STATE OF VERMONT
RUTLAND COUNTY, SS

DAVID HASBROUCK, Individually, and as parent and natural guardian of ELTINGE PAUL HASBROUCK, a minor Plaintiffs	)	RUTLAND SUPERIOR COURT DOCKET NO.S0471-97Rdc
V.	)	
ERNEST CLERIHEW Defendant	)	

CONFORMED COPY
RUTLAND SUPERIOR COURT
OCT 08 1998
Cheryl L. Johnson
Clerk

NOTICE OF DECISIONS:
MOTION TO DETERMINE SUFFICIENCY OF DISCOVERY RESPONSES, and PLAINTIFF'S MOTION IN LIMINE

Defendant's Motion to Determine Sufficiency of Responses to Requests

The Court has reviewed Defendant's Motion filed September 17, 1998, as well as Plaintiff's response of September 23, 1998. The Court concludes that Plaintiff's responses are sufficient responses to Requests for Admission under the Rule of Civil Procedure. In response to a request to admit, a party is required only to admit a fact, deny it, object, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. V.R.C.P. 36(a). Defendant's Request to Admit included, in addition to requests to admit, a request to produce (request 1), and interrogatories (requests 2 and 3). Requests to admit are not to be confused with other forms of discovery requests. "Requests for admissions and interrogatories are not interchangeable procedures. California v. Jules

Fribourg, 19 FRD 432, 435 (ND Cal. 1955)." In re: Olympia Holding Corp., Bkrtcy D.C. Fla. 1995, 189 B.R. 846, 853. Utilizing interrogatories disguised as requests for admission in order to avoid a local rule on the number of permissible interrogatories is an abuse of the discovery process. Id. Similarly, it is a misuse of process to combine the procedure for Requests for Admission, which is designed to conclusively establish facts for the case (Rule 36(b)), with discovery requests, which are designed to draw out information that may lead to the discovery of admissible evidence (Rule 26). While Defendant, after receiving responses to Requests to Admit, may wish to follow-up with discovery requests, it undermines the process of establishing facts conclusively to include discovery requests in Requests for Admission. Such a procedure is not provided for in the Rules for good reason, as it results in confusion.

For the foregoing reasons, the Defendant's Motion is **GRANTED**, and the Court determines that the Plaintiff's responses to Defendant's Request to Admit are sufficient. Therefore, Defendant's request for an order that all the requests be deemed admitted is denied. Defendant's alternative request for an Order to Compel is denied.

Plaintiff's Motion in Limine to Exclude Defendant's Liability Experts

The Court has reviewed Plaintiff's Motion in Limine filed September 17, 1998, and Defendant's response filed September 18, 1998.

The Pretrial Order in this case provided that depositions of fact witnesses were to be completed by July 1, 1998, motions were to be filed by August 1, 1998, and all discovery was to be completed by September 1, 1998. Plaintiffs served expert interrogatories on the

Defendant on August 26, 1997. By response dated October 17, 1997, Defendants stated that any experts were "unknown at this time." The Pretrial Order was issued two months later, on December 17, 1997.

Defendant never supplemented his response to the request to disclose experts until August 31, 1998, the day before discovery was to be complete. Defendant did not file, at any time, a motion to extend discovery or change the deadlines on the Pretrial Order.

The Pretrial Order provided sufficient time for experts to be disclosed and for discovery to be completed within the established schedule. Defendant had 10-11 months from the time of the initial discovery request, and several months after the Pretrial Order, in which to disclose an expert in sufficient time for the expert to be deposed within the limits of the Pretrial Order. The provision that "all discovery is to be completed in this cause by 9/1/98" is not limited to discovery arising from fact witnesses, but includes all discovery, which means discovery related to expert witnesses as well. A common sense reading of the Pretrial Order is that in order for all discovery to be completed by September 1, 1998, an expert disclosure by Defendant would have to be made in a reasonable amount of time prior to that date to allow for deposition. Therefore, Defendant's disclosure of an expert on August 31, 1998 is untimely. If allowed, over Plaintiff's objection, it would put the Plaintiff in the position of choosing between foregoing deposition of an expert witness, or accepting delay in the resolution of his claim. Under this form of Pretrial Order, it is the Defendant who bears the responsibility of making a timely disclosure, or seeking an extension if there is a reason to support it. Plaintiff may seek sanctions for Defendant's

failure to do so. Because Defendant's conduct results in prejudice to the Plaintiff, the Court exercises its discretion to preclude the testimony of Defendant's experts. White Current Corp. v. Vermont Electric Co-op., 158 Vt. 216 (1992). Although a fixed date is not yet set for trial, for the court to permit this kind of late disclosure of experts in contravention of the schedule set out in the Pretrial Order would result in delay and undermine the effect of the Pretrial Order.

For these reasons, Plaintiff's Motion in Limine is **GRANTED** and Defendants are precluded from relying on the testimony of experts disclosed on August 31, 1998.

Dated at Rutland, Vt. this 8th day of October 1998.

Mary Miles Teachout
HON. MARY MILES TEACHOUT
SUPERIOR COURT JUDGE