum, that § 1.351 of the Commission's Rules, which deals with evidentiary rules, makes the Federal Rules of Civil Procedure applicable to this proceeding. The Commission's rules governing discovery, including sanctions for abuse of discovery, are derived in part from the Federal Rules of Civil Procedure. Amendment of Part 1, Rules of Practice and Procedure to Provide for Certain Changes in the Commission's Discovery Procedures in Adjudicatory Hearings, 91 FCC 2d 527 (1982), at ¶¶ 3 and 14. While not binding on the agency, the Federal Rules of Civil Procedure provide guidance in Commission adjudicatory proceedings. Cincinnati Bell Telephone Co., 8 FCC Rcd 6709 (1993), at n. 6; J.B. Broadcasting of Baltimore, Ltd., 70 FCC 2d 217 (1978), ¶ 8.

⁸ 8A Charles A. Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure, Civil 2d § 2174 at 303 (1994). Pertinent pages from the treatise are attached for the Presiding Judge's convenience.

Similarly, in Chronicle Broadcasting, Co., 20 FCC 2d 774, 17 RR 2d 1189 (Rev. Bd. 1969), the Review Board utilized the same analysis to sustain an objection to a particular interrogatory that would have required the responding party to poll third party publishers regarding subscription rates. The Review Board agreed with the Presiding Judge that the effort would have been unduly burdensome to the responding party.

9. Contrary to Kay's misplaced assessment of the law, it is well established that the party objecting to an interrogatory on the basis of undue burden or oppression has the responsibility of demonstrating that the burden of collecting the information weighs more heavily than the need for the information to resolve the dispute. In Alexander v. Rizzo, 50 F.R.D. 374 (E.D.Pa. 1970), the district court held that, despite the defendants showing that it would take many man years by the police department to unearth the answers to the interrogatories, "taking into consideration the obvious necessity of this information sought" discovery should proceed. Id. at 376. In Roesberg, Sr. v. Johns-Manville Corp., 85 F.R.D. 292 (E.D.Pa. 1980), the court conducted an exhaustive analysis of what a responding party must show when objecting to a particular interrogatory:

Finally, GAF objects generally to this interrogatory as "overly broad, burdensome, oppressive and irrelevant", a complaint which GAF echoes with virtually every other interrogatory. To voice a successful objection to an interrogatory, GAF cannot simply intone this familiar litany. Rather, GAF must show 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, Trabon Engineering Corp. v. Easton Manufacturing Co., 37 F.R.D. 51, 54 (N.D. Ohio 1964), Stanley Works v. Haeger Potteries, Inc., 35 F.R.D. 551, 555 (N.D. Ill. 1964), by submitting affidavits or offering evidence revealing the nature of the burden. Leumi Financial Corp. v. Hartford Accident & Indemnity Corp., 295

F.Supp. 539, 544 (S.D.N.Y. 1969), Wirtz v. Capital Air Service, Inc., 42 F.R.D. 641, 643 (D.Kan. 1967). The court is not required to "sift each interrogatory to determine the usefulness of the answers sought". Klausen v. Sidney Printing & Publishing Co., 271 F.Supp. 783, 784 (D.Kan. 1967). See also, Hoffman v. Wilson Line, Inc., 7 F.R.D. at 74. The detail in the complaint specifies the necessary relevance of the interrogatories. In re Folding Carton Antitrust Litigation, 83 F.R.D. at 254, McClain v. Mack Trucks, Inc., 85 F.R.D. at 57. The burden now falls upon GAF, the party resisting discovery to clarify and explain its objections and to provide support therefor. Gulf Oil Corp. v. Schlesinger, 465 F.Supp. 913, 916-17 (E.D.Pa. 1979), In re Folding Carton Antitrust Litigation, 83 F.R.D. 260, 265 (N.D. Ill. 1979), Robinson v. Magovern, 83 F.R.D. 79, 85 (E.D.Pa. 1979), Flour Mills of America, Inc. v. Pace, 75 F.R.D. 676, 680 (E.D.Okl. 1977). The number and detailed character of interrogatories is not alone sufficient reason for disallowing them unless the questions are "egregiously burdensome or oppressive". Wirtz v. Capital Air Service, Inc., 42 F.R.D. at 643. See also Anderson Co. v. Helena Cotton Oil Co., 117 F.Supp. 932, 941 (E.D.Ark. 1953). Nor is the fact that answering the interrogatories will require the objecting party to expend considerable time, effort and expense, Wirtz v. Capital Air Service, Inc., 42 F.R.D. at 643, or may interfere with the defendant's business operations. In re Folding Carton Antitrust Litigation, 83 F.R.D. at 254. See also Klausen v. Sidney Printing & Publishing Co., 271 F.Supp. at 784, Rogers v. Tri-State Materials Corp., 51 F.R.D. 234, 245 (N.D.W.Va. 1970)

Id. at 296-97.

10. It is clear from the foregoing that when a timely objection to an interrogatory is made on the basis of undue hardship, the prevailing law calls for the presiding officer to weigh the equities involved in determining whether to require the responding party to compile the requested information. In the instant case, Kay made no timely objection to Interrogatory No. 4 on the basis of undue burden or oppression. Indeed, he did not object to the interrogatory at all when he submitted his purported "answer." Furthermore, even if Kay had attempted to make a timely claim of hardship, such claim would not have prevailed. Kay belatedly interposed a claim of hardship in his opposition to the Bureau's motion to

compel. However, the Presiding Judge properly rejected that claim and ordered Kay to fully answer the interrogatory. Order, FCC 95M-203 (released October 31, 1995). The Presiding Judge's Order requiring Kay to produce a station-specific list of his loading was entirely proper given the fact that: (a) no timely objection was made to the interrogatory; (b) the Commission has *already determined* that no undue burden exists with respect to providing loading information;⁹ (c) the information sought is uniquely available to Kay; (d) the information sought is relevant to the designated issues; (e) the information sought is critical to the Bureau's task of satisfying its burdens in this case; and (f) the information sought is vital to the Commission's fulfillment of its regulatory licensing responsibilities.

