

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL E. HELFFRICH	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 04-1558
HAINES AND KIBBLEHOUSE, INC., et al.	:	

MEMORANDUM AND ORDER

Baylson, J.

March 29, 2005

This personal injury case has engendered an unusual number of discovery disputes that could have been avoided by more professional courtesy between counsel than the pleadings demonstrate. Although the competing Motions to Compel by Plaintiff and Defendants (except for Schlegel Builders, Inc., represented by separate counsel) make certain unsupported claims, and advocate unattainable professional purity for the conduct of depositions, both sides have made some improper objections, suggestions to witnesses and/or instructions at various points, and neither counsel is completely blameless nor completely at fault.

After a review of the voluminous deposition extracts attached to the motions, the Court believes that fact discovery has proceeded in large measure according to the Federal Rules of Civil Procedure, but because both counsel complain of each other's conduct, the Court will grant both Motions to Compel in part and will deny them in part.

It is certainly true that under the Rules, as well as under the stipulation that appears in the deposition transcripts, all objections, except as to the form of the question, are reserved until the time of trial. However, in some instances objections have been made without specifying the

grounds, or made to the form of question (although they could be interpreted as such). At other times, objections are simply stated without being “speaking objections” (which are universally improper), and there are some instructions to the witness that either prevented answers or, in the case of Plaintiff’s deposition, attempted to correct a non-responsive answer, which is not the prerogative of Plaintiff’s counsel. The questions are not always clear, and are sometimes repetitive, argumentative and would be inadmissible at trial. However, the rules give substantial leeway to the questioner to be professionally responsible.

Therefore, the Court will allow the Plaintiff to ask again those questions to which specific notation is made in Plaintiff’s Motion to Compel, and will require Plaintiff to reappear for additional questions specified by Defendants noted in their Motion to Compel (Doc. No. 49). All of the supplemental depositions shall be limited to one (1) hour per witness.

The Court notes that the discovery rules and the cases cited by both parties do not allow instructions not to answer a question unless it is founded on a sincere and sustainable claim of privilege. Therefore, even if questions ask hypotheticals or opinions, they must be answered by the witness. If a party believes that a deposition is being conducted in bad faith, it can adjourn the deposition and promptly make a motion to terminate the deposition, but does so at the risk of incurring costs if the motion is improper.

At this time the Court will not impose costs or sanctions on either party but suggests that future depositions be conducted in a greater spirit of collegiality and professional respect for each other. Accordingly, it is hereby ORDERED as follows:

1. Plaintiff’s Motion to Compel (Doc. No. 46) and Defendants’ Motion to Compel (Doc. No. 49) are GRANTED in part and DENIED in part.

2. Defendant Landis C. Deck's Motion for Enlargement of Time to Respond to Plaintiff's Requests for Admissions (Doc. No. 48) is GRANTED. Moving Defendants shall respond to no more than 100 Requests for Admissions no later than April 4, 2005, with service to be completed on Plaintiff's counsel on that day.

3. The Court will not extend the April 11, 2005 deadline for fact discovery unless necessitated by an act of God.

4. It is unclear from the papers whether the parties have a dispute as to the date, time and location of further depositions. If this logistical issue cannot be worked out among counsel, then counsel should notify chambers for a telephone conference. If the Court finds it necessary to set specific dates, times and locations for depositions, it will likely impose sanctions against whichever counsel it determines to have been unreasonable in this regard.

5. If there are still disputes about production of documents, counsel shall forward the disputed documents to Chambers with a letter explaining the reasons for non-production.

BY THE COURT:

s/Michael M. Baylson
Michael M. Baylson, U.S.D.J.

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