[Cite as *Hudson v. United Servs. Auto. Assn. Ins. Co.,* 150 Ohio Misc.2d 23, 2008-Ohio-7084.]

IN THE COURT OF COMMON PLEAS OF
GREENE COUNTY, OHIO,
CIVIL DIVISION

HUDSON	)	CASE NO. 2008-CV-0114
	)	Judge Wolaver
v.	)	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT MATTHEW D. RIPPL'S MOTION TO COMPEL PLAINTIFF TO ANSWER INTERROGATORIES, ORDERING RIPPL TO SUBMIT A STATEMENT OF COSTS INCURRED IN OBTAINING THIS ORDER AND A STATUS REPORT ON PLAINTIFF'S COMPLIANCE WITH RIPPL'S DISCOVERY REQUESTS, AND DECLAR-ING PART OF IT TO BE A FINAL APPEALABLE ORDER
UNITED SERVICES AUTOMOBILE ASSOCIATION INSURANCE COMPANY et al.,	)	
		10-21-08

Brannon & Associates and Douglas D. Brannon, for plaintiff.

Altick & Corwick and Jonathan B. Freeman, for defendant.

WOLAVER, Judge.

{¶ 1} This case is now before the court on defendant Matthew D. Rippl's motion filed August 26, 2008, for an order to compel plaintiff Timothy Hudson to respond to Rippl's

discovery requests, namely, to compel answers to certain interrogatories posed to plaintiff. Also before the court is the response of the plaintiff.

A. The Disputed Interrogatories

{¶ 2} Under the Rules of Civil Procedure, "[a]ny party, without leave of court, may serve upon any other party up to forty written interrogatories to be answered by the party served * * * Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer."[1] Rippl submitted 37 interrogatories to plaintiff. Rippl in his motion to compel claims that the answers plaintiff submitted to nine of the 37 are either incomplete or the objections made are invalid.

{¶ 3} The court observes that the replies state, in reply to interrogatory number one, that they are given by the plaintiff, but they appear to be completely by his counsel. The answers are not signed by plaintiff but solely by his counsel, who signed once "as to all objections," once under the line "Respectfully submitted," and a third time on the certificate of service. Counsel did not make the answers under oath, another violation of the clear language of the rule. The court notes that the rules do not permit attorneys to answer for their clients, and any answers that may be made by counsel are inadmissible as evidence.[2]

{¶ 4} Plaintiff's counsel submitted answers and objections to Rippl's interrogatories to Rippl's counsel by letter dated April 4, 2008—notwithstanding the fact that plaintiff's counsel's certificate of service is dated March 31. Rippl's counsel, in a letter dated April 24, asked plaintiff's counsel for more complete answers to the disputed interrogatories. No answer was

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[1] Civ.R. 33(A).

[2] *Inzano v. Johnston* (1986), 33 Ohio App.3d 62, 65, 514 N.E.2d 741, citing *Hensley v. Fairview Park Hosp.* (C.P.1970), 26 Ohio Misc. 128, 54 O.O.2d 348, 265 N.E.2d 800, *Pomeranz v. Hill* (M.C.1970), 26 Ohio Misc. 185, 53 O.O.2d 273, 265 N.E.2d 562, and *Schuldt v. Assoc. Invest. Co.* (1938), 61 Ohio App. 213, 15 O.O. 148, 22 N.E.2d 572.

received, and Rippl's counsel again wrote plaintiff's counsel on July 28 to renew his request for cooperation, which also appears to have been ignored. Rippl filed his motion to compel a month later; plaintiff filed a reply brief as noted herein.

{¶ 5} "In general philosophy the [discovery] rules are designed for extra-judicial operation. Courts will generally not become involved until a person who feels aggrieved seeks their intervention."[3] The rules provide that "[i]f * * * a party fails to answer an interrogatory submitted under Rule 33 * * * the discovering party many move for an order compelling an answer."[4] Parties are obligated to try to work out their disputes before taking them before the court.[5] When a motion to compel is filed, the court shall award expenses if the motion or the opposition to it is unjustified.[6] Because one of the parties is aggrieved, this court must reluctantly but dutifully involve itself in discovery.

{¶ 6} The court will address the disputed interrogatories in turn.

