

IN THE MATTER OF

NORTH TEXAS SPECIALTY PHYSICIANS,
A CORPORATION.

Docket No. 9312

**NORTH TEXAS SPECIALTY PHYSICIANS' MOTION TO COMPEL
RESPONSES TO INTERROGATORIES**

Pursuant to 16 C.F.R. § 3.38, Respondent North Texas Specialty Physicians ("NTSP") seeks an order compelling the FTC to respond to two of the interrogatories NTSP has previously served on the FTC. As grounds therefore, NTSP would respectfully show as follows:

I.

Background

The FTC began its pre-complaint investigation of NTSP on July 22, 2002 when it issued a Civil Investigative Demand.¹ In response to the Civil Investigative Demand, NTSP produced 18,379 pages of documents. The FTC also took the depositions of NTSP's executive director and the president of its board of directors. In addition, the FTC obtained documents and information from third parties related to its investigation of NTSP. It received documents and information related to payor contracts in the DFW Metroplex from 48 different persons and entities, and documents and information related to NTSP from 50 different persons and entities.² Discussions with the FTC indicate that it has received approximately five boxes of documents from these third parties.

¹ See Civil Investigative Demand, attached as Exhibit A.

² See Complaint Counsel's Response to Respondent's First Set of Interrogatories, attached as Exhibit B.

Almost 14 months after the pre-complaint investigation regarding NTSP had begun, the FTC, on September 16, 2003, instituted an adjudicative proceeding against NTSP. The Complaint alleges that NTSP entered into a conspiracy with other persons and engaged in acts and practices that restrained trade, hindered competition, and constituted unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.³ The Complaint sets forth general allegations regarding the acts and practices of NTSP upon which the FTC bases its claims, but provides no indication of (a) which persons allegedly conspired with NTSP in violation of the antitrust laws, or (b) what specific acts and practices of NTSP allegedly restrained trade, hindered competition, or constituted an unfair method of competition.⁴

To narrow the issues and prepare for the hearing of this matter in a cost-effective manner, NTSP served four interrogatories on the FTC.⁵ Two of those interrogatories are the subject of this motion to compel. Interrogatory number 1 asks the FTC to:

Identify each and every communication between NTSP and any alleged coconspirator in which the coconspirator agreed that he or she would reject a payor offer, including the date, time, content, and participants of such communication.⁶

Interrogatory number 2 asks the FTC to:

Identify each and every act or practice of NTSP which you contend restrains trade, hinders competition, or constitutes an unfair method

³ Complaint at p. 3, ¶ 12 and p. 6, ¶ 23.

⁴ See Complaint.

⁵ See Respondent's Interrogatories to Complaint Counsel, attached as Exhibit C.

⁶ *Id.* at p. 3.

of competition, including the date of each such act or practice and how that act or practice restrained trade or hindered competition.⁷

The FTC has refused, however, to answer these interrogatories. Instead, it has objected and argued that each of these interrogatories “is in the nature of a contention interrogatory and seeks information that is more properly sought after the completion of fact discovery, if at all.”⁸ Accordingly, NTSP does not have a full picture of the specific facts that support the FTC’s allegations. The FTC is therefore forcing NTSP to defend itself without access to relevant information that goes to the very heart of the FTC’s allegations.

II.

Argument and Authorities

A. The FTC has the burden of proof.

As the party resisting discovery, the FTC has the burden to justify its objections to NTSP’s interrogatories. “Unless the objecting party sustains its burden of showing that the objection is justified, the Administrative Law Judge shall order that an answer be served”⁹

B. Contention interrogatories are a permissible form of discovery that must be answered.

An interrogatory is not necessarily objectionable merely because it seeks a response that involves a contention that relates to factual issues.¹⁰ Thus, there is no automatic rule that an interrogatory is prohibited because it relates to a party’s contentions. To the contrary, courts

⁷ *Id.*

⁸ See Complaint Counsel’s Objections to Respondent’s First Set of Interrogatories at p. 2, attached as Exhibit D; see also Complaint Counsel’s Response to Respondent’s First Set of Interrogatories at p. 1, attached as Exhibit B.

⁹ FTC Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.38(a)(1).

¹⁰ *Id.* at 16 C.F.R. § 3.35(b)(2); see also *In re Flowers Indus., Inc.*, 1981 FTC LEXIS 110 at *2 (1981) (stating that the use of contention interrogatories was recognized by the FTC when it added the rule of procedure providing for interrogatories), attached as Exhibit E.

have recognized that contention interrogatories are sometimes “the most reliable and cost-effective discovery device, which would be less burdensome than depositions at which contention questions were propounded.”¹¹ Contention interrogatories assist in narrowing and defining the issues and enable the propounding party to determine the proof required to rebut the adverse party’s position.¹² As such, “the general view is that contention interrogatories are a perfectly permissible form of discovery, to which a response ordinarily would be required.”¹³ The Administrative Law Judge, however, has discretion in determining when answers to contention interrogatories must be made.¹⁴

C. The FTC has conducted enough discovery to answer NTSP’s contention interrogatories.

Although this adjudicative proceeding was filed a short time ago, the FTC has already conducted a substantial amount of discovery. During its pre-complaint investigation, the FTC deposed two NTSP representatives, requested and received over 18,000 pages of documents from NTSP, and obtained from 50 third-party witnesses information and documents related to NTSP or payor contracts in the DFW Metroplex. Although courts will sometimes defer answers to contention interrogatories until substantial discovery has been conducted, this should not be one of those cases because the FTC has already completed a significant amount of discovery.

¹¹ *Cable & Computer Tech., Inc. v. Lockheed Saunders, Inc.*, 175 F.R.D. 646, 652 (C.D. Cal. 1997).

¹² *Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445, 447 (D. Kan. 2000); see also *Nestle Foods Corp. v. Aetna Cas. and Sur. Co.*, 135 F.R.D. 101, 110 (D. N.J. 1990) (stating that the objective of contention interrogatories is to “ferret out and narrow the issues”); *Bove v. Worlco Data Sys., Inc.*, No. 86-1419, 1986 U.S. Dist. LEXIS 19384, at *4 (E.D. Pa. 1986) (agreeing that contention interrogatories “may help to clarify and narrow the issues in a case at an early stage of litigation”), attached as Exhibit F.

¹³ *Starcher v. Correctional Med. Sys., Inc.*, 144 F.3d 418, 421 n.2 (6th Cir. 1998).

