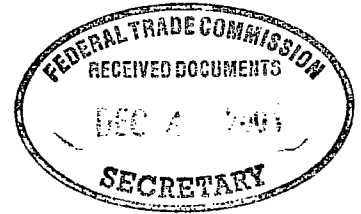


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



\_\_\_\_\_  
In the Matter of )  
 )  
 )

North Texas Specialty Physicians, )  
Respondent. )  
\_\_\_\_\_)

Docket No. 9312

**ORDER ON RESPONDENT'S MOTION TO QUASH AND  
MOTION TO COMPEL RESPONSES TO INTERROGATORIES**

**I.**

On November 5, 2003, Respondent North Texas Specialty Physicians ("NTSP") filed a motion to compel responses to interrogatories. Complaint Counsel filed its opposition on November 17, 2003.

On November 12, 2003, Respondent filed a motion for a protective order seeking, *inter alia*, the postponement of depositions noticed by Complaint Counsel until at least ten days after Complaint Counsel (a) answered interrogatories that disclose the specific allegations against NTSP, and (b) produced documents obtained during the pre-complaint investigation. By Order dated November 12, 2003, Complaint Counsel was ordered to file, on an expedited basis, an opposition to the request to postpone the depositions.

By Order dated November 14, 2003, Respondent's motion for a protective order to postpone depositions until after Complaint Counsel produced documents obtained during the pre-complaint investigation was granted in part. Respondent's motion for a protective order to postpone depositions until after Complaint Counsel answered Respondent's interrogatories was denied in part without prejudice because the dispute over these interrogatories was the subject of a separate, pending motion to compel responses to interrogatories. Complaint Counsel's opposition to the motion to compel responses was not due until November 17, 2003.

Respondent's November 12, 2003 motion for a protective order sought, in the alternative, to quash the deposition subpoenas. Complaint Counsel was required to file its opposition to Respondent's motion to quash the deposition subpoenas by November 19, 2003. Because Complaint Counsel had not then filed its opposition to the alternative request to quash the deposition subpoenas, no ruling was made in the November 15, 2003 Order with respect to Respondent's motion to quash.

As set forth below, Respondent's motion to compel responses to interrogatories is GRANTED. As further set forth below, Respondent's motion to quash the deposition subpoenas is DENIED.

## II.

Respondent's motion to compel responses to interrogatories seeks an order compelling Complaint Counsel to respond to two interrogatories. These interrogatories ask Complaint Counsel to: (1) identify communications between Respondent and any alleged coconspirator in which the coconspirator agreed that he or she would reject a payor offer; and (2) identify acts or practices of NTSP which Complaint Counsel contend restrain trade, hinder competition, or constitute an unfair method of competition. Complaint Counsel's Objections and Responses to Respondent's interrogatories object to these two interrogatories on the grounds that they are contention interrogatories that seek "information that is more properly sought after the completion of fact discovery, if at all." Complaint Counsel, in its opposition to the motion to compel, asserts that case law overwhelmingly favors delaying responses to contention interrogatories until the end of fact discovery.

The Commission's Rules authorize the use of contention interrogatories. 16 C.F.R. § 3.35(b)(2). Although under the Commission's Rules, the Administrative Law Judge may order that contention interrogatories need not be answered until after designated discovery has been completed, 16 C.F.R. § 3.35(b)(2), no motion for a protective order was filed by Complaint Counsel. Moreover, as discussed below, a ruling that Complaint Counsel need not answer the disputed interrogatories is not warranted in the instant case.

"The purpose of interrogatories is to narrow the issues and thus help determine what evidence will be needed at trial . . ." *In re TK-7 Corp.*, 1990 FTC LEXIS 20, \*1-2 (1990). The Commission's Rules require that each interrogatory be answered "fully." 16 C.F.R. §3.35(a)(2). To answer interrogatories fully requires Complaint Counsel to provide facts supporting its contentions. *In re Beatrice Foods Co.*, 1979 FTC LEXIS 598, \*4 (1979) (ordering complaint counsel to state the facts supporting certain allegations of the complaint).

This case is distinguishable from *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 133 (2000), upon which Complaint Counsel relies. In that case, respondent's motion to compel responses to interrogatories was denied on the grounds that the answers provided by complaint counsel were sufficient at that stage in the litigation. *Id.* at \*2. In the instant case, Complaint Counsel has provided only objections and no answers at all. Thus, Complaint Counsel's answers here are insufficient.

Respondent's motion to compel responses to interrogatories is GRANTED. Complaint Counsel is HEREBY ORDERED to respond to Respondent's interrogatories within five days with the information that Complaint Counsel has available at the present time. To the extent that Complaint Counsel gains additional information through the course of discovery that will enable it


to answer these interrogatories more fully, Complaint Counsel shall supplement its prior responses. See 16 C.F.R. § 3.31(e) (duty to seasonably amend prior responses to interrogatories).

III.

Respondent's November 12, 2003 motion for a protective order makes an alternative request to quash the deposition subpoenas issued by Complaint Counsel. Under the Commission's Rules of Practice, any party may take a deposition provided that such deposition is reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of the respondent. 16 C.F.R. §§ 3.31(c)(1), 3.33(a). The Rules also provide that a party may move to quash depositions, and the moving party must "set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation . . . ." 16 C.F.R. § 3.34(c).

In its November 12, 2003 motion, Respondent presents no arguments, reasons, or precedent for quashing the deposition subpoenas. As the party resisting discovery, Respondent bears the burden of showing that an order quashing the subpoenas is justified. 16 C.F.R. § 3.38(a)(1). Respondent has not met its burden. Accordingly, Respondent's motion to quash the deposition subpoenas is DENIED.

ORDERED:

  
D. Michael Chappell  
Administrative Law Judge

December 4, 2003