11. Kay next argues that the Bureau has not satisfied its burden for summary decision of the § 308(b) issue because: (a) "the Bureau has not produced any evidence . . . that Kay has not produced all information in his possession in response to Interrogatory No. 4." and (b) "[t]he Bureau's entire Motion is predicated on the allegation that Kay has failed to allocate the mobiles to a particular station for a particular customer." Bench

⁹ Nearly four years ago, the Commission fully considered whether requiring land mobile licensees to substantiate their loading in compliance cases would constitute an undue burden. The Commission unequivocally held that it would not, given the critical nature that loading information plays in regulating land mobile licensees. Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems, 7 FCC Rcd 5558 (1992), at ¶¶ 17-22; Amendment of Part 90 of the Commission's Rules Pertaining to End User and Mobile Licensing Information, 7 FCC Rcd 6344 (1992), at ¶¶ 5-8. In order to ensure that there would be no undue hardship, the Commission afforded licensees flexibility with respect to the types of records upon which they could rely to substantiate their loading. However, the Commission reminded licensees of their ongoing obligation to deal candidly and truthfully with the Commission. 7 FCC Rcd at 5561, ¶ 22.

Memorandum, pp. 7-8. With respect to the first claim, Kay again is confusing a written interrogatory with a document request. Simply because Kay has provided documentary materials in response to the Bureau's request for documents, does not relieve him of the obligation to fully answer Interrogatory No. 4. In this regard, it belies logic how Kay can continue to maintain that he has already fully responded to Interrogatory No. 4 when the documents upon which he relies, by his own admission, do not contain the requested loading information. Kay's second claim, that the Bureau has not satisfied its burden for summary decision of the § 308(b) issue, rests, in part, on the disingenuous notion that Interrogatory No. 4 does not seek information on a station-by-station basis. It belies logic how Kay can make this argument in good faith when, at p. 2 of his Bench Memorandum, Kay quotes the interrogatory verbatim, and the interrogatory explicitly states "With respect to *each of the call signs* listed in Appendix A" (emphasis added).

12. Kay's next argument, that the Bureau has not demonstrated that Kay's licenses should be revoked, lacks merit. There are at least *two* independent grounds for concluding that Kay is basically unfit to be a licensee. First, it is unnecessary to hold a hearing in this proceeding on any of the Part 90-compliance issues because Kay has violated § 308(b) of the Act, willfully and repeatedly.¹⁰ Section 308(b) of the Act places a fundamental, statutory-

¹⁰ There is, of course, no need to find that the violations were willful when they have been repeated. The Bureau has heretofore, in filings and at oral argument, provided ample grounds for concluding that Kay has willfully and repeatedly violated § 308(b) of the Act. Among the evidence that the Bureau presented was the predesignation correspondence between Kay and the Commission. That correspondence collectively constitutes the *best evidence* of Kay's willingness at the time to deliberately engage in actions designed to frustrate the Commission's staff and impede the Agency from carrying out its statutory

based obligation on licensees to provide, upon proper request, certain specific information sought by the Commission. It is well established that the §308(b) issue is a dispositive issue because it goes to Kay's basic qualifications to function as a licensee.¹¹ Section 1.251(e) of the Commission's Rules states that if a dispositive issue is decided by summary decision "no hearing (or further hearing) will be held." The reason is obvious: it would be a complete waste of scarce Commission resources to hold further hearings on the qualifications of someone who has already been found to be unqualified.¹² There is a second, perhaps more ominous, reason why a hearing is unnecessary in this instance. Kay has abused the Commission's discovery processes by dissembling in his answer to Interrogatory No. 4, deliberately withholding relevant information, and defying the Presiding Judge's valid discovery Order. If the Faith Center and related cases collectively stand for anything, it is that the Commission does not tolerate abuses of its discovery processes.

13. Kay's final claim is that the Bureau's Motion for Summary Decision and Order Revoking Licenses is premature. Bench Memorandum, p. 12. Kay essentially argues -- as he did in his opposition to the Bureau's motion for summary decision-- that the Bureau should have sought *another* order from the Presiding Judge compelling Kay to fully answer

responsibilities. Kay's post-designation actions firmly establish a continuing pattern of willful misconduct insofar as § 308(b) is concerned.

¹¹ See ¶ 6, supra.

¹² Kay appears to suggest in his Bench Memorandum the contrary view that he is entitled as a matter of law to a hearing on the Part 90 compliance issues in this case even if the § 308(b) issue is decided against him. However, Kay cites no authority for this proposition, and the Bureau is aware of none.

Interrogatory No. 4. The Bureau has already fully addressed this matter in its reply filing and it incorporates those reply comments herein by reference. See Bureau's January 22, 1996, Reply to Opposition to Motion for Summary Decision and Order Revoking Licenses, pp. 2-4.

14. In sum, Kay has already had all the process to which he is due -- and more. Kay has had the opportunity to advance his positions on the § 308(b) issue in: (a) his own motion for summary decision; (b) his reply to the Bureau's opposition to his motion for summary decision; (c) his opposition to the Bureau's motion for summary decision; (d) his motion to strike the Bureau's authorized reply; (e) his Bench Memorandum; and (f) at the oral argument. Kay also has had the opportunity to produce his loading information over a period of more than two years. Despite all these opportunities, Kay has neither produced the requested loading information nor advanced any justifiable reason for refusing to do so. Furthermore, he has engaged in abusive, contemptuous and dilatory behavior and knowingly deceived the Bureau and Presiding Judge during discovery in this proceeding. By his own actions, Kay has revealed himself to be unreliable and unqualified to hold Commission licenses. The public interest would be served if Kay were no longer a Commission licensee.

Kay's Motion to Strike

15. Kay requests the Presiding Judge to strike the Bureau's January 22, 1996, Reply to Opposition to Motion for Summary Decision and Order Revoking Licenses. Kay argues

that the Reply improvidently went beyond the matters raised in Kay's Opposition. As shown below, Kay's argument lacks merit.