¹⁴ See FTC Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.35(b)(2).

Courts have recognized that substantial pre-suit discovery allows a party to answer contention interrogatories. In *Rusty Jones, Inc. v. Beatrice Co.*, the court faced an issue identical to the present motion.¹⁵ The party upon which contention interrogatories were served argued that it had not conducted enough discovery to answer contention interrogatories.¹⁶ But the court rejected that argument based on the completion of substantial pre-suit discovery.¹⁷ Because the party resisting discovery “had access to thousands of pages” of documents from the opposing party prior to the litigation, the court in *Rusty Jones* found that the resisting party had sufficient information to answer the contention interrogatories.¹⁸

Similarly, in *Bove v. Worlco Data Systems, Inc.*, the court held that pre-suit discovery was sufficient to require a party to answer contention interrogatories.¹⁹ In that case, the plaintiff refused to answer contention interrogatories because discovery had just begun.²⁰ But there had been prior litigation regarding the transactions at issue in *Bove*, and during that litigation depositions were taken and documents were produced.²¹ Furthermore, counsel for the plaintiff in

¹⁵ No. 89 C 7381, 1990 WL 139145, at *2 (N.D. Ill. 1990), attached as Exhibit G.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ No. 86-1419, 1986 U.S. Dist. LEXIS 19384, at *3-4 (E.D. Pa. 1986).

²⁰ *Id.* at *2-3.

²¹ *Id.* at *3.

Bove had been involved in the underlying transactions.²² Accordingly, the *Bove* court held that contention interrogatories were not premature and must be answered.²³

Like the plaintiffs in *Rusty Jones* and *Bove*, the FTC has also conducted substantial pre-suit discovery. In fact, the amount and types of pre-suit discovery conducted by the FTC are even more extensive than that conducted in those cases. The plaintiff in *Rusty Jones* had received only documents from the opposing party, but the FTC has received documents from NTSP and many third parties, and it has deposed two NTSP representatives. And, although *Bove* involved pre-suit depositions and the production of documents, that discovery was from a related case. In contrast, the FTC's pre-suit discovery here — which includes both depositions and the production of documents — concerns this very adjudicative proceeding. Accordingly, the FTC should be compelled to answer NTSP's contention interrogatories.

C. The FTC is preventing NTSP from adequately defending itself.

The Complaint sets forth only general allegations regarding NTSP's acts and practices that allegedly violate the antitrust laws. But these allegations do not allow NTSP to fully and adequately defend itself. Through its interrogatories, NTSP wanted to identify the specific acts and practices that support the FTC's allegations. By withholding that information, the FTC is limiting NTSP's ability to make important decisions, including (a) whom to depose, (b) whom to subpoena documents from, (c) which defenses to assert, (d) how to prepare its witnesses for deposition, and (e) how to answer some written discovery.²⁴ The FTC is limiting NTSP's ability

²² *Id.* at *4.

²³ *Id.*

²⁴ For example, FTC Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.31(b)(1) requires NTSP to provide the “name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the allegations of the Commission’s complaint, to the proposed relief, or to the defenses of the respondent.” Because the FTC has refused to provide detailed information about the allegations in the Complaint, the FTC is limiting NTSP's ability to provide more detailed initial disclosures.

to narrow the issues to which it must respond and is forcing NTSP to engage in expensive and wasteful discovery regarding issues that may not underlie the FTC's allegations.

Presently, NTSP knows only that it is alleged to have conspired with certain unnamed other persons, conducted activities that hindered competition or restrained trade, and engaged in unfair competition. General allegations like these unfairly prejudice NTSP's defense, especially when the FTC has had over a year's worth of discovery before the Complaint was issued. To prevent further prejudice, the FTC should be ordered to respond fully and completely to NTSP's contention interrogatories.

D. The FTC should be compelled to answer based on all currently available information.

Although the FTC has completed a significant amount of pre-suit discovery, NTSP anticipates that the FTC will argue that it needs even more discovery before it can answer NTSP's contention interrogatories. But courts have previously rejected that argument because, before suit is filed, a plaintiff must have already investigated its claims.²⁵ Those courts recognize that Federal Rule of Civil Procedure 11 requires a pre-suit investigation to discover sufficient information to support the allegations made in a complaint.²⁶

Like Rule 11, 15 U.S.C. § 45 requires the FTC to "have reason to believe" that there are grounds for issuance of a complaint.²⁷ Thus, the FTC must have investigated the factual basis for its claims against NTSP and, in fact, it unquestionably did so by completing substantial pre-complaint discovery. It is hard to believe that the FTC does not have information responsive to

²⁵ See *King v. E.F. Hutton & Co.*, 117 F.R.D. 2, 5 (D. D.C. 1987) (stating that requiring a party to answer contention interrogatories is consistent with Federal Rule of Civil Procedure 11, which requires the party to have some factual basis for the allegations in their complaint); *Cable & Computer Tech., Inc.*, 175 F.R.D. at 652 (same); *In re One Bancorp Securities Litigation*, 134 F.R.D. 4, 7-8 (D. Me. 1991) (same).

²⁶ *Id.*

²⁷ 15 U.S.C. § 45(b) (2003)

NTSP's interrogatories, but it has nonetheless claimed that it does not have to disclose that information to NTSP, at least not until all discovery is completed, and possibly not at all.

The fact that discovery is not complete does not eliminate the need for the FTC to answer NTSP's contention interrogatories. The Rules of Practice allow the FTC to supplement its interrogatory answers if it learns that the answers are in some material respect incomplete or incorrect.²⁸ Responding to NTSP's interrogatories, therefore, will not hinder the FTC's ability to present its case. It will, however, allow NTSP to defend itself on a level playing field so that the parties have access to the same relevant and responsive information. NTSP can then proceed with its defense in an efficient and cost-effective manner.

III.

Conclusion

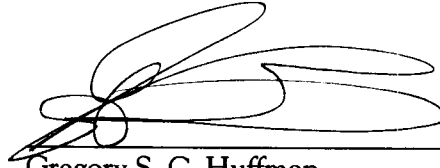
The general allegations in the Complaint do not provide sufficient information to allow NTSP to prepare a full and complete defense. Because the FTC completed significant pre-complaint discovery, and because the FTC can (and has a duty to) supplement its interrogatory answers, compelling the FTC to answer NTSP's contention interrogatories will not prejudice the FTC. Instead, it will level the playing field and enable NTSP to properly defend itself.

