DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

ELIAS JOSEPH and WILLAN PATRICK, **Plaintiffs,** **v.** **GENERAL ENGINEERING CO., and** **ROLLS ROYCE AUSTRALIA, LTD.,** **Defendants**	**CIVIL NO. 2000/48**

TO: Lee J. Rohn, Esq.
Beth Moss, Esq.
Richard P. Farrelly, Esq. - Fax 774-7300

ORDER ON PLAINTIFFS' MOTION TO COMPEL

THIS MATTER came for consideration on Plaintiffs' Motion to Compel Defendant General Engineering Company (GEC). GEC filed opposition to the motion and Plaintiffs filed a reply to such opposition.

At issue are interrogatories 26-53 which GEC has declined to answer pursuant to Fed. R. Civ. P. 33(a) [limiting a "party's" interrogatories to 25). Plaintiffs assert that pursuant to Rule 33(b)(4) GEC has waived its rights of objection thereto.[1]

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1. Plaintiffs also argue that they are two parties and thus they should always be accorded 50 interrogatories. The law is unclear in such regard. See Wright Miller & Marcus, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2168.1. For reasons above, the Court need not decide such issue. However, if relevant the Court notes that thirty-one (31) interrogatories were common to both Plaintiffs; eleven (11) concerned only Joseph; eleven (11) concerned only Patrick. The Court would likely have allowed Plaintiffs thirty-six (36) interrogatories, *i.e.* twenty-five (25) as for either plus eleven (11) for the other.

Plaintiffs also seek further production of documents pursuant to their request for production.

I. Regarding Interrogatories 26-53

The subject interrogatories were served on GEC in mid-January 2001.[2] On June 5, 2001 Plaintiffs filed a Motion to Compel responses to their discovery requests. GEC's response to such motion on June 18, 2001 indicated that GEC was diligently working on its discovery responses and requested ten (10) additional days to comply. By Order dated June 18, 2001, the Court granted Plaintiffs' Motion to Compel and Ordered that GEC respond to Plaintiffs' discovery requests by June 29, 2001. GEC's responses including its objection to excess interrogatories were served on Plaintiffs on June 19, 2001. Accordingly, GEC's interrogatory responses were properly due by mid-February 2001. GEC filed no timely motion for extension thereof.

Fed. R. Civ. P. 33(a) provides that a party may not serve in excess of twenty-five (25) interrogatories without leave of court. Rule 33(b)(3) provides that answers and objections to interrogatories shall be served within thirty (30) days after

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2. Plaintiffs' reply states January 12, 2001. Plaintiffs' Notice of Service thereof is dated January 12, 2001 with certificate of service dated January 17, 2001 (Exhibit "1" to Plaintiff's motion).

service of the interrogatories. Rule 33(b)(4) states that any ground not stated in a timely objection is waived (unless the failure to object is excused by the court for good cause shown).

The law is well settled that a party's failure to object to interrogatories within thirty (30) days of service thereof is considered a waiver of any objections they might have had.[3] *Coregis Insurance Co. v. Baratta and Fenerty, Ltd. et al.*, 187 F.R.D. 528, 529 (E.D. Pa. 1999); *Jayne H. Lee, Inc. v. Flagstaff Industries Corp.,* 173 F.R.D. 651, 657 (D.Md. 1997); *Disantis v. Smith of Philadelphia et al.*, 1987 WL 28357 *1 (E.D. Pa.) [citing *Bohlin v. Brass Rail, Inc*. 20 F.R.D. 224 (S.D. N.Y. 1957), "Regardless of how outrageous or how embarrassing the questions may be, the defendants have long since lost their opportunity to object to the questions..."); *Fretz v. Keltner*, 109 F.R.D. 303, 309 (D.Kan. 1985); *In Re: Toilet Seat Antitrust Litigation*, 1978 WL 1309 *2 (E.D. Mich.); *Davis v. Romney*, 53 F.R.D. 247, 248 (E.D. Pa.); *Cephas v. Busch*, 47 F.R.D. 371, 372-73 (E.D. Pa. 1969), "under the circumstances the court has no alternative but to grant Plaintiff's motions to compel answers notwithstanding

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3. There remains some dispute as to whether objections based on privilege are waived. See *e.g.* contrast in first two cited cases.

that much of the information sought is totally irrelevant to the issues in this suit and notwithstanding that the interrogatories, in many respects, are harassing and vexatious."

The stricture of Rule 33(b)(4) has been applied to objections to interrogatories in excess of Rule 33(a)'s limitation. *Naegle v. Electronic Data Systems Corp., et al.*, 193 F.R.D. 94, 97 (W.D. N.Y. 2000); *In Re: Joshua John Wiggins, Debtor v. Peachtree Settlement Funding*, 2000 WL 33712300 *1 (Bankr. D. Idaho). Accordingly, it is hereby;

ORDERED that GEC fully respond to interrogatories 26-53 within twenty (20) days of the date of this Order.