16. The Bureau's Reply consists of a total of nine paragraphs. Paragraph No. 1 provides introductory, non-substantive information. Paragraph No. 2 is directly responsive to Kay's claim in his Opposition that the Bureau's Motion for Summary Decision and Order Revoking Licenses is procedurally defective because it is not supported by an affidavit. Paragraph No. 3 is directly responsive to Kay's claim in his Opposition that the Bureau should have filed another motion to compel, rather than a motion for summary decision. Paragraph Nos. 4 and 5 are directly responsive to Kay's claim in his Opposition that the Bureau is seeking summary decision based on a general failure by Kay to produce discovery materials. Paragraph No. 6 is directly responsive to Kay's claim in his Opposition that facts concerning his predesignation violations of § 308(b) of the Act bear no relevance to the Bureau's Motion for Summary Decision and Order Revoking Licenses. Paragraph Nos. 7 and 8 are directly responsive to Kay's excuses for failing to comply with the Presiding Judge's discovery Order, FCC 95M-203 (released October 31, 1995). Paragraph No. 9 provides a summation.

17. As shown above, the Bureau Reply was strictly limited to responding to the various claims and factual and legal errors in Kay's Opposition. Furthermore, the Bureau was authorized by the Presiding Judge to proffer a reply pleading,¹³ and it did so in complete

¹³ See Order, FCC 96M-1 (released January 18, 1996).

compliance with the Presiding Judge's instructions.

Respectfully submitted,
Michele C. Farquhar
Chief, Wireless Telecommunications Bureau



W. Riley Hollingsworth
Deputy Associate Bureau Chief



William H. Kellett
Gary P. Schonman
Anne Marie Wypijewski
Attorneys

Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554
(202) 418-1430

February 8, 1996

OBJECTIONS TO INTERROGATORIES § 2174
Rule 33

is also a waiver of the objection.²⁴

If a party moves under Rule 37(a) to compel answers to interrogatories that have been objected to, the court will ordinarily rule on the objection and the motion at that time, but under unusual circumstances it may defer ruling on the motion and thus delay the time when an answer, if any, will be required.²⁵

2174. — Grounds for Objections

Interrogatories may be objected to on the ground that they are outside the scope of discovery as defined in Rule 26(b), either because they seek information not relevant to the subject matter of the action,¹ or information that is privileged,² or information that is excluded by the work-product rule and for which the requisite showing has not been made,³ or information of experts that is not discoverable.⁴ Objections on these grounds have been discussed in connection with Rule 26(b).

But this does not exhaust the grounds on which objection can

24. Voluntary answer

National Transformer Corp. v. France
Mfg. Co., D.C.Ohio 1949, 9 F.R.D. 606.

We need not consider whether the research that may be called for is unduly burdensome, since plaintiff answered the interrogatories without interposing any objection and is now limited to a claim that his answer is insufficient." *Skelton & Co. v. Goldsmith*, D.C.N.Y.1969, 49 F.R.D. 128, 130 n. 1.

Whenever an answer accompanies an objection to interrogatory, objection is deemed waived and the answer, if responsive, stands. *Meese v. Eaton Mfg. Co.*, D.C.Ohio 1964, 35 F.R.D. 162.

Defendant waived any objection to interrogatories on ground that they called for legal conclusions and legal theories by expressly undertaking to supply further answer when it had completed discovery. *Riley v. United Air Lines, Inc.*, D.C.N.Y.1962, 32 F.R.D. 230.

Herbst v. Chicago, R.I. & P.R. Co., D.C.Iowa 1950, 10 F.R.D. 14.

25. Defer ruling

In patent-infringement action, relevancy of interrogatories inquiring as to any other patent applications filed by plaintiffs would be ruled on after defendant answered complaint since patent applications must be kept secret unless they are materially connected with pending litigation. *Meese v. Eaton Mfg. Co.*, D.C.Ohio 1964, 35 F.R.D. 162.

Momand v. Paramount Pictures Distributing Co., D.C.Mass.1941, 36 F.Supp. 568, 574.

§ 2174

1. Not relevant

See §§ 2007-2015.

2. Privileged

See §§ 2016-2020.

3. Work product

See §§ 2021-2028.

4. Expert information

See §§ 2029-2034.

be made. Rule 33 does not sanction oppression by interrogatories,⁶ a reality emphasized by the recent imposition of a limitation on the number of interrogatories a party can ask without leave of court⁶ and the general concern with proportionality in discovery.⁷ An objection will be sustained if either a particular interrogatory⁸ or a set of interrogatories⁹ is thought to be so broad and all-inclusive as

5. Does not sanction oppression

Zenith Radio Corp. v. Radio Corp. of America, D.C.Del.1952, 106 F.Supp. 561, 565 n. 6, reconsideration denied D.C.Del.1953, 109 F.Supp. 913.

6. Number of interrogatories

See § 2168.1.

7. Proportionality

See § 2008.1.

8. Interrogatory too broad

Interrogatory asking plaintiff what it had done that would demonstrate that it had acted with due diligence in investigation of an alleged violation of 15 U.S.C.A. § 1 was overbroad, ambiguous, and called for a legal conclusion, and an answer would not be compelled. Jewish Hospital Assn. of Louisville v. Struck Const. Co., D.C.Ky.1978, 77 F.R.D. 59.

An objection will be sustained if either a particular interrogatory or a set of interrogatories is thought by the court to be so broad and all inclusive as to be burdensome. Flour Mills of America, Inc. v. Pace, D.C.Okl.1977, 75 F.R.D. 676, 680, citing Wright & Miller.

In private antitrust action against corporation owned by and representing insurance companies and providing adjustment services, interrogatory seeking identification of documents reflecting communications between defendant and independents was too broad, but if plaintiff could list relevant subject matter, court would then sustain motion to compel answers in next wave of discovery; defendant should, however, presently identify booklets and pamphlets sent from or to inde-

pendent adjusters relating to defendant's claim adjustment service. Professional Adjusting Systems of America, Inc. v. General Adjustment Bureau, Inc., D.C.N.Y.1974, 373 F.Supp. 1225.

It is unduly burdensome to require corporate opponent to both answer interrogatory and identify source of its answer and any other source of information relating to subject of interrogatory in context of civil actions under Title VII of Civil Rights Act of 1964. Evans v. Local Union 2127, Intern. Broth. of Elec. Workers, AFL-CIO, D.C.Ga.1969, 313 F.Supp. 1354.

Portion of interrogatory in personal-injury action asking defendant to recite all information he possessed relating to accident was too broad to permit an effective response, and plaintiff was permitted to amend it to omit objectionable portion. Mort v. A/S D/S Svendborg, D/S AF 1912 A/S, D.C.Pa. 1966, 41 F.R.D. 225.