For all of these reasons, NTSP requests that the Administrative Law Judge (a) grant its motion to compel; (b) order the FTC to provide, within five days from the date of the order, full and complete answers, based on all currently available information, to NTSP's Interrogatory

²⁸ FTC Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.31(e)(2); *see also King*, 117 F.R.D. at 5-6 (dismissing claim that further discovery must be conducted to answer contention interrogatories and holding that responses must be made and supplemented as permitted by the Federal Rules of Civil Procedure); *Cable & Computer Tech., Inc.*, 175 F.R.D. at 652 (holding that contention interrogatories must be answered, but may be supplemented if further discovery so requires); *One Bancorp Securities Litigation*, 134 F.R.D. at 8 (same).

numbers 1 and 2; and (c) grant such other and further relief to which NTSP may be justly entitled.

Respectfully submitted,



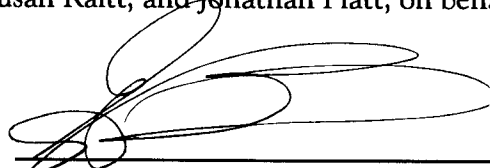
Gregory S. C. Huffman
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Gregory D. Binns

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**ATTORNEYS FOR NORTH TEXAS
SPECIALTY PHYSICIANS**

CERTIFICATE OF CONFERENCE

Counsel for Respondent North Texas Specialty Physicians has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by this motion and has been unable to reach such an agreement. This conference was conducted on October 21, 2003 via a conference call at approximately 9:30 a.m. (CST). The participants during the conference call were William M. Katz, Jr. and Gregory D. Binns, on behalf of Respondent North Texas Specialty Physicians, and Michael Bloom, Susan Raitt, and Jonathan Platt, on behalf of Complaint Counsel.



Gregory D. Binns

CERTIFICATE OF SERVICE

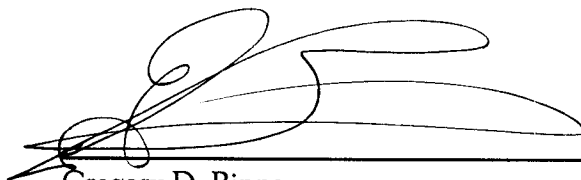
I, Gregory D. Binns, hereby certify that on November 4, 2003, I caused a copy of North Texas Specialty Physicians' North Texas Specialty Physicians' Motion to Compel Responses to Interrogatories, to be served upon the following persons:

Michael Bloom (via e-mail and Federal Express)
Senior Counsel
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

Hon. D. Michael Chappell (via Federal Express)
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Office of the Secretary (via e-mail and Federal Express)
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue NW
Washington, D.C. 20580

and by e-mail upon the following: Susan Raitt (sraitt@ftc.gov), and Jonathan Platt (jplatt@ftc.gov).



Gregory D. Binns

EXHIBIT A



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

North Texas Specialty Physicians
c/o Gregory S. C. Huffman, Esq.
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201-4693

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME OF THE DOCUMENTS MUST BE AVAILABLE

July 31, 2002, 9:00 a.m.

3. SUBJECT OF INVESTIGATION

North Texas Specialty Physicians:
Alleged anticompetitive joint negotiation of payor agreements for provision of medical services.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Theodore Zang/Michael Bloom

5. COMMISSION COUNSEL

Theodore Zang

DATE ISSUED

7/22/02

COMMISSIONER'S SIGNATURE

Walter D. Thompson

APPEARANCE - The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

The demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH - The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 5.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation you are entitled to as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

Form of Certificate of Compliance

The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form shown below, by the person to whom this demand is directed or if not a natural person, by a person or persons knowledgeable of the facts and circumstances of such production or responsible for answering each interrogatory or report question. In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

I/We do certify that all of the documents required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this has not been submitted, the objection to its submission and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

**CIVIL INVESTIGATIVE DEMAND
DIRECTED TO NORTH TEXAS SPECIALTY PHYSICIANS**

If the company believes that the required search or any other part of this Civil Investigative Demand can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified in the last paragraph of this Civil Investigative Demand.

SPECIFICATIONS

1. A statement disclosing, for each year, the names, business addresses, hospital affiliation or privileges, and medical specialties of all current and past NTSP officers and members.
2. A statement fully describing the extent of any integration or risk-sharing by NTSP in connection with NTSP's operations, including but not limited to administrative or business functions (*e.g.*, contract negotiating, billing, collection, claims processing, purchasing of equipment or supplies, marketing, and similar functions), utilization review, cost containment, quality assurance, practice guidelines, monitoring of patient satisfaction, medical records management, or credentialing functions or services.
3. A statement identifying each payor with which NTSP has communicated about, entered or declined to enter into, or conveyed or declined to convey to its member physicians a contract for the provision of medical services.
4. For each payor identified in response to specification 3, identify the person or persons who were principally involved in communications regarding possible, proposed, or actual contracts for the provision of medical services by NTSP or its member physicians and the person or persons at NTSP who were principally involved in such communications with the payor.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this Civil Investigative Demand, the following definitions and instructions apply:

A. The terms “the company” and “NTSP” mean North Texas Specialty Physicians and each of its parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.

B. The term “person” includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

C. The terms “and” and “or” have both conjunctive and disjunctive meanings.

D. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for information for each of the years from January 1, 2000 to the present. Where information is requested, provide it separately for each year; where yearly data is not yet available, provide data for the calendar year to date. If calendar-year information is not available, supply the company's fiscal year data indicating the twelve month period covered, and provide the company's best estimate of calendar-year data.

E. This Civil Investigative Demand shall be deemed continuing in nature so as to require production of all information responsive to any specification included in this Civil Investigative Demand up to one week prior to the date of the company's full compliance with this Civil Investigative Demand.

F. In order for the company's response to this Civil Investigative Demand to be complete, the attached certification form must be executed by the official supervising compliance with this Civil Investigative Demand, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this Civil Investigative Demand or suggestions for possible modifications thereto should be directed to Theodore Zang at (212) 607-2816. The response to the Civil Investigative Demand shall be addressed to the attention of Michael Bloom and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission Northeast Region at 1 Bowling Green, Suite 318, New York, New York 10004.

NTSP CIVIL INVESTIGATIVE DEMAND

CERTIFICATION

This response to the Civil Investigative Demand, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required information, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete. If the Commission uses such copies in any court or administrative proceeding, the company will not object based on the Commission not offering the original document.