II. Plaintiffs' Demands for Production

1. Regarding Demand for Production 1

   The parties agree this is moot. Plaintiffs' motion is DENIED.

2. Regarding Demand for Production 3 and 4

   Plaintiffs' request as stated in their reply is outside the scope of Plaintiff's demand. Accordingly, Plaintiffs' motion is DENIED.

3. Regarding Demand for Production 7, 8, 9

   Demand for Production 7 requests all documents including the personnel files of every person holding

> the position of heliac welder and boilermaker welder with GEC during the past seven (7) years. No. 8 and 9 request the personnel files of every person acting in any agency, supervisory or management capacity on GEC's behalf over Plaintiffs during their employment by GEC. Plaintiffs assert that the welder files are necessary to show that they had similar experience and qualifications as Plaintiffs and that Plaintiffs' layoff was a pretext. Plaintiffs contend that the supervisor files are necessary to determine whether they were qualified and properly trained for their positions and whether they had been disciplined for "similar behavior and the like."

In its response GEC argues that personnel files on non-party employees contain sensitive private information. GEC states that Plaintiffs were both employed in temporary positions to perform bench welding which was completed on August 2, 1999. Plaintiffs were then assigned duties of boilermaker welders to perform tubefitter welding and were laid off on August 3, 1999 due to a reduction in force of certified welders performing bench welding. GEC asserts that "certified welders" and boilermaker welders were not competing for Plaintiffs' positions.

Upon consideration, it appears that the extent of discovery allowed must be tailored to the particular allegations at issue. *Dorchy v. Washington Metropolitan Area Transit Authority*, 45 F.Supp. 2d 5, 15 (D.C. 1999); *Onwuka v. Federal Express Corp., et al.* 178 F.R.D. 508, 517-18 (D. Minn. 1997):

> We think the proper balance between privacy interest of non-party third persons and the discovery interest of a party litigant, is to assure that only those portions of the pertinent personnel files, which are clearly relevant to the parties' claims are open to disclosure and then subject to an appropriate Confidentiality Order as the circumstances require.

See also: *Northern v. City of Philadelphia* 2000 WL 355526 *3 (E.D. Pa.). "Although personnel files are discoverable, they contain confidential information and discovery of them should be limited." Similarly, *Miles v. The Boeing Company*, 154 F.R.D. 112, 115 (E.D. Pa. 1994). The information allowed "must be limited in scope in accordance with Fed. R. Civ. P. 26(b)(1) and tied to the allegations of Plaintiff's complaint" *Kresefky v. Panasonic Communications and Systems Co., et al.*, 169 F.R.D. 54, 66 (D.N.J. 1996).

Upon examination of Plaintiff's Second Amended Complaint, the Court notes that Plaintiffs allege:

> (par 4) that they were employed by GEC on or about July 4, 1999 as heliac welders; (par 9)

> that Plaintiffs are black males of West Indian descent; (pars 10-11)that Plaintiffs were fired without just cause as a result of illegal race, national origin, and color discrimination; (par. 12) that after Plaintiffs' wrongful firing, Defendants hired four white males to do the same work at higher wages. GEC's answer admitted that Plaintiff Patrick was employed as a heliac welder and that both Plaintiffs were employed on or about July 4, 1999. GEC denied the remaining referenced allegations.

Upon consideration of the above, it is hereby;

ORDERED as follows:

a. Within twenty (20) days of the date of this Order, GEC shall provide Plaintiffs with the following described information from the personnel files of all heliac welders who were appointed to such position at any time from July 4, 1999 to August 3, 1999 and the four (4) persons allegedly hired by GEC referred to in paragraph 12 of Plaintiffs' Second Amended Complaint.[4]

b. The information provided shall consist of all documents that evince the qualifications of such employees, all performance appraisal reports and any disciplinary complaints and actions taken as a result thereof.

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4. If GEC contends it cannot identify such four (4) persons, it shall confer with Plaintiffs' attorney in such regard.

c. Prior to such disclosure, Plaintiffs shall execute any requested appropriate confidentiality agreement with regard to such information.

d. In compliance herewith, GEC shall deliver **the complete personnel files** of the applicable employees to GEC's attorneys who shall then exact therefrom the information to be produced. To the extent any of the required information is deemed to be particularly sensitive and irrelevant to this matter, GEC may submit such information to the court for *in camera* review.

4. Regarding Demand for Production 10

Plaintiffs demand is DENIED as overbroad and irrelevant.

5. Regarding Demand for Production 11 and 12

GEC states that there are no other documents responsive thereto. GEC shall produce an averred statement to such effect within twenty (20) days of the date of this Order. Accordingly, Plaintiffs motion is DENIED.

ENTER:

Dated: April 15, 2002

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JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

ATTEST:
WILFREDO MORALES
Clerk of Court

By:_____
Deputy Clerk