Union's interrogatory asking employer to state whether employer's attorney was authorized to act with full authority on all matters contained in complaint between certain dates was too broad. Truck Drivers & Helpers Local Union No. 696 v. Grosshans & Petersen, Inc., D.C.Kan.1962, 209 F.Supp. 161.

9. Set too broad

Set of interrogatories, which was two inches high and 381 pages long, which contained 2,736 questions and subparts and which, conservatively, would cost \$24,000 to answer, was unduly burdensome and oppressive when viewed with relation to the case and

to be burdensome. These are the sorts of situations that led to numerical limitations on interrogatories. In making that determination the courts have for years adopted a proportionality approach that balances the burden on the interrogated party against the benefit that having the information would provide to the party submitting the interrogatory.¹⁰ The recent trend toward guarding

would be stricken sua sponte. In re U.S. Financial Securities Litigation, D.C.Cal.1975, 74 F.R.D. 497.

Set of 70 interrogatories that were filed in action for allegedly racially discriminatory employment practices, many of which contained from two to 23 subparts and which sought mass of information not only with respect to race but also with respect to sex for period beginning prior to defendant's incorporation and opening of its hospital where alleged discrimination took place was overbroad and defendant was entitled to protective order. Jones v. Holy Cross Hospital Silver Spring, Inc., D.C.Md.1974, 64 F.R.D. 586.

Where the 209 interrogatories containing 432 separate questions filed by plaintiff in civil-rights action against police officers and others were in the majority irrelevant, overbroad, and improper and much of what was apparently sought was information more readily and usually obtained through the use of oral depositions, interrogatories were improper and would be stricken. Boyden v. Troken, D.C.Ill. 1973, 60 F.R.D. 625.

Where, as to interrogatories presented by plaintiffs in action for loss of business due to defendants' allegedly false statements in disparagement of plaintiffs' resort, some were entirely irrelevant, others were repetitive, and many were nothing more than statements, allegations and conclusions by author, rather awkwardly cast in form of questions, and some "questions" contained statements which possibly might be proper subjects of a question for admissions and others sought discovery of materials which might be

proper subject for production, interests of justice would best be served by requiring plaintiffs to submit new interrogatories. Hutter v. Frederickson, D.C.Wis.1972, 58 F.R.D. 52.

This rule governing interrogatories does not license the unlimited quizzing of an adverse party. Greene v. Raymond, D.C.Colo.1966, 41 F.R.D. 11.

Defendant's objections to interrogatories which required defendant to state "all" facts in his possession relative to each occurrence would be sustained on ground that interrogatories were too general and all-inclusive to be answered. Stovall v. Gulf & So. Am. S.S. Co., D.C.Tex.1961, 30 F.R.D. 152.

10. Balance burden against benefit Rich v. Martin Marietta Corp., C.A.10th, 1975, 522 F.2d 333, 343, citing Wright & Miller.

Answers to interrogatories requesting data on every computer programmer hired by large conglomerate in previous seven years would not be compelled in view of interrogatories' burdensomeness. Halder v. International Tel. & Tel. Co., D.C.N.Y.1977, 75 F.R.D. 657.

In patent licensor's action wherein licensees sought damages for alleged anti-trust violations, where licensees' interrogatories would require licensor to meticulously examine everything in licensor's files for anything that mentioned or pertained to any apparatus or process used by any licensee and believed by licensor to be infringing, interrogatories were unduly burdensome and oppressive. Deering Milliken Research Corp. v. Tex-Elastic Corp., D.C.S.C.1970, 320 F.Supp. 806.

Although plaintiff was entitled to explore the relationship of defendant to a named medical expert, interrogatories requesting complete details of all referrals to the expert for examination over a three-year period would shed little light upon the relationship between defendant and the expert and was not sufficiently related to the issue of possible bias to justify putting the defendant to the inconvenience and expense of assembling the information. *DaSilva v. Moore-McCormack Lines, Inc.*, D.C.Pa.1969, 47 F.R.D. 364.

Objection to plaintiff's interrogatory in patent-oriented declaratory judgment action would be sustained, when interrogatory would necessarily involve an enormous number of documents, and value of material was far outweighed by effort that would be required to accumulate such mass of information. *Struthers Scientific & Int'l Corp. v. General Foods Corp.*, D.C.Tex.1968, 45 F.R.D. 375.

Objections to proposed interrogatories would be sustained on ground that a large number of the interrogatories would entail a great deal of labor in answering and were of doubtful usefulness, and on the further ground that, as to a large number of them, the witness disclaimed any knowledge whereby answer might be made. *Fox v. Fisher*, D.C.Tenn.1941, 39 F.Supp. 878.

Cf.

When it is clear from face of interrogatory considerable amount of effort will be necessary to answer it and purpose of interrogatory is not to determine existence of an issue but to obtain evidence to buttress position on issue, then interrogating party should come forward with some evidence to show that issue is in fact in case. *Leumi Financial Corp. v. Hartford Acc. & Indem. Co.*, D.C.N.Y.1969, 295 F.Supp. 539.

—objection overruled

In folding-carton antitrust litigation, interrogatories would not be unduly burdensome because they sought information about individual transactions over a 15-year period, where information sought about purchasing practices was relevant to proof of conspiracy, impact, and class certification, so that because the interrogatories themselves were relevant, the fact that answers to them would be burdensome and expensive was not in itself a reason for refusing to order discovery that was otherwise appropriate; because the purchasing practices of plaintiffs were a relevant inquiry throughout the alleged 15-year conspiracy period, answering the interrogatories for the 15-year period was not burdensome, especially because defendants had been required to respond for the whole alleged conspiracy period and beyond on matters at issue. *In re Folding Carton Antitrust Litigation*, D.C.Ill.1979, 83 F.R.D. 260.

That production of documents would be burdensome and expensive and would hamper some of defendants' business operations is not in itself a reason for refusing to order discovery that is otherwise appropriate; such principle is equally true for answering of interrogatories. *In re Folding Carton Antitrust Litigation*, D.C.Ill.1978, 83 F.R.D. 251.

