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Judges Rejecting Long-Winded Answers

Kitchen-sink responses to interrogatories are all too common and do clients no favors.

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It's scary that I remember The Second City skit like it was yesterday, since it was actually 50 years ago. An actor playing Soviet Premier Nikita Khrushchev (ask your parents, or maybe your grandparents) on a visit to the United Nations was asked by a U.S. reporter, "Are the U.S. and USSR headed for war?"

Nikita boomed for nearly three minutes in bombastic Russian, as he gesticulated wildly, took off his shoe and pounded it on the table. When he finished his interminable rant, his interpreter stepped forward and said, "No."

Funny. And we lawyers do it every day. I just opened my mail and read my opponent's latest tome, "Defendant's Answers and Objections to Plaintiff's Interrogatories." What a hoot. Let me explain. Do you have a few minutes? This will take a while.

My opponents' "Answers" are preceded by a "Preliminary Statement" explaining that discovery is still continuing (Gosh, thanks! I hadn't realized) and "General Objections" (no less than 10 of them) that apply, they recite, to the entire set of interrogatories.

Three pages of rant later, we finally get to my first interrogatory. I'm paraphrasing here:

"Has Defendant negotiated for or contracted with any provider other than Plaintiff for the same type of services at issue in this case?" And the particular response to that interrogatory continues the rant: "Defendant incorporates its General Objections as though fully set forth herein. Defendant further objects to this interrogatory as being improperly compound. Defendant further objects to this interrogatory because it seeks disclosure of material protected by the attorney-client privilege and by confidentiality agreements with third parties and because it is vague, overbroad, and irrelevant."

And then ... wait for it: "Subject to and without waiving the foregoing objections, Defendant states as follows:"

"No."

It's Second City, all over again.

Full disclosure. I took another look at the responses I myself had filed to the other side's dis-

covery. I didn't lob in a preliminary statement, but I, too, had started with general objections. Only three of them, only half a page, not repeated in each answer, so not nearly so egregious as my opponent. But, truth is, my high moral ground is a few snow caps short of the mountain top. They did it; I did it; I'll bet you do it, too.

But why do we do it? The answer, I'm sure you're thinking, is that we do it because we always have. We tell an associate to get a "form." The associate, tutored by our legal catechism to believe that an objection not made is an objection waived and terrified to miss anything, gets three forms and squeezes out every tidbit from each into a laundry list of every possible, albeit theoretical objection.

And remembering the Johnny Carson Rule of Comedy—always repeat a good joke at least but no more than three times—the associate repeats every objection as a preliminary objection, as a general objection and as a specific objection. By God, object early, often and repeat.

But not so fast. Earlier this year, the U.S. District Court for the Northern District of Illinois in *In re Peregrine Fin. Grp. Customer Litig.* found that general objections are no objections at all. "It is well-established that … generalized boilerplate objections have no effect," the court found.

BOILERPLATE REJECTED

Courts have repeatedly warned litigants who oppose discovery that their "burden cannot be met by a reflexive invocation of the same baseless, often abused litany that the requested discovery is vague, ambiguous, overly broad, unduly burdensome or that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence."

The bandwagon gets jumped on virtually every day, as court after court re-affirms that general boilerplate objections are no objections at all. I drafted this article on July 6, and giving myself a 90-day window prior to that, I searched with the term, "boilerplate w/2 objection," and found at least a dozen newly reported cases, in six jurisdictions where I will think twice before making general objections: Kentucky, Oregon, Kansas, California, Nevada and West Virginia.

Indeed, some courts are beginning to reach the end of their good will with lawyers like you and me who raise general objections simply because we always have and are afraid not to.

As the U.S. District Court for the Northern District of Illinois in *Buonauro v. City of Berwyn* stated: "This court has remarked on the continued use of general objections with some impatience, and has advised litigants in clear terms that their burden cannot be met by a reflexive invocation of the same baseless, often abused litany."

In the U.S. District Court for Maryland, Judge Paul Grimm is not merely impatient about the practice. His standing discovery order expressly prohibits lawyers who appear before him from making such objections: "Boilerplate objections (e.g., objections without a particularized basis, such as 'overbroad, irrelevant, burdensome, not reasonably calculated to identify admissible evidence'), as well as incomplete or evasive answers, will be treated as a failure to answer pursuant to Fed. R. Civ. P. 37(a)(4)."

Forget the fact that you've always done it. Discount the fact that everybody does it. Get over your fear that you may waive an objection if you don't raise every possible one. If you have a valid objection to an interrogatory, make it—tailored to the particular interrogatory. But don't make general objections.

Or, if you can't help yourself, at least make your objections in Russian. They'll be no less effective that way, and maybe you won't be sanctioned for the indecipherable content. Do svidaniya, tovarich.

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