TYPE OR PRINT NAME AND TITLE

(Signature)

Subscribed and sworn to before me at the City of _____,

State of _____, this _____ day

of _____, 2002.

(Notary Public)

My Commission Expires: _____

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

RESOLUTION AUTHORIZING USE OF COMPULSORY
PROCESS IN A NONPUBLIC INVESTIGATION

File No. 0210075

Nature and Scope of Investigation:

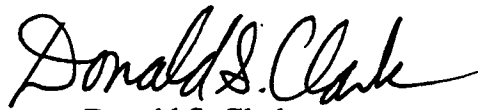
To determine whether North Texas Specialty Physicians, its past and present members, its agents or other persons, partnerships, or corporations have agreed on the terms or conditions upon which they would deal with health care insurers; concertedly negotiated with health care insurers; boycotted or threatened to boycott health care insurers; or otherwise engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, et seq. and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Dated: April 11, 2002

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
NORTH TEXAS SPECIALTY PHYSICIANS,
a corporation.

DOCKET NO. 9312

COMPLAINT COUNSEL'S RESPONSE TO RESPONDENT'S
FIRST SET OF INTERROGATORIES

Pursuant to Section 3.35 of the Federal Trade Commission's ("the Commission") Rules of Practice, Complaint Counsel hereby responds to Respondent North Texas Specialty Physician's ("NTSP") First Set of Interrogatories. As Complaint Counsel has indicated in its Objections to Respondent's First Set of Interrogatories of October 16, 2003 ("Complaint Counsel's Objections"), Interrogatories Number 1 and 2 are objectionable and we are not responding to those interrogatories herein. Subject to and in conformity with Complaint Counsel's Objections, in response to Interrogatories Number 3 and 4, we are providing responsive information acquired in the investigation of NTSP. Each response is preceded by the full text of the corresponding interrogatory.

Interrogatory Number 3:

Identify each person or entity from whom you have received documents or information concerning payor contracts in the DFW Metroplex.

Kelly Weber
ProNet

Austin Pittman
PacifiCare

Rick Grizzle
CIGNA HealthCare of Texas

James Sabolik

CIGNA HealthCare of Texas

David Bird
CIGNA HealthCare

Giselle M. Molloy, Esq.
CIGNA Healthcare

Celina Burns
The Prudential Insurance Company of America

Sheila Ware
Aetna/U.S. Healthcare North Texas, Inc.

Anthony Dennis, Esq.
Aetna, Inc.

David Roberts
Aetna, Inc.

Chris L. Jagmin, M.D.
Aetna, Inc.

Mark Chulick, Esq.
Aetna, Inc., Southwest Region

Neil Fleishman, Esq.
Blue Cross/Blue Shield of Texas

Gary Cole
Humana, Inc.

Gary Reed, Esq.
Humana, Inc.

Arlene Ormsby
Humana, Inc.

John Lovelady
PacifiCare

Lynda Marshall, Esq. (PacifiCare)
Hogan & Hartson

Chris Bulger
Texas Health Choice, L.C.

David Beatty
United Healthcare of Texas, Inc.

Thomas Quirk
United Healthcare of Texas, Inc.

Michael Ile, Esq.
United Healthcare, Inc.

Dawn Boyd
ProNet

Daniel L. Wellington, Esq.
(Health Texas Provider Network & Humana, Inc.)
Fulbright & Jaworski, LLP

Phyllis Brasher, J.D., M.H.A.
Texas Health Choice, L.C.

C. Mark Bailey
Blue Cross/Blue Shield

David Rainey
CIGNA Healthcare of Texas

Diane Youngblood
HealthTexas Provider Network

Virginia Nisbet
American Airlines

Jackie Quick
American Airlines

Kevin Towery
AELRx

John Mayer

Don Snyder
Alcon Labs

Lisa Norris
City of Grand Prairie

Denise Eisen
AdvancePCS

Jene Clayton
Automation

Maureen Redman
Automation

Dennis Dear, Esq.
Automation

Eric Bassett
Mercer Human Resources Consulting

Mike Reece
Rockwall Independent School District

Tommie Smith
Rockwall Independent School District

Ted Troy
McQuery Henry Bouls Troy

Terrie Henderson, Director of HR
Carter BloodCare

Tad Linn, Esq.
First Health

Mike Wilson
First Health

Tom Byers,
USC Health Services

Denise Southhall
Private Health Care Systems

Carla Britten
Private Health Care Systems

Interrogatory Number 4:

Identify each person or entity from whom you have received documents or information concerning NTSP.

Kelly Weber
ProNet

Austin Pittman
PacifiCare

Rick Grizzle
CIGNA HealthCare of Texas

James Sabolik
CIGNA HealthCare of Texas

David Bird
CIGNA HealthCare

Giselle M. Molloy, Esq.
CIGNA Healthcare

Celina Burns
The Prudential Insurance Company of America

Sheila Ware
Aetna/U.S. Healthcare North Texas, Inc.

Anthony Dennis, Esq.
Aetna, Inc.

David Roberts
Aetna, Inc.

Chris L. Jagmin, M.D.
Aetna, Inc.

Mark Chulick, Esq.
Aetna, Inc., Southwest Region

Blue Cross/Blue Shield of Texas

Neil Fleishman, Esq.
Blue Cross/Blue Shield of Texas

Gary Cole
Humana, Inc.

Gary Reed, Esq.
Humana, Inc.

Arlene Ormsby
Humana, Inc.

John Lovelady
PacifiCare

Lynda Marshall, Esq. (PacifiCare)
Hogan & Hartson

Chris Bulger
Texas Health Choice

David Beatty
United Healthcare of Texas, Inc.

Thomas Quirk
United Healthcare of Texas, Inc.

Michael Ile, Esq.
United Healthcare, Inc.

Dawn Boyd
ProNet

Daniel L. Wellington, Esq.
(Health Texas Provider Network & Humana, Inc.)
Fulbright & Jaworski, LLP

Ron Lutz
Genesis Physicians Group

Phyllis Brasher, J.D., M.H.A.
Texas Health Choice, L.C.