In action arising from alleged incident of police brutality in which it was alleged that defendants mayor and police commissioner were negligent in failing to give officers adequate training and supervision on avoiding police brutality and in failing to test officers for racial prejudice, violent propensities and emotional instabilities, interrogatory as to prior reports received by such defendants as to alleged police brutality and as to the dispositions thereof and action taken as a result, though not limited to reports concerning the officers involved in incident with plaintiff, was relevant and perhaps crucial to plaintiff's case, and

against
tions m

Int
an obje
adequat

thus de
answer
might
Culp v.
136.

Where de
suit did
tion of
swers
some, o
and pla
to inter
docume
hance
tion, de
answer
names
and use
fringing
sales re
tramat
60 F.R.I

Interrogat
swered,
the corre
suming
informat
of the c
custody
Georgia
F.R.D. 1.

Value to
weighed
defenda
Advertisi
F.R.D. 59

11. Unne
When inte
were bro
an harass
order tha
to comply
an abuse
ard, C.A.

against discovery abuse may incline courts to approach such questions more strictly.

Interrogatories that are unnecessary are objectionable,¹¹ and an objection may be sustained if the interrogatory objected to is adequately covered by other interrogatories.¹² But objections to

thus defendants would be required to answer interrogatory even though it might impose heavy burden on them. *Culp v. Devlin*, D.C.Pa.1978, 78 F.R.D. 136.

Where defendant in patent-infringement suit did not demonstrate that production of requested documents and answers would be annoying, burdensome, or completely irrelevant to suit, and plaintiff contended that answers to interrogatories and production of documents would significantly enhance ability to present cause of action, defendant would be required to answer interrogatories relating to names and addresses of purchasers and users of defendant's allegedly infringing equipment and to produce sales records. *Roto-Finish Co. v. Ultramatic Equipment Co.*, D.C.Ill.1973, 60 F.R.D. 571.

Interrogatory was required to be answered, even though preparation of the correct answer would be time consuming and probably costly, since the information was crucial to the issues of the case and was in the exclusive custody of the defendant. *King v. Georgia Power Co.*, D.C.Ga.1970, 50 F.R.D. 134.

Value to plaintiff of information outweighed annoyance and expenses to defendant. *Seff v. General Outdoor Advertising Co.*, D.C.Ohio 1951, 11 F.R.D. 597.

11. Unnecessary

When interrogatories filed by taxpayer were broad and lacked utility save as an harassment to the United States, order that United States did not have to comply with such discovery was not an abuse of discretion. *U.S. v. Howard*, C.A.3d, 1966, 360 F.2d 373.

To avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to litigation at hand. In re *U.S. Financial Securities Litigation*, D.C.Cal.1975, 74 F.R.D. 497.

Interrogatory asking corporation if it had made such inquiry as would enable it to make full and complete answers was objectionable as unnecessary. *Sutherland Paper Co. v. Grant Paper Box Co.*, D.C.Pa.1948, 8 F.R.D. 416.

Objections sustained to interrogatories where the answers would be useful only in connection with information sought by other improper interrogatories. *Savannah Theatre Co. v. Lucas & Jenkins*, D.C.Ga.1943, 10 F.R.D. 461.

12. Already covered

Where plaintiff, in answer to prior interrogatories, had stated that reasonable value of boat was \$38,000 before fire and zero after fire and that boat had been used only a few hours prior to loss and therefore market value immediately prior to loss was the same as sale price of \$38,000, objection to interrogatory inquiring into factual contentions supporting claim for \$38,000 damages would be sustained. *Lincoln Gateway Realty Co. v. Carri-Craft, Inc.*, D.C.Mo.1971, 53 F.R.D. 303.

When interrogatory was repetitious, redundant and tautological to another interrogatory, an answer thereto would not be required. *Payer, Hewitt & Co. v. Bellanca Corp.*, D.C.Del.1960, 26 F.R.D. 219.

Defendant's interrogatories, seeking information similar to that sought in

interrogatories may not be used as a means of collateral attack on the sufficiency of the complaint or as a vehicle for having the court decide the issues presented on the merits of the case.¹³

As a general rule a party in answering interrogatories must furnish information that is available to it and that can be given without undue labor and expense.¹⁴ But a party cannot ordinarily

interrogatories previously propounded by plaintiff, were improper. *Woods v. Kornfeld*, D.C.Pa.1949, 9 F.R.D. 196.

Objections to interrogatories that were covered by other interrogatories would be sustained. *B.B. Chemical Co. v. Cataract Chem. Co.*, D.C.N.Y.1938, 25 F.Supp. 472.

Cf.

In folding-carton antitrust litigation, although plaintiffs' objections to defendants' interrogatories on ground of repetition were proper to certain extent, court would still require answers to those interrogatories, and if all information had been previously produced sufficient to derive an answer to the interrogatories, plaintiffs might demonstrate good cause for a protective order as to those interrogatories, and if a protective order was granted, plaintiffs would still have to identify the documents from which answers to interrogatories could be obtained. In *re Folding Carton Antitrust Litigation*, D.C.Ill.1979, 83 F.R.D. 260.

But cf.

Interrogatories were not objectionable as not propounded in good faith merely because codefendant had theretofore answered interrogatories concerning the same matter, in absence of showing that they were unnecessarily repetitious. *Rediker v. Warfield*, D.C.N.Y. 1951, 11 F.R.D 125.

13. Decide issues

On motion addressed to interrogatories, court has no authority to make decision as to issues in case. *U.S. v. 216 Bottles of Sudden Change, Div. Hazel Bishop Inc.*, D.C.N.Y.1965, 36 F.R.D. 695.

When presently objecting defendants had not moved to strike the complaint, they could not collaterally attack the complaint by way of objections to interrogatories. *Curtis v. Loew's Inc.*, D.C.N.J.1957, 20 F.R.D. 444.

14. Information available to him

Party cannot refuse to answer interrogatory simply because he would have to consult books or documents in order to prepare response. *Flour Mills of America, Inc. v. Pace*, D.C.Okla.1977, 75 F.R.D. 676.

Interrogatories seeking information known by defendant's employees who witnessed incident were not objectionable where questions called for answers that could be readily obtained by person answering interrogatories; if answers were not available after reasonable inquiries to employees who had knowledge of alleged incident, the answer could so state. *Ballard v. Allegheny Airlines, Inc.*, D.C.Pa.1972, 54 F.R.D. 67.

Pilling v. General Motors Corp., D.C.Utah 1968, 45 F.R.D. 366, 369-370.

Brown v. Dumbar & Sullivan Dredging Co., D.C.N.Y.1948, 8 F.R.D. 107.

A party cannot be forced to prepare his opponent's case nor to make investigations for his adversary, but objection that preparing an answer to interrogatory would be an undue burden is not available when information can reasonably be furnished. *Territory of Alaska v. The Arctic Maid*, D.C.Alaska 1955, 15 Alaska 667, 135 F.Supp. 164.

An interrogated party must furnish relevant information in his possession

be forced
tories th
search, c
are in m

that car
labor or
ments, 1
1947, 71

Ashby v. W
duction
791 P.2c
citing W

Ramada In
Inc., De
973, citi

15. Prep:
No party n
rogating
nor will
questioe
ter or qu
densome.
1973, 60

Party must
interroga
readily av
be requir
independ
quire suc
Lacoste v.
1973, 60

Interrogator
device fo
party to
case for
heuser-B
F.R.D. 24

16. Invest
To the exte
interrogat
audit, int
burdensom
against v
brought v
to questio
sources of
End Repr
1976, 75 1

eral attack
ing the cou
18

gatories mu
can be giv
not ordinari

ting defend
strike the
t collateral
by way of
ries. Curti
.1957, 20 F.R.

illable to h
answer inter
e would hav
uments in
Flour Mill
e, D.C.Okl.19

ng inform
s employe
are not obje
is called for
readily obtai
y interrogat
t available
o employe
ged incident
Ballard v.
D.C.Pa.1972

Motors C
F.R.D. 306

Sullivan Dre
F.R.D. 107

ed to prepar
o make inve
ry, but obje
swer to inter
lue burden
mation can
d. Territo
Maid, D.C.A
135 F.Supp

must furnish
his posses

be forced to prepare its opponent's case.¹⁵ Consequently interroga-
tories that require a party to make extensive investigations, re-
search, or compilation or evaluation of data for the opposing party
are in many circumstances improper.¹⁶

that can be obtained without great
labor or expense. *Cinema Amuse-
ments, Inc. v. Loew's Inc.*, D.C.Del.
1947, 7 F.R.D. 318.

*Abbey v. Western Council, Lumber Pro-
duction and Industrial Workers*, 1990,
791 P.2d 434, 437, 117 Idaho 684,
citing *Wright & Miller*.

*Canada Inns, Inc. v. Dow Jones & Co.,
Inc.*, Del.Super.1986, 523 A.2d 968,
973, citing *Wright & Miller*.

Prepare opponent's case
A party may be compelled to do inter-
rogating party's investigation for him,
nor will he be required to answer
questions concerning privileged mat-
ter or questions that are unduly bur-
densome. *Olmert v. Nelson*, D.C.D.C.
1972, 60 F.R.D. 369.

A party must provide by way of answers to
interrogatories the relevant facts
readily available to it but it should not
be required to enter into extensive
independent research in order to ac-
quire such information. *La Chemise
Lacoste v. Alligator Co., Inc.*, D.C.Del.
1973, 60 F.R.D. 164.

Interrogatories should not be used as a
device for compelling interrogated
party to prepare the interrogator's
case for interrogator. *Kainz v. An-
hauer-Busch, Inc.*, D.C.Ill.1954, 15
F.R.D. 242.

Investigation or research
to the extent that complete answer to
interrogatory would have required an
extensive search, interrogatory was excessively
burdensome; however, city officials
against whom civil-rights suit was
brought would be ordered to respond
to question in part by disclosing any
sources of external funds. *Alliance to
Abolish Repression v. Rochford*, D.C.Ill.
1976, 75 F.R.D. 430.

When plaintiff brought action on bro-
kers' blanket bond against insurer
and timeliness of notice of claim was
an issue, objection to interrogatories
requiring insurer to state how it han-
dled claims on bonds similar to that
involved from time bond was issued to
plaintiff to about five months after
last transaction for which recovery
was sought would be sustained in ab-
sence of any evidence of estoppel be-
fore court which was loath to compel
insurer to search files to compile what
might prove to be useless information.
*Leumi Financial Corp. v. Hartford
Acc. & Indem. Co.*, D.C.N.Y.1969, 295
F.Supp. 539.

Interrogatories were permissible insofar
as they required claimant to disgorge
information within its knowledge or
possession, but it would be unreason-
able to require claimant to search for
facts and compile outside data and
citations to literature not within its
possession or known to it. *U.S. v. 216
Bottles of Sudden Change*, by *Lanolin
Plus Lab. Div. Hazel Bishop Inc.*,
D.C.N.Y.1965, 36 F.R.D. 695, 702.

Interrogatories were too broad, general,
burdensome, and oppressive, when
they sought communications between
defendant and over eighty patent li-
censees over almost quarter of centu-
ry. *Cone Mills Corp. v. Joseph Ban-
croft & Sons Co.*, D.C.Del.1963, 33
F.R.D. 318.

Interrogatory that would require party
to investigate all of its officers or em-
ployees for eight-year period to discov-
er if they had certain information was
burdensome and oppressive. *Fischer
& Porter Co. v. Sheffield Corp.*,
D.C.Del.1962, 31 F.R.D. 534.

On objection by defendant to interroga-
tories propounded to defendant before

Thus a party should provide relevant facts readily available to it but should not be required to enter upon independent research in order to acquire information merely to answer interrogatories.¹⁷ If the data is equally available to both parties, the party seeking the information should do its own research.¹⁸ Even if the data is in the

trial, court would distinguish between requests for information that reasonably might be expected to be available to defendant as matters of record or personal knowledge of its officers or agents, and requests that defendant analyze, evaluate, or substantiate certain facts or information. *Dusek v. United Air Lines, Inc.*, D.C.Ohio 1949, 9 F.R.D. 326.

Interrogatories requesting information as to how many days plaintiff was absent from work in year of his accident, whether records indicated reason for any absences, whether defendant caused plaintiff to submit to medical examination prior to being hired and at intervals, name of examining physician and nature of findings on those occasions were objectionable as requiring detailed and exhaustive search in order to procure necessary information. *Jones v. Pennsylvania R. Co.*, D.C.Ill.1947, 7 F.R.D. 662.

When interrogatories propounded by plaintiff in Price Administrator's action to recover damages on account of overceiling sale of merchandise asked defendant to perform extensive accounting and auditing operations of its own books and records in order that it might prepare and present to plaintiff in tabulated form, or in other convenient form, every minute detail upon which plaintiff might base his recovery of damages, interrogatories were objectionable as burdensome, vexatious and onerous. *Porter v. Montaldo's*, D.C.Ohio 1946, 71 F.Supp. 372.

17. Independent research

Lugo v. Heckler, D.C.Pa.1983, 98 F.R.D. 709, 715, citing *Wright & Miller*.

When plaintiff would be required to search and analyze more than five-million documents in order to furnish answers to first group of interrogatories served on plaintiff by certain of the defendants, plaintiff's objections to the first group of interrogatories was required to be sustained by district court. *Riss & Co. v. Association of American RRs.*, D.C.D.C.1959, 23 F.R.D. 211.

Under rule relating to interrogatories to parties, plaintiffs were not entitled to require defendant to answer interrogatory eliciting all United States and Pennsylvania laws, rules and regulations pertaining directly or indirectly to treatment of meats and similar products by packing companies for destruction and/or prevention of certain organisms in such food products. *Kluchenac v. Oswald & Hees Co.*, D.C.Pa.1957, 20 F.R.D. 87.

Interrogatory seeking memoranda concerning arrangements for providing service for large consumers in the TVA area was not required to be answered when to do so would be oppressive and unduly expensive. *Volunteer Elec. Co-op. v. TVA*, D.C.Tenn. 1954, 139 F.Supp. 22.

18. Equally available

Hoffman v. United Telecommunications, Inc., D.C.Kan.1967, 117 F.R.D. 436.

Since all information necessary to answer disputed interrogatories was equally available to defendant by depositions, or records in audit, no compelling reason existed to order plaintiff to answer such interrogatories, which plaintiff alleged would require over 10,000 answers. *Spector Freight Systems, Inc. v. Home Indem. Co.*, D.C.Ill.1973, 58 F.R.D. 162.

Ch. (

poss

inter

expe

34¹⁸

Inter

ma

at t

ea

des

the

ma

req

dir

anc

sit

51

Obje

wa

sif

ter

Co

D.

In d

cr

ret

ra

m

di

ot

pr

av

Re

19

Inte

pi

n

ti

le

w

q

ro

n

r

S

2

In

c

v

r

available to research in areas.¹⁷ If seeking the data is in the

required to more than five-er to furnish interrogatories by certain of the objections to interrogatories sustained by dis- Association D.C.1959, 23

interrogatories to not entitled to answer interrogatories in States and and regula- or indirectly and similar companies for de- sion of certain od products. & Hess Co., 17.

memoranda con- for providing mem- bers in the red to be an- would be op- pensive. Vol- VA, D.C.Tenn.

communications, 7 F.R.D. 436. necessary to an- gatories was endant by de- audit, no com- o order plain- terrogatories, would require pector Freight Indem. Co., 162.

possession of the interrogated party, its adversary cannot use interrogatories to evade the burden of compiling data at its own expense if the records are available for its inspection under Rule 34¹⁹ or by consent of the interrogated party.²⁰ This practice was

Interrogatory that required injured seaman to relate position of each witness at time of accident, including direction each witness was from seaman and description of obstructions blocking the witnesses' view, requested information that vessel owner should be required to obtain through questions directed to the witnesses themselves and through inspection of accident site. *Reichert v. U.S.*, D.C.Cal.1970, 51 F.R.D. 500.

Objection sustained where information was public and answer would require sifting through a vast amount of material. *Struthers Scientific & Int'l Corp. v. General Foods Corp.*, D.C.Tex.1968, 45 F.R.D. 375, 380.

In diversity action against railroad for wrongful death of individual who was crushed between a railroad car and retaining wall, interrogatories asking railroad for such matter as precise measurements of retaining wall, its distance from the tracks, and various other such measurements were improper as asking for data equally available to interrogating party. *Reynolds v. Southern Ry. Co.*, D.C.Ga. 1968, 45 F.R.D. 526.

Interrogatory propounded to drug company relevant to alleged failure to maintain continuing check on literature regarding safety of drug that allegedly caused harm to plaintiff's eyes was to be answered, but court required company only to list literature requested and did not require company to prepare summaries of literature requested by interrogatories. *Luey v. Sterling Drug, Inc.*, D.C.Mich.1965, 240 F.Supp. 632.

In action for injuries sustained in fall on defendant's premises, defendant would not be required to answer interrogatory requesting him to state the

weather conditions at time and place of accident for the ten-hour period preceding the accident since such answer would require compilation of statistical data, and the information sought was available from sources equally accessible to plaintiffs. *Needles v. F. W. Woolworth Co.*, D.C.Pa. 1952, 13 F.R.D. 460.

In bankruptcy trustee's action for reclamation or money value of property transferred by bankrupt to defendant, defendant's interrogatories, asking plaintiff for itemization and valuation of goods owned by bankrupt at time of transactions, itemization of disposition of moneys paid bankrupt by defendant, and statement of whether plaintiff knew or believed that bankrupt's books and records were inaccurate, were objectionable as calling for information concerning books and records readily accessible to defendant, goods in defendant's possession, and trustee's opinions or conclusions. *Klein v. Leader Elec. Corp.*, D.C.Ill. 1948, 81 F.Supp. 624.

But see

Government would be required to answer interrogatory notwithstanding claim that information and materials requested were as readily accessible to defendants who propounded interrogatory as to the plaintiff government. *U.S. v. 58.16 Acres of Land*, D.C.Ill. 1975, 66 F.R.D. 570.

19. Available under Rule 34

In action under antitrust laws arising out of operation of movie theaters, interrogatories that required receipts and other data on a daily basis, were so detailed that plaintiffs would be required to compile the answers themselves, although defendants would be

²⁰. See note 20 on page 306.

formalized in 1970 by the adoption of Rule 33(c) (now Rule 33(d)), giving the interrogated party its option to produce business records from which the answer can be found if the burden of deriving the answer is substantially the same for both parties.²¹

It would be a mistake, however, to suppose that the fact that answering an interrogatory would require research by the interrogated party is enough to bar the interrogatory in every case. It is

required to answer the interrogatories to the extent of stating whether such information was available in books, records or documents, on which plaintiffs could base a motion to produce. *Erone Corp. v. Skouras Theatres Corp.*, D.C.N.Y.1968, 22 F.R.D. 494.

Generally, a party propounding interrogatories should not be permitted to compel his opponent to make compilations or perform research and investigations with respect to statistical information, which party propounding interrogatories might make for himself by obtaining the production of books and documents pursuant to Rule 34 or by doing a little footwork. *Konczakowski v. Paramount Pictures, Inc.*, D.C.N.Y.1957, 20 F.R.D. 588.

As a general rule, court will not by interrogatories require party to examine its own records, and compile and correlate information therefrom for benefit of opposing party, when opposing party has right to inspect such record. *H. K. Porter Co. v. Bremer*, D.C.Ohio 1951, 12 F.R.D. 187.

If plaintiffs were unable to answer defendant's interrogatories allowed by court, plaintiffs could not be permitted to obtain the information by a cross-interrogatory embracing substantially the same subject matter, but they should resort to discovery under Rule 34. *Brown v. Dunbar & Sullivan Dredging Co.*, D.C.N.Y.1948, 8 F.R.D. 105. It is interesting to compare this case with *Brown v. Dunbar & Sullivan Dredging Co.*, D.C.N.Y.1948, 8 F.R.D. 107, in which defendant's interrogatory, asking for the same infor-

mation from the plaintiffs, was allowed.

Interrogatories are not a substitute for inspection of books or documents under Rule 34. *Cinema Amusements, Inc. v. Loew's, Inc.*, D.C.Del.1947, 7 F.R.D. 318.

A fire insurance company's motion for further answers by insured to interrogatories seeking information obtainable by company on inspection of insured premises, as authorized by parties' agreement, was denied. *Phoenix Ins. Co. v. Cline*, D.C.Mass.1942, 3 F.R.D. 354.

But cf.

Plaintiffs' objections to duplication for certain interrogatories would be overruled, because previous document requests would not fully provide the answers to such interrogatories. In re *Folding Carton Antitrust Litigation*, D.C.Ill.1979, 83 F.R.D. 260.

20. Available by consent

Tytel v. Richardson-Merrell, Inc., D.C.N.Y.1965, 37 F.R.D. 351.

Triangle Mfg. Co. v. Paramount Bag Mfg. Co., D.C.N.Y.1964, 35 F.R.D. 540.

Barrows v. Koninklijke Luchtvaart Maatschappij, D.C.N.Y.1951, 11 F.R.D. 400.

Phoenix Ins. Co. v. Cline, D.C.Mass. 1942, 3 F.R.D. 354.

Fox v. Fisher, D.C.Tenn.1941, 39 F.Supp. 878.

C. F. Simonin's Sons, Inc. v. American Can Co., D.C.Pa.1940, 1 F.R.D. 134. See § 2178.

21. Option to produce

See § 2178.

not.²² In

22. Research

Number of interrogatories for question or opponent answerin require th consider or may business Johns-M 85 F.R.D.

Interrogato titrust a relating t biles and fendant, lating so bile, did discovery withstand fendant would be ments v some as thousand mation, cerned a. that mad entire pic defendan derived l ence to s Smith A General 54 F.R.D.

Where civi related t city polic tion soug tiffs wa though d pletion c require l lice depa of man l dered to tion for

not.²³ In order to justify sustaining an objection to an interrogato-

22. Research required

Number and detailed character of interrogatories is not alone sufficient reason for disallowing them unless the questions are egregiously burdensome or oppressive; nor is the fact that answering the interrogatories will require the objecting party to expend considerable time, effort and expense, or may interfere with defendant's business operations. *Roesberg v. Johns-Manville Corp.*, D.C.Pa.1980, 85 F.R.D. 292.

Interrogatories issued by plaintiff in antitrust action requesting information relating to all product lines of automobiles and trucks manufactured by defendant, rather than information relating solely to one make of automobile, did not flagrantly violate scope of discovery and would be allowed, notwithstanding objection raised by defendant that volume of labor that would be involved in seeking out documents would be extremely burdensome as it involved thousands upon thousands of detailed pieces of information, where plaintiff was not concerned as much with bits and pieces that made up the whole as it was with entire picture and would be satisfied if defendant would submit total figures derived from documents with reference to source of calculation. *Morgan Smith Automotive Products, Inc. v. General Motors Corp.*, D.C.Pa.1971, 54 F.R.D. 19.

Where civil-rights case was intimately related to matters and procedures of city police department and information sought to be discovered by plaintiffs was obviously necessary, even though defendants asserted that completion of requested discovery would require hundreds of employees of police department to spend many years of man hours, discovery would be ordered to proceed and defendants' motion for protective order and request

for order relieving them from answering interrogatories would be denied. *Alexander v. Rizzo*, D.C.Pa.1970, 50 F.R.D. 374.

"A party cannot refuse to answer an interrogatory simply because he would have to consult books or documents in order to prepare a response." *King v. Georgia Power Co.*, D.C.Ga.1970, 50 F.R.D. 134, 138.

Interrogatories, which sought information as to whether or not nonaccused devices being manufactured by plaintiff were charged with infringement, but that related to patents in issue, were required to be answered, even though detailed tests might be required resulting in prejudice from inconclusive test results and even though answer might require an opinion. *Federal Cartridge Corp. v. Olin Mathieson Chem. Corp.*, D.C.Minn. 1967, 41 F.R.D. 531.

When music publishing corporation's president was driving force behind litigation in which corporation sought relief relating to its public performance rights, corporation was not excused from answering interrogatories relating to those rights by fact that making of answers would be expensive and would require much research. *Life Music, Inc. v. Broadcast Music, Inc.*, D.C.N.Y.1966, 41 F.R.D. 16.

"Defendant also protests that she 'should not be compelled to perform * * * burdensome labor on behalf of the plaintiff.' That sort of argument is but a protest against the rationale and the spirit of the Rules. Neither party is ever required to work for the other. The theory of the Rules is that counsel and the Court are jointly engaged in an orderly search for truth in accordance with the best modern procedural devices derived from our ancient heritage of due process of law." *U.S. v. Purdome*, D.C.Mo.1962, 30 F.R.D. 338, 342 (per Oliver, J.).