B. The Expert Interrogatory

{¶ 7} "[A] party by means of interrogatories may require any other party (i) to identify each person whom the other party expects to call as an expert witness at trial, and (ii) to state the subject matter on which the expert is expected to testify."[7] Parties are also "under a duty seasonably to supplement [their] response[s] with respect to any question directly addressed to * * * the identity of each person expected to be called as an expert witness at trial and the subject matter on which he is expected to testify."[8] The expert interrogatory seeks exactly this

[3] Civ.R. 26, 1970 Staff Notes.
[4] Civ.R. 37(A)(2).
[5] Civ.R. 37(E).
[6] Civ.R. 37(A)(4).
[7] Civ.R. 26(B)(4)(b).
[8] Civ.R. 26(E)(1).

information, including contact information for the witnesses. The reply given was "Objection. Will provide in accordance with the Courts [sic] pretrial scheduling order."

{¶ 8} The day before Rippl filed his motion to compel, plaintiff filed a document with the clerk captioned "Plaintiff's Disclosure of Expert Witnesses." Plaintiff asks us to find Rippl's objection to the expert interrogatory moot because of its filing of this witness list. The court could agree in part except as follows:

{¶ 9} One proposed expert witness is not identified by name at all but is listed as "Miami Valley Hospital (Physician and Medical Records Custodian)." It does not include telephone numbers for any party, which was requested by Rippl, only addresses. Nor does it give any information, also requested by Rippl, as to the subject matter of their expected testimony. The only indication of what the witnesses might testify to is a series of initials after their names, e.g., M.D., Ph.D., B.S., C.F.E.I., and ACTAR. The court understands what the first three are. The last abbreviation, "ACTAR," appears to indicate that the witness has been accredited by the Accreditation Commission for Traffic Accident Reconstruction,[9] while "C.F.E.I." appears to indicate that the named witness is a "Certified Fire and Explosion Investigator."[10]

{¶ 10} However, such a general hint of a witness's expertise as these abbreviations—which in the case of "ACTAR" and "C.F.E.I." are not even common knowledge—is inadequate to comply with Civ.R. 26(B)(4)(b) or the expert interrogatory. The purpose of discovery is to put parties on notice of each side's case and how it intends to present it. This is especially true in dealing with expert testimony, which requires preparation on the opposing side beyond what would be done for a lay witness. Rippl can hardly be expected to properly prepare to depose or

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[9] See http://www.actar.org/faq.html (last accessed October 6, 2008).
[10] See http://www.nafi.org/cfei.htm (last accessed October 6, 2008).

rebut plaintiff's experts without any indication of what plaintiff's experts are going to say; yet that is exactly what plaintiff would have them do with his inadequate disclosure.

{¶ 11} Plaintiff's filed list does not entirely make the expert interrogatory moot as plaintiff has not supplied the requested information. By the explicit terms of Civ.R. 26 he is obligated to disclose the information Rippl seeks. As he has not done so, plaintiff shall fully answer the expert interrogatory.

C. The Income Interrogatory

{¶ 12} Rippl asked plaintiff, "Do you claim loss of income as a result of the [car accident]?" Rippl asked for plaintiff to "explain in detail" an affirmative answer and to include documentation of the claim, with copies of his state, federal, and local tax returns. The entirety of plaintiff's reply was "Yes." No explanation of the specifics of plaintiff's lost-income claim was supplied. No documents were submitted. Nor was there an objection for either the terse answer—Rippl had asked for "detail" if the answer was "yes"—or the failure to supply documentation. No objection to the request was made, as it could have been under Civ.R. 26(C).

{¶ 13} A party is entitled to obtain discovery by requesting documents.[11] The Civil Rules do not provide a specific exemption to shield tax returns. "Although there is no privilege protecting the production of tax returns, the courts have been reluctant to order routinely their discovery. This historic trend seems to stem in part from the private nature of the sensitive information contained therein, and in part from the public interest in encouraging the filing by taxpayers of complete and accurate returns."[12]

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[11] Civ.R. 26(B)(3).

[12] *Smith v. Bader* (S.D.N.Y.1979), 83 F.R.D. 437, 438, citing *Mitsui & Co. Inc. v. Puerto Rico Water Resources Auth.* (D.P.R.1978), 79 F.R.D. 72, 80, *Payne v. Howard* (D.D.C.1977), 75 F.R.D. 465, 470, and *Wiesenberger v. W. E. Hutton & Co.* (S.D.N.Y.1964), 35 F.R.D. 556, 557.