C. Mark Bailey
Blue Cross/Blue Shield

David Rainey
CIGNA Healthcare of Texas

Diane Youngblood
HealthTexas Provider Network

Virginia Nisbet
American Airlines

Jackie Quick
American Airlines

Kevin Towery
AELRx

John Mayer

Don Snyder
Alcon Labs

Lisa Norris
City of Grand Prairie

Denise Eisen
AdvancePCS

Jene Clayton
Automation

Maureen Redman
Automation

Dennis Dear, Esq.
Automation

Eric Bassett
Mercer Human Resources Consulting

Mike Reece
Rockwall Independent School District

Tommie Smith
Rockwall Independent School District

Ted Troy
McQuery Henry Bouls Troy

Terrie Henderson
Carter BloodCare

Tad Linn, Esq.
First Health

Mike Wilson
First Health

Tom Byers,
USC Health Services

Denise Southhall
Private Health Care Systems

Carla Britten
Private Health Care Systems

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan Platt", written over a horizontal line.

Jonathan Platt
Complaint Counsel
Northeast Region
Federal Trade Commission
1 Bowling Green, Suite 318
New York, NY 10004

Dated: October 27, 2003

CERTIFICATE OF SERVICE

I, Jonathan Platt, hereby certify that on October 27, 2003, I caused a copy of Complaint Counsel's Response to Respondent's First Set of Interrogatories to be served upon the following person by email and by first class mail:

Gregory Huffman, Esq.
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201-4693
Gregory.Huffman@tklaw.com

and by email upon the following: William Katz (William.Katz@tklaw.com).

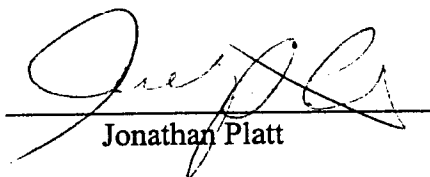

Jonathan Platt

EXHIBIT C

10-6

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF

NORTH TEXAS SPECIALTY PHYSICIANS,
A CORPORATION.

Docket No. 9312

RESPONDENT'S INTERROGATORIES TO COMPLAINT COUNSEL

Pursuant to 16 C.F.R. § 3.35, Respondent North Texas Specialty Physicians ("NTSP") hereby requests that Complainant respond to the following interrogatories within thirty days of service in accordance with the definition and instructions set forth below.

I.

DEFINITIONS AND INSTRUCTIONS

NTSP requests and instructs that Complainant answer the interrogatories in accordance with the following definitions and instructions:

- A. Each interrogatory shall be answered separately and fully in writing under oath. The answers are to be signed by the person making them.
- B. "Person" means any natural person, firm, association, partnership, corporation, joint stock company, government, government agency, unincorporated association, trust or other form of legal entity, whether or not in the employ of Complainant. The acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents, subsidiaries, and attorneys.
- C. "Complainant," "you," or "your" refers to the Federal Trade Commission, Complaint Counsel, their employees, agents, and representatives.

D. "NTSP" refers to Respondent North Texas Specialty Physicians, its employees, representatives, attorneys, agents, past and present participating physicians, directors, officers, and consultants.

E. The singular includes the plural and vice versa; the terms "and" and "or" shall be both conjunctive and disjunctive; and the past tense includes the present tense and vice versa.

F. "Communication" as used herein shall mean any transmission or exchange of information, either orally or in writing, and includes without limitation any conversation, letter, note, memorandum, interoffice or intraoffice correspondence, electronic mail or any other electronic transmission, telephone call, telegraph, telex, telecopy, facsimile, cable, conference, tape recording, video recording, digital recording, discussion, or face-to-face communication.

G. The terms "document" and "documents" are used in their customary broad sense and include, without being limited to, writings, drawing, graphs, charts, handwritten notes, film, photographs, audio and video recordings and any such representations stored on a computer, a computer disk, CD-ROM, magnetic or electronic tape, or any other means of electronic storage, and other data compilations from which information can be obtained in machine-readable form (translated, if necessary, into reasonably usable form by Complainant). See 16 C.F.R. § 3.34(b).

H. The "DFW Metroplex" means the counties of Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant, all of which are located in the State of Texas.

I. "Payor" means any third-party payor, health maintenance organization, preferred provider organization, fee-for-service indemnity insurance, employer self-insured health benefit plan, Medicare, Medicaid, or any other private or governmental health care plan or insurance of any kind.

J. "Participating physician" means any physician or physician entity that has contracted with NTSP with regard to the provision or contemplated provision of the physician's services to any hospital, payor, or other physician organization.

K. "Physician entity" means a sole proprietorship, partnership, foundation, or professional corporation of physicians.

L. "Physician organization" means any association of physicians including, but not limited to, physician entities and physician independent practice associations.

M. "Related to" or any variant thereof means in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.

N. These requests are continuing and require supplemental response if you, or any person acting on your behalf, obtains additional documents called for by the Request between the time of the original response and the time of hearing. See 16 C.F.R. § 3.31(e)(2).

I.

INTERROGATORIES

1. Identify each and every communication between NTSP and any alleged coconspirator in which the coconspirator agreed that he or she would reject a payor offer, including the date, time, content, and participants of such communication.
2. Identify each and every act or practice of NTSP which you contend restrains trade, hinders competition, or constitutes an unfair method of competition, including the date of each such act or practice and how that act or practice restrained trade or hindered competition.

3. Identify each person or entity from whom you have received documents or information concerning payor contracts in the DFW Metroplex.
4. Identify each person or entity from whom you have received documents or information concerning NTSP.

Respectfully submitted,



Gregory S. C. Huffman
William M. Katz, Jr.

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william.katz@tklaw.com

**ATTORNEYS FOR NORTH TEXAS
SPECIALTY PHYSICIANS**

CERTIFICATE OF SERVICE

I, Gregory S.C. Huffman, hereby certify that on October 6, 2003, I caused a copy of the foregoing to be served upon the following person by e-mail and by Federal Express:

Michael Bloom
Senior Counsel
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

and by e-mail upon the following: Susan Raitt (sraitt@ftc.gov), and Jonathan Platt (jplatt@ftc.gov).



Gregory S.C. Huffman

EXHIBIT D

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

NORTH TEXAS SPECIALTY PHYSICIANS,
a corporation.

DOCKET NO. 9312

**COMPLAINT COUNSEL'S OBJECTIONS TO
RESPONDENT'S FIRST SET OF INTERROGATORIES**

Pursuant to § 3.35 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings ("Rules of Practice"), 16 C.F.R. § 3.35, complaint counsel hereby submits objections to Respondent's Interrogatories to Complaint Counsel ("Interrogatories") issued on October 6, 2003. Each interrogatory is restated below, along with any applicable objections. Notwithstanding these objections, complaint counsel will respond subject to the objections made. Such responses shall not constitute a waiver of any applicable objection or privilege.

General Objections

1. Complaint counsel objects to the Interrogatories to the extent that they seek information that may be protected by the work product doctrine, attorney-client privilege, law enforcement privilege, deliberative process privilege, investigatory privilege, government informer privilege and other similar bases for withholding documents and information.
2. Complaint counsel objects to the Interrogatories to the extent that they seek to impose obligations broader than those required or authorized by the Rules of Practice or any applicable order or rule of this Court.
3. Complaint counsel objects to the Interrogatories to the extent that they are unduly burdensome or require unreasonable efforts on behalf of complaint counsel.
4. Complaint counsel objects to the Interrogatories, including the Definitions and Instructions, to the extent that Respondent objects to or does not undertake the same burdens in discovery.

These General Objections shall apply to each interrogatory herein and shall be incorporated by reference as though set forth fully in each of the responses to follow.

Objections and Responses to Individual Interrogatories

1. Identify each and every communication between NTSP and any alleged coconspirator in which the coconspirator agreed that he or she would reject a payor offer, including the date, time, content, and participants of such communication.

Objection: Complaint counsel objects to this interrogatory in that it is in the nature of a contention interrogatory and seeks information that is more properly sought after the completion of fact discovery, if at all.

2. Identify each and every act or practice of NTSP which you contend restrains trade, hinders competition, or constitutes an unfair method of competition, including the date of each such act or practice and how that act or practice restrained trade or hindered competition.

Objection: Complaint counsel objects to this interrogatory in that it is in the nature of a contention interrogatory and seeks information that is more properly sought after the completion of fact discovery, if at all.

3. Identify each person or entity from whom you have received documents or information concerning payor contracts in the DFW Metroplex.

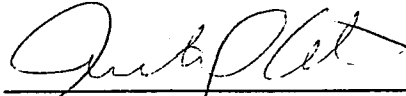
Objection: Complaint counsel objects to this interrogatory because it is overly broad and is not sufficiently limited in duration and scope. Subject to and without waiving this objection, complaint counsel will provide an answer to this interrogatory.

4. Identify each person or entity from whom you have received documents or information concerning NTSP.

Objection: Subject to the general objections stated above, complaint counsel will provide an answer to this interrogatory.

Dated: October 16, 2003

Respectfully submitted,



Jonathan Platt
Attorney for Complaint Counsel
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004
(212) 607-2819
(212) 607-2822 (facsimile)

CERTIFICATE OF SERVICE

I, Jonathan Platt, hereby certify that on October 16, 2003, I caused a copy of Complaint Counsel's Objections to Respondent's First Set of Interrogatories to be served upon the following person by email and by first class mail:

Gregory Huffman, Esq.
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201-4693
Gregory.Huffman@tklaw.com

and by email upon the following: William Katz (William.Katz@tklaw.com).


Jonathan Platt

EXHIBIT E

LEXSEE 1981 FTC LEXIS 110

In the Matter of FLOWERS INDUSTRIES, INC., a corporation

DOCKET NO. 9148

Federal Trade Commission

1981 FTC LEXIS 110

ORDER COMPELLING ANSWERS TO INTERROGATORIES

October 7, 1981

ALJ: [*1]

James P. Timony, Administrative Law Judge

ORDER:

ORDER COMPELLING ANSWERS TO INTERROGATORIES

Respondent moves to compel answers to interrogatories 10 through 25, 27 through 31, 34 and 37 of its initial set of interrogatories. These interrogatories, except numbers 34 and 37, seek information about allegations of the complaint, and require a statement of the facts and contentions upon which complaint counsel currently rely in support of the allegations.

Before filing the motion, respondent met with complaint counsel in an attempt to resolve objections to the interrogatories. Complaint counsel offered to respond to the interrogatories upon the condition that, prior to receiving the responses, respondent should agree to waive its right to move to compel additional responses even if complaint counsel's responses were insufficient. n1 Respondent refused to accept the condition and now seeks to compel answers.

n1 Complaint counsel asked for such an agreement "in order to avoid being faced with a motion to compel despite having spent substantial time and effort in providing respondent with expanded answers." Complaint counsel's response, at p. 3. It is not clear whether the meeting on the motion took place before counsel received the order of September 2, 1981, requiring a good faith attempt to resolve discovery issues before a motion was filed. I do not consider complaint counsel's conditional offer a good faith attempt to resolve this dispute and if it was clear that they were aware of the September 2 order at the time of the meeting, I would probably compel answers without further consideration.

[*2]

In opposing the interrogatories, complaint counsel argue that they have already provided respondent with a great deal of discovery; that respondent is in the industry and already has the requisite knowledge; that respondent's counsel are learned and do not really need a further elaboration of merger law; that the interrogatories attempt to depose complaint counsel and learn their mental processes and work product; and that complaint counsel are busy with other matters. These insubstantial arguments, if accepted, would extinguish the use of this useful discovery device in Federal Trade Commission adjudicatory proceedings. The Commission surely recognized these factors, which are hardly unusual, when it added the rule providing for interrogatories. 43 Fed. Reg. 233 (1978) at p. 56863. n2

n2 The use of contention interrogatories is recognized by Rule 3.35(b)(2).

Complaint counsel do point out that the interrogatories, if read literally, might call for every item of evidence which they will use to support the allegations of the complaint. Respondent states, however, that it does not seek minute detail or a meticulous order of proof for complaint counsel's case, but merely seeks the [*3] information in reasonable detail.

Complaint counsel also argue that the interrogatories are premature since they have not yet chosen all of their witnesses and documents which they will use to support the allegations of the complaint. That argument would not preclude, of course, answers based upon their present concept of the theory of the case and the evidence they will use. If complaint

counsel have not yet chosen the evidence they will use they can so state. n3 In all likelihood, however, they have reached a preliminary determination as to some documents and witnesses they will use at trial, and they certainly must have a more elaborate theory of the case than they had when the complaint issued. Based upon this assessment, complaint counsel should answer the contention interrogatories by sufficiently identifying documents and stating facts, and by elaborating their legal contentions, so that respondent will have a current road map of where this case is headed.

n3 Complaint counsel did in fact state in response to interrogatory 34 that they have not yet selected the experts they will call as witnesses.

Interrogatory 37, however, goes too far. That interrogatory would require [*4] complaint counsel to:

Identify each and every person, not previously identified in response to these Interrogatories, who has or may have knowledge as to the facts and contentions set out in your Complaint and in your response to these Interrogatories.

In antitrust cases a party is not generally permitted to discover the identity of every person interviewed by the other party. *Graber Mfg. Co., Inc.*, 68 FTC 1235, 1239 (1965); *United States v. Aluminum Ltd.*, 268 F. Supp. 758, 764-65 (D. N.J. 1966); *Ethyl Corp.*, FTC Docket No. 9128, order of 10/11/79. Interrogatory 37 is even broader, apparently seeking identification of each person who complaint counsel believe may have knowledge as to the facts and contentions made in the complaint. Although such discovery may be required in less complicated cases (e.g., those brought for personal injuries), n4 the rule in antitrust cases is contrary. In *United States v. Loew's, Inc.*, 23 F.R.D. 178, 180 (S.D.N.Y. 1959), the court refused to compel an answer to a similar interrogatory and held that: n5

. . . To ask the Government to state the names and addresses of every person known to "have knowledge" of any fact tending to [*5] prove the existence or circumstances of such oral contract would impose an impossible burden upon the Government. It would require, for example, that the names of every person who worked upon the case in the anti-trust division, including the lawyers, stenographers, investigators, etc. would have to be furnished, because they all might have received some information about the evidence . . .

n4 *Reichert v. United States*, 51 F.R.D. 500, 503 (N.D. Ca. 1970).

n5 If the interrogatory were limited to one or two issues it might be enforced. *United States v. Aluminum Ltd.*, 268 F. Supp. at 762.

Interrogatory 37 will therefore be quashed.

IT IS HEREBY ORDERED that, within 30 days, complaint counsel shall answer interrogatories 10 through 25 and 27 through 31 of respondent's initial set of interrogatories.

EXHIBIT F

LEXSEE 1986 US DIST LEXIS 19384

DANIEL BOVE, et al. v. WORLCO DATA SYSTEMS, INC., et al.

Civil Action No. 86-1419

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

1986 U.S. Dist. LEXIS 19384

October 7, 1986, Decided; October 8, 1986, Filed

LexisNexis (TM) HEADNOTES- Core Concepts:

COUNSEL: [*1]

Carl T. Bogus, Esq., for plaintiffs.

Dennis R. Suplee, Esq., for defendants.

OPINIONBY:

POLLAK

OPINION:

MEMORANDUM/ORDER

POLLAK, J.

This case involves a contract between plaintiffs, twelve limited partners in a research and development limited partnership, and defendants, the company with which the partnership contracted to develop a system of software for a new type of life insurance product and several employees of that company. Plaintiffs allege that the contract was breached and fraudulent misrepresentations were made, and that defendants' conduct violated *RICO*, 18 U.S.C. § 1964(c).

The particular dispute before us now concerns a set of interrogatories and document requests served by defendants on June 4, 1986, approximately three months after this action was initiated. Plaintiffs have objected to most of the interrogatories and document requests; defendants have moved to compel discovery and for costs and fees.

In one group of interrogatories at question here, defendants ask the following three questions with respect to several paragraphs (identified by number) of the complaint: (1) "State in detail all facts which you contend support your allegation that . . ." [with the ellipsis [*2] representing language quoted from the complaint]; (2) "Identify all documents which you contend support your

allegation that . . ."; (3) "Identify all persons having knowledge or information which you contend supports your allegation that . . ." The allegations the support for which is inquired into include Worlco's estimated time to complete the project; Worlco's use of best efforts to complete the project; defendants' conspiracy to defraud plaintiffs into believing that Worlco did use its best efforts; Worlco's obligation to refund plaintiffs' investment; and so forth. A second group of interrogatories asks plaintiffs to specify which statements in several letters are contended to be misleading, in what way, and based upon what information.

Defendants object that these are "contention interrogatories," and are premature. Under Fed. R. Civ. P. 33(b),

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 [*3] a pre-trial conference or other later time.

Relying heavily upon the discussion of contention interrogatories in *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 333 (N.D. Cal. 1985) (Brazil, M.), plaintiffs argue that it is inappropriate under Rule 33 for defendants to ask them to state the facts, documents, and sources upon which they base the allegations in their complaint at an early stage of discovery. Plaintiffs express the concern that "[a]s their counsel conducts discovery in this action and investigates their claims further, their contentions and supporting information may change." Plaintiffs' Response Memorandum at 8. In response, defendants argue that their requests to identify witnesses are not contention interrogatories. Defendants also state that although this case was filed only three

months before interrogatories were served, the history of the litigation is longer: defendants discuss, and plaintiffs do not contest, prior state court litigation dating back to June of 1985 in which depositions and documentary discovery were conducted. Defendants further discuss prior involvement of plaintiffs' counsel with the transactions underlying the present [*4] federal litigation. On this basis, defendants argue that their interrogatories are not premature, and should therefore be answered now even if they are characterized as contention interrogatories.

We agree that while contention interrogatories may help to clarify and narrow the issues in a case at an early stage of litigation, there is reason to question the appropriateness of "the early knee jerk filing of sets of contention interrogatories that systematically track all the allegations in an opposing party's pleadings." *In re Convergent Technologies, supra*, at 337-38. Nonetheless, in light of the history and nature of this litigation, we find defendants' interrogatories neither early nor knee-jerk. We do

not think it unduly burdensome to ask plaintiffs to set forth the factual basis for their RICO claims on a continuing basis.

Plaintiffs' position is that they should only have to answer these interrogatories once. In the event that they are ordered to answer the interrogatories now rather than at the close of discovery, they ask that defendants be barred from introducing the answers as evidence at trial. They fear that the admission of their early answers into evidence at [*5] trial will have the effect of excluding additional information acquired through discovery. Since we hold that plaintiffs must answer these interrogatories on a continuing basis, this concern is unfounded.

It is hereby ORDERED AND DIRECTED that defendants' motion to compel answers to interrogatories is GRANTED; defendants' motion for sanctions is DENIED.

OCTOBER 7, 1986

EXHIBIT G

(Cite as: 1990 WL 139145 (N.D.Ill.))

H

Only the Westlaw citation is currently available.

United States District Court, N.D. Illinois, Eastern Division.

RUSTY JONES, INC., Plaintiff,

v.

Beatrice COMPANY, John S. Corcoran and Arthur J.
McGivern, Defendants.

No. 89 C 7381.

Sept. 14, 1990.

MEMORANDUM OPINION AND ORDER

ANN C. WILLIAMS, District Judge.

*1 On December 22, 1989 defendant Beatrice Company ("Beatrice") served its first set of interrogatories on plaintiff Rusty Jones, Inc. ("Rusty Jones"). Rusty Jones objected to the interrogatories, claiming that the number of interrogatories exceeds the maximum permissible under Local Rule 9(g); that the answers require disclosure of information subject to work product protection; that the interrogatories are premature; that the interrogatories are burdensome; and that the information sought is within the control of defendant. The parties attempted to resolve Rusty Jones' objections pursuant to Local Rule 12(k) but were unable to do so. Beatrice then filed a motion to compel answers to its interrogatories pursuant to Fed.R.Civ.P. 37(a). The court will address each objection in turn.

Local Rule 9(g)

Local Rule 9(g) provides that a party may submit no more than twenty interrogatories without leave of court and that subparagraphs of an interrogatory must relate directly to the subject matter of the interrogatory. Beatrice served thirteen interrogatories upon Rusty Jones, but each interrogatory has numerous subparts. Rusty Jones argues that Beatrice's interrogatories exceed the number permitted by the local rule because the subparts do not directly relate to the subject matter of the corresponding interrogatory.

The court agrees that Beatrice has propounded more interrogatories than allowed by Rule 9(g) without first seeking leave of court. However, the court will grant Beatrice leave to propound the extra interrogatories at this juncture. Rusty Jones' complaint consists of eleven counts and 142 paragraphs and Beatrice estimates its liability could exceed one hundred million dollars. Thus, given the number of allegations against which Beatrice must defend itself and given the value of Beatrice's potential liability, the court finds there is good cause to allow Beatrice to serve extra

interrogatories.

Work Product Protection

Beatrice served Rusty Jones with a number of "contention interrogatories" asking Rusty Jones to state all information which Rusty Jones "believes supports" certain allegations in the complaint. Rusty Jones objected to the contention interrogatories, claiming that the answers would require "that Rusty's counsel sort out of all the relevant facts those which they believe are particularly supportive of their case" and that "[t]his sorting out process is work product, protected from disclosure." Plaintiff's Memo. in Opposition to Motion to Compel, 9-10. The court finds that defendant is not asking plaintiff to sort through all relevant information and identify the most relevant facts but instead is asking plaintiff to simply identify all the facts relevant to various allegations in the complaint. Such interrogatories are expressly permitted by Fed.R.Civ.P. 33(b). Moreover, several courts have found contention interrogatories are not violative of work product protections. *See e.g., King v. E.F. Hutton & Co., Inc.*, 117 F.R.D. 2, 5 n. 3 (D.D.C.1987); *In Re Convergent Technologies Securities Litigation*, 108 F.R.D. 328, 334-35 n. 20 (N.D.Cal.1985). Therefore, the court will not deny the motion to compel based on work product concerns.

Timing of Contention Interrogatories

*2 Plaintiff also states that the court should deny defendant's motion to compel because Beatrice's contention interrogatories are premature. Rusty Jones maintains that it has not yet gathered enough information through discovery to adequately answer the interrogatories. However, several months before filing the case, Rusty Jones had access to thousands of pages of Beatrice's documents because Beatrice had produced the documents in response to a request by Rusty Jones when Rusty Jones filed for bankruptcy. Moreover, Beatrice has already answered Rusty Jones' interrogatories and document production requests. Also, Rusty Jones certainly investigated the case before filing their complaint in order to have some factual basis upon which to base its allegations, in compliance with Fed.R.Civ.P. 11. Therefore, the court finds Rusty Jones does have sufficient information with which to answer Beatrice's contention interrogatories.

Burdensome Nature of Interrogatories and Control of Information

Rusty Jones also objected to the interrogatories on the ground that they were oppressive and burdensome. The court finds that given the number of allegations in the complaint and defendant's potential liability, the interrogatories are not overly burdensome. The fact that a party will be put to some trouble and expense in the process

(Cite as: 1990 WL 139145 (N.D.Ill.))

of answering interrogatories does not necessitate a finding that the interrogatories are unduly burdensome. *Federal Deposit Insurance Corp. v. Mercantile National Bank of Chicago*, 84 F.R.D. 345, 348 (N.D.Ill.1979).

Finally, Rusty Jones objected to the interrogatories because some of the information sought is already within the possession of Beatrice. The court holds that if Rusty Jones has the information available to it, it must answer the interrogatories, notwithstanding that Beatrice may also have some knowledge of the information. *See Cohn v. Dart Industries, Inc.*, 21 Fed.R.Serv.2d 792, 793 (D.Mass.1976).

Conclusion

For the aforementioned reasons, the court grants defendant's motion to compel plaintiff to answer defendant's first set of interrogatories.

1990 WL 139145, 1990 WL 139145 (N.D.Ill.)

END OF DOCUMENT

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

IN THE MATTER OF

NORTH TEXAS SPECIALTY PHYSICIANS,
A CORPORATION.

Docket No. 9312

**Order Granting North Texas Specialty Physicians' Motion
to Compel Responses to Interrogatories**

I.

Respondent North Texas Specialty Physicians filed a Motion to Compel Responses to Interrogatories on November 4, 2003. The FTC filed its opposition. For the reasons set forth below, Respondent's motion is GRANTED.

II.

Pursuant to 16 C.F.R. § 3.38, Respondent seeks an order compelling the FTC to provide responses to Interrogatories 1 and 2. The FTC contends that these interrogatories are contention interrogatories and, therefore, should be answered only after discovery is completed, if at all. Because the FTC has already conducted substantial discovery in the pre-complaint investigation of this matter, the FTC is ordered to provide full and complete responses to NTSP's Interrogatories 1 and 2 with the information and facts it currently has available. The FTC's responses to Interrogatories 1 and 2 shall be served on Respondent no later than five days from the date of this order.

III.

Rule 3.31(e)(2) of the Commissions' Rules of Practice imposes a duty upon parties to "supplement or correct [a] disclosure or response" under certain circumstances, and includes "a duty seasonably to amend a prior response to an interrogatory . . . if the party learns that the response is in some material respect incomplete or incorrect." 16 C.F.R. § 3.31(e)(2). The FTC is ordered to timely supplement or amend its responses to Interrogatories 1 and 2, as necessary, if subsequent discovery so requires.

Ordered:

D. Michael Chappell
Administrative Law Judge

Date: