

NOT FOR PUBLICATION

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

NICKEY DAVIS,

Plaintiff,

v.

HOVENSA, L.L.C. AND UHP PROJECTS, INC.,

Defendants.

SX-02-CV-333

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant HOVENSA, L.L.C.'s (hereinafter, "HOVENSA") Motion for Protective Order, dated on June 23, 2003. On July 28, 2003, Plaintiff filed an Opposition to Defendant HOVENSA's Motion for Protective Order. On August 25, 2003, Defendant HOVENSA filed a Motion for Leave to File Supplemental Authority in Support of its Motion for Protective Order.

FACTS

On May 21, 2002, Plaintiff filed a Complaint against Defendant HOVENSA and Defendant UHP Projects, Inc. (hereinafter, "UHP"), alleging that he suffered physical injuries, medical expenses, loss of income, loss of capacity to earn income, mental anguish, pain and suffering and loss of enjoyment of life as the direct and proximate result of Defendant HOVENSA and Defendant UHP's negligent acts and omissions while Plaintiff worked at Defendant HOVENSA's refinery on St. Croix, U.S. Virgin Islands.

On or about May 20, 2003, Plaintiff propounded discovery requests upon Defendant HOVENSA. Defendant HOVENSA contends that the interrogatories contained questions exceeding the twenty-five (25) interrogatory limit imposed by Fed. R. Civ. P. 33. Meanwhile, Plaintiff contends that the interrogatories propounded did not exceed the twenty-five (25) interrogatory limit and requested Defendant HOVENSA to respond within the appropriate time

limit. Defendant HOVENSA stated that, in compliance with Fed. R. Civ. P. 26(c), the counsels have "met and conferred" through correspondences on June 2, 2003 and June 5, 2003, but were unable to resolve their differences. Accordingly, Defendant HOVENSA filed this Motion for Protective Order.

DISCUSSION

Protective Order

Defendant HOVENSA filed this Motion for Protective Order pursuant to Fed. R. Civ. P. 26(c)(1), to prevent the undue burden and expense of answering interrogatories not in compliance with Fed. R. Civ. P. 33. Fed. R. Civ. P. 26(c)(1) provides that:

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place, for the disclosure or discovery; (C) prescribing a discovery method other than the one selected by the party seeking discovery; (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters; (E) designating the persons who may be present while the discovery is conducted; (F) requiring that a deposition be sealed and opened only on court order; (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

According to *In re Tutu Water Wells Contamination CERCLA Litig.*, "Prospective deponent bears heavy burden of demonstrating good cause for order precluding deposition on health grounds; however, if there is compelling evidence that deposition will be a substantial threat to deponent's life, court may in its discretion appropriately grant a protective order. 189

F.R.D. 153 (D.V.I., 1999) (the court granted deponent's motion for protective order – the deponent was in frail health and had already been extensively deposed).

Fed. R. Civ. P. 33 governs interrogatories to parties. Fed. R. Civ. P. 33(a) provides that "Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(2)." For purposes of the rule limiting the number of interrogatories a party may propound, the *Theobles v. Industrial Maintenance Company, HOVIC and HOVENSA, L.L.C.* court stated that, "[O]nce a subpart of an interrogatory introduces a line of inquiry that is separate and distinct from the inquiry made by the portion of the interrogatory that precedes it, the subpart must be considered a separate interrogatory, no matter how it is designated..." 247 F.R.D. 483, 484 (D.V.I., 2006). Regarding the topic of subparts, Fed. R. Civ. P. 33, Advisory Committee's Note, 1993 Amend., also provided that:

Each party is allowed to serve 25 interrogatories upon any other party, but must secure leave of court (or a stipulation from the opposing party) to serve a larger number. Parties cannot evade this presumptive limitation through the devise of joining as "subparts" questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place persons present, and contents be stated separately for each communication.

Interrogatories

Defendant HOVENSA argues that although Plaintiff's interrogatory requests is listed as twenty-four (24), all the subparts makes the total number of interrogatory requests exceeds the twenty-five limit. Specifically, Defendant HOVENSA objects to Interrogatories No. 1, 2, 3, 4, 5, 8, 9, 11, 13, 14, 15, 16 and 17 and claims that each of those interrogatories actually constitutes multiple separate interrogatories. Defendant HOVENSA points out that since Plaintiff never

received leave of court and there is no written stipulation authorizing service of interrogatories exceeding the twenty-five (25) limit in this matter, the Court should grant its Motion for Protective Order and order Plaintiff to resubmit interrogatories that comply with Fed. R. Civ. P. 33(a).

Plaintiff argues that his interrogatory requests is within the twenty-five (25) limit because the subparts are logically subsumed and necessarily related to the primary questions in the interrogatories. Therefore, Plaintiff contends that he did not exceed the twenty-five (25) interrogatory limit allowed by Fed. R. Civ. P. 33(a) since the subparts constitute one interrogatory. *See Kendall*, 174 F.R.D. at 684. Accordingly, Plaintiff requests the Court to deny Defendant HOVENSA's Motion for Protective Order. In the alternative, Plaintiff requests the Court to grant leave to serve Defendant HOVENSA the additional interrogatories if the Court finds Plaintiff's interrogatory requests to exceed the twenty-five (25) interrogatory limit.

After review of Plaintiff's interrogatory requests, the Court finds Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 to each constitute as a single interrogatory. However, the Court finds Interrogatories No. 1, 4 and 9 to each constitute as multiple interrogatories and the Court shall discuss *infra*.

Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17

Defendant HOVENSA argues that Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 each impermissibly contains separate questions. Plaintiff maintains that all the Interrogatories contain subparts that are logically subsumed and necessarily related to each Interrogatory's primary inquiry.

For Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17, the Court finds that the subparts of each Interrogatory involve the same line of inquiry and did not introduce any discrete

separate subjects. Accordingly, Interrogatory No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 will each be considered as a single interrogatory.

Interrogatory No. 1: Please describe in complete detail your version of how the incident in Plaintiff's Complaint occurred, after you have made a diligent inquiry of all of the Defendant's agents and employees who have any knowledge of the occurrence and set forth: (a) the names, addresses and telephone numbers of the individual(s) of whom an inquiry was made; (b) the names, addresses and telephone numbers of the individual(s) who informed you of the incident, including the substance of the information provided; (c) what was done in response to the report of the incident; (d) the location of Plaintiff when you received the report; (e) whether you offered any assistance, medical or otherwise to Plaintiff; and (f) Plaintiff's response to any such offer of assistance.

Defendant HOVENSA argues that, under the standards stated in the Advisory Committee's notes, Interrogatory No. 1 impermissibly contains at least five separate questions. *See also Nyfield v. Virgin Islands Telephone Corp., et al.*, 200 F.R.D. 246, 248 (D.V.I. 2001) (concluding that a single interrogatory impermissibly constitutes two parts where, for example, one inquiry concerns the reasons for action taken against the plaintiff and the other concerns those parties involved in the decision-making process).

Plaintiff contends that the Interrogatory No. 1 requests Defendant HOVENSA to state its version of how the incident in Plaintiff's Complaint occurred after Defendant HOVENSA made a reasonable inquiry of all of its agents and employees. Plaintiff maintains that the interrogatory continues to ask questions that are logically subsumed and necessarily related to the primary question. Accordingly, Plaintiff argues that this interrogatory and its related subparts properly constitute a single interrogatory.

In *Theobles*, the court disagreed with the *Nyfeild* court's finding that Interrogatory No. 7 Interrogatory No. 16 constituted two interrogatories because (a) Interrogatory No. 7 - one inquires concerning the reason for elimination of plaintiff's position and the other concerns those persons who were involved in the decision-making process and (b) Interrogatory No. 16 - one

inquires concerning the reason for plaintiff's transfer and the other concerns those persons who were involved in the decision-making process. 247 F.R.D. at 485. The *Theobles* court specifically overruled *Nyfield* to the extent that it does not conform with the proposition of *Banks v. Office of the Senate Sergeant-At-Arms*, 222 F.R.D. 7 (D.D.C., 2004), and found Interrogatories No. 7 and 16, as described in the *Nyfield* opinion, to constitute only a single interrogatory each. *Id.* The *Theobles* court stated that,

"The analysis in *Banks* complies more closely with the goals of Rule 33 as expressed by the advisory committee. 222 F.R.D. at 11. The objecting party in *Banks* 'insist[ed] that asking about what duties plaintiff was given or had taken away is distinct from asking who added them or took them away.' *Id.* The court disagreed, holding that these two inquiries formed a single interrogatory: 'These two topics are too intimately, and logically connected to have to be divided into separate questions.'" *Id.*

Interrogatory No. 1 seeks information concerning Defendant HOVENSA's version of how the incident in Plaintiff's Complaint occurred after Defendant HOVENSA inquired all of its agents and employess. It asks for (a) the names, addresses and telephone numbers of the individual(s) of whom an inquiry was made; and (b) the names, addresses and telephone numbers of the individual(s) who informed you of the incident, including the substance of the information provided. In other words, it requests the "time, place, persons present, and contents," which are subparts of a single interrogatory according to the Advisory Committee's notes. Fed. R. Civ. P. 33, Advisory Committee's Note, 1993 Amend. However, subparts "(c) what was done in response to the report of the incident; (d) the location of Plaintiff when you received the report; and (e) whether you offered any assistance, medical or otherwise to Plaintiff" are discrete from subparts (a) and (b) and introduces a new topic. That new topic is any action Defendant HOVENSA took in response to the report of the incident. Furthermore, subpart (f) Plaintiff's response to any such offer of assistance is also discrete from previous

subparts. It introduces another topic – that being Plaintiff's response to Defendant HOVENSA's offer of assistance, if any. While the questions regarding Defendant HOVENSA's version of the incident, Defendant HOVENSA's response to the report of incident and Plaintiff's response to Defendant HOVENSA's offer of assistance are all related to the issue of the incident, they are separate and distinct questions. *See Theobles*, 247 F.R.D. at 486 (finding the question of whether HOVENSA received complaints concerning plaintiff and what HOVENSA did in response to such complaints are separate and distinct questions). "Each question is independent of the other and can stand alone. The second question is not subsumed in the first." *Id.*, citing *Kendall*, 174 F.R.D. at 686. Thus, Interrogatory No. 1 must be counted as three interrogatories.

Interrogatory No. 4: Identify by name, employer, address, job title, duties and responsibilities of each individual who was trained or instructed with regard to the operation or use of water blasting equipment such as that utilized by Plaintiff on the date of the incident, set forth separately as to each, all training, instruction and experience with regard to water blasting, including, but not limited to, each date training and instruction was received, a description of the training and instruction, by whom the training and instruction was conducted, the location of training and instruction, each individual present during any such training and instruction, each date prior to the incident in which the individual was involved with water blasting, the extent and nature of the involvement with regard to water blasting and the location of the water blasting.

Defendant HOVENSA argues that this exhaustive interrogatory request not only seeks extensive information concerning all persons trained to operate water blasting equipment, but also all information concerning any involvement those persons may have with water blasting.

Plaintiff maintains that the subparts of Interrogatory No. 4 are requesting information that is logically subsumed and necessarily related to the primary inquiry. Accordingly, Plaintiff argues that Interrogatory No. 4 and its related subparts properly constitute one interrogatory. *See Kendall*, 174 F.R.D. at 686.

Interrogatory No. 4 seeks information concerning individuals who was trained or instructed with regard to the operation or use of water blasting equipment such as that utilized by Plaintiff when the incident in Plaintiff's Complaint occurred. It asks an extensive list of questions regarding the individual's (a) name, (b) employer, (c) address, (d) job title, (e) duties and responsibilities, (f) training, instruction and experience with regard to water blasting – including date of training, location of training and everyone present at training and (g) involvement with water blasting prior to Plaintiff's incident – the date, the extent and nature and the location. The Court finds all the subparts, besides a section of subpart (f), to follow the same line of inquiry as the primary question and therefore should not be treated as separate interrogatories. *See Theobles*, 247 F.R.D. at 485. A section of subpart (f) asks for Defendant HOVENSA to list everyone present at the training and instruction attended by the individual. The Court finds this part to be discrete and constitute a separate interrogatory. *Id.* at 486. That section of subpart (f) introduces a new topic and is no longer related to the original individuals that Plaintiff is seeking information on. Thus, Interrogatory No. 4 must be counted as two interrogatories. "Each question is independent of the other and can stand alone. The second question is not subsumed in the first." *Id.*, citing *Kendall*, 174 F.R.D. at 686.

Interrogatory No. 9: State the exact time and date Defendant, any agent and/or employee received a report, notice or complaint of any unsafe, hazardous, dangerous, abnormal and/or unusual condition of the water blaster, and all related equipment, including, but not limited to, the hoses, compressor and/or pressure controls at any time prior to the occurrence of the incident described in Plaintiff's Complaint, and identify fully by name, title, duties and responsibilities of the person receiving the report, notice or complaint and state what actions, if any, that were taken in regard to these notifications or complaints.

Defendant HOVENSA argues that Interrogatory No. 9 impermissibly requests information concerning the dates, times and identities of any previous complaints received regarding the water blasting equipment, but also information concerning any actions taken in

regard to such complaints. Thereby, Interrogatory No. 9 should not be considered as a single interrogatory. *See Nyfield*, 200 F.R.D. at 248 (when one inquires concerning receipt of IDC benefits and the other with the efforts and action taken in order to comply with the terms thereof, that constitutes as two interrogatories).

Plaintiff maintains that the subparts of Interrogatory No. 9 are requesting information that is logically subsumed and necessarily related to the primary inquiry. Accordingly, Plaintiff argues that Interrogatory No. 9 and its related subparts properly constitute one interrogatory. *See Kendall*, 174 F.R.D. at 686.

Interrogatory No. 9 seeks information concerning the time, the date and the agent and/or employee of Defendant HOVENSA's that were notified of the condition of the water blaster and all related equipment prior to the occurrence of the incident in Plaintiff's Complaint. It asks Defendant HOVENSA to identify fully (a) the name, (b) the title, (c) the duties, (d) the responsibilities of the person receiving the report, notice or complaint and (e) what actions, if any, that were taken in regard to these notifications or complaints. Subparts (a) through (d) are merely requesting "time, place, persons present, and contents," which according to the Advisory Committee's notes, are subparts of a single interrogatory. However, subpart (e) is discrete. Subpart (e) introduces a new topic - that being any action, if any, that was taken in response to the notifications or complaints of the water blaster and related equipment. *See Theobles*, 247 F.R.D. at 486 (finding the question of whether HOVENSA received complaints concerning plaintiff and what HOVENSA did in response to such complaints are separate and distinct questions). "Each question is independent of the other and can stand alone. The second question is not subsumed in the first." *Id.*, citing *Kendall*, 174 F.R.D. at 686. Thus, Interrogatory No. 9 must be counted as two interrogatories.

CONCLUSION

The Court finds that Plaintiff has exceeded the twenty-five (25) limit for interrogatories in this matter. Interrogatory No. 1 constitute three interrogatories; Interrogatories No. 4 and 9 constitute two interrogatories each; Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 with subparts constitute a single interrogatory each. The Court finds that Defendant HOVENSA satisfactorily demonstrated good cause for a protective order in this matter. Accordingly, the Court will grant Defendant HOVENSA's Motion for Protective Order as to the interrogatories and deny Plaintiff's request for leave to serve Defendant HOVENSA the additional interrogatories. The Court will order Plaintiff to resubmit interrogatory requests that comply with the Federal Rules of Civil Procedure. When the correct number of interrogatories have been propounded, Defendant HOVENSA may respond or object as deemed appropriate.

DONE and so ORDERED this 3rd day of January, 2011.

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: *[Signature]*
Deputy Clerk

Dated: *2/2/11*

[Signature]
HAROLD W. L. WILLOCKS
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY
This *4th* day of *Feb* 20*11*
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By: *[Signature]* Court Clerk *TH*