{¶ 14} Plaintiff asks us to consider two cases in support of his proposition that "plaintiff's tax returns are subject to a qualified privilege and disclosure of tax returns will be required only if they are relevant to a disputed issue and if there is a compelling need for the disclosure because the information contained in the return cannot be obtained by other means."[13]

{¶ 15} As Ohio modeled the Civil Rules after the Federal Rules of Civil Procedure, it is instructive to look at how the federal courts have interpreted similar language.[14] The Southern District of New York has opined that "the production of tax returns should not be ordered unless it clearly appears they are relevant to the subject matter of the action or to the issues raised thereunder, and further, that there is a compelling need therefor because the information contained therein is not otherwise readily obtainable."[15] Numerous cases from the federal courts and those of other states declare tax returns to be discoverable.[16]

{¶ 16} For at least a half century Ohio courts have found that income tax returns are discoverable when a party has put his income at issue.[17] Plaintiff answered the income interrogatory in the affirmative. Plaintiff has thus placed his income at issue. Therefore, Rippl is entitled to documents related to the lost-income claim. Plaintiff in his reply to the motion to compel claims that defendant is on a "fishing expedition." The court believes that there might be other ways of documenting plaintiff's lost income that would not require disclosure of tax returns, e.g., statements from employers or claims for unemployment benefits.

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[13] *State ex rel. Fisher v. Cleveland*, 8th Dist. No. 83945, 2004-Ohio-4345, 2004 WL 1846124; *Credit Life Ins. Co. v. Uniworld Ins. Co. Ltd.* (S.D.Ohio 1982), 94 F.R.D. 113.

[14] *First Bank of Marietta v. Mascrete, Inc.* (1997), 79 Ohio St.3d 503, 508, 684 N.E.2d 38. See also *Myers v. Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353, 852 N.E.2d 1176, ¶18; *Ohio Consumers' Counsel v. Pub. Util. Comm.,* 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶89.

[15] *Cooper v. Hallgarten & Co.* (S.D.N.Y.1964), 34 F.R.D. 482, 484.

[16] See Annotation, Discovery and Inspection of Income Tax Returns in Actions Between Private Individuals (1960), 70 A.L.R.2d 240.

[17] See, e.g., *Mandell v. Yellow Cab Co. of Cleveland* (C.P.1958), 84 Ohio Law Abs. 524, 13 O.O.2d 199, 170 N.E.2d 296.

{¶ 17} The rules recognize that discovery requests might be overbroad and provide for relief in the form of a protective order. Plaintiff, however, has not filed a motion under Civ.R. 26(C) to ask for such an order. If plaintiff believes that the request for income tax returns is oppressive or burdensome and the information requested by Rippl on plaintiff's lost income can be otherwise documented, the court invites plaintiff to make a request for a protective order.

{¶ 18} The motion to compel an answer to the income interrogatory, including the production of the tax returns is granted, but stayed for 21 days from the date of this order so plaintiff might request a protective order and propose other ways of documenting his lost-income claim.

D. The Special-Damages Interrogatory

{¶ 19} Rippl asked plaintiff to "[l]ist all special damages which you claim because of the [car accident] (Civil Rule 9[G])." The plaintiff's reply was:

> Objection. This interrogatory is vague, overbroad, and unduly burdensome. Plaintiff is not a legal expert and can not [sic] give an opinion regarding what may constitute special damages. Furthermore, this is not a proper question for an interrogatory. Over objection and without waiver of same, see the complaint.

{¶ 20} "Special damages are those occasioned by the special character, condition, or circumstance of the person wronged. They are not presumed by the injury. They must be specially pleaded and must be proved by competent evidence."[18] When a plaintiff claims them "they shall be specifically stated."[19] Loss of earnings is one type of special damages.[20]

{¶ 21} "An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves [a] * * * legal conclusion."[21] While it may be that "plaintiff is not a legal expert" it does not appear that plaintiff answered the interrogatories. The rules

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[18] *Robb v. Lincoln Publishing (Ohio), Inc.* (1996), 114 Ohio App.3d 595, 622, 683 N.E.2d 823.
[19] Civ.R. 9(G).
[20] *Morrison v. Devore Trucking, Inc.* (1980), 68 Ohio App.2d 140, 428 N.E.2d 438, paragraph four of the syllabus.
[21] Civ.R. 33(B).

provide that "answers [to interrogatories] are to be signed by the person making them, and the objections signed by the attorney making them."[22] As outlined above, it does not appear that plaintiff actually answered any of the interrogatories; rather, his counsel did so. Because of that, counsel can hardly start defending the failure to answer on the basis that his client is not familiar with legal words and phrases.

{¶ 22} The court does presume plaintiff to be familiar with the term "special damages." The question is not vague, or overbroad, or overly burdensome. The term is a familiar one in the law and it can hardly be claimed that complying with the Civil Rules is overly burdensome when plaintiff himself has raised the issue; as explained above, plaintiff is seeking recovery for lost income.[23] Therefore he is asking for special damages. It does not seem out of line for Rippl to ask plaintiff to identify any special damages besides the lost-income claim that he might have. Plaintiff shall answer the special-damages interrogatory.

E. The Reimbursement Interrogatory

{¶ 23} Rippl asked plaintiff to identify "the person, firm, or corporation who paid or reimbursed you for any special damages which you claim." Plaintiff's answer was "[t]his information is currently incomplete and Plaintiff will supplement."

{¶ 24} The court observes that in reply to the special-damages interrogatory, plaintiff claimed not to be a "legal expert" and professed ignorance of the term "special damages," but he has not done so with the very next interrogatory. Plaintiff has an obligation to identify his special damages, and it is reasonable to ask him to identify anyone who reimbursed him for them. Plaintiff did not object to the query, but stated that the information was incomplete and

[22] Civ.R. 33(A).
[23] Complaint, ¶11.

would be supplied later. It is now six months later, and it appears that plaintiff has still failed to answer. The court orders plaintiff to answer the reimbursement interrogatory.

F. The Medical Interrogatory

{¶ 25} Plaintiff was asked, "Have you been injured or sustained illness which has caused you to be treated by a professional health care person (doctor-chiropractor-physical therapist-etc.) during your lifetime" other than from the car accident. Plaintiff's answer was:

> Objection. This interrogatory is vague, overbroad, irrelevant[,] and not reasonably calculated to lead to the discovery of any admissible evidence. Furthermore, the information requested is protected under HIPPA [the Health Insurance Portability and Accountability Act] and is otherwise inadmissible as evidence.

{¶ 26} Discovery is limited to those matters "not privileged."[24] The plaintiff in a civil action waives the privilege defense only if the information sought is relevant to the suit.[25] "[A] person's medical records are generally protected from disclosure by the Health Insurance Portability and Accountability Act of 1996."[26] The Revised Code waives the doctor-patient privilege for those who have filed a civil action,[27] but only for information that relates to "causally or historically to physical or mental injuries that are relevant to issues in the * * * civil action."[28] "[A] personal injury litigant does not waive the physician-patient privilege merely by filing his petition."[29] When a party places his health at issue, his medical history becomes relevant and can be discoverable.[30] This does not, however, entitle Rippl to inquire as to plaintiff's entire medical history as he proposes to do with a request for information "during

[24] Civ.R. 26(B)(1).
[25] *McCoy v. Maxwell* (2000), 139 Ohio App.3d 356, 359, 743 N.E.2d 974.
[26] *State v. Jiminez*, 2d Dist. No. 22082, 2008-Ohio-1601, 2008 WL 867733, ¶33, citing Section 164, Title 45, C.F.R.
[27] R.C. 2317.02(B)(1)(a)(iii).
[28] R.C. 2317.02(B)(3)(a).
[29] *State ex rel. Lambdin v. Brenton* (1970), 21 Ohio St.2d 21, 24, 50 O.O.2d 44, 254 N.E.2d 681.
[30] *Miller v. Bassett*, 8th Dist. No. 86938, 2006-Ohio-3590, 2006 WL 1934788, ¶24.

[plaintiff's] lifetime." An Eighth District case found that requesting medical records over the previous ten years was overbroad.[31] To ask information on a lifetime of medical treatment is even more overbroad, and the court rejects it. Rippl must be reasonable in his requests for discovery of plaintiff's medical history, and his motion to compel an answer to the medical interrogatory is denied.

G. The Examination Interrogatory

{¶ 27} Plaintiff was asked to identify the doctors who had done a physical or mental evaluation of him in the preceding two years. The answer given was the same as to the medical interrogatory.

{¶ 28} While what was said between a physician and his patient may be confidential, the fact that the physician treated the patient is not protected by the confidentiality provisions of the Revised Code.[32] The names of those who treated a patient are discoverable.[33] Only communications are protected, not the fact they were made with a certain doctor.[34] Rippl has not asked for any communications in violation of the doctor-patient privilege, only information as to whether any medical examinations have occurred and who made them. This is discoverable information.

{¶ 29} Ordinarily, a trial court's orders on discovery matters are not final appealable orders.[35] But under R.C. 2505.02(B)(4), an order is reviewable if it is:

> An order that grants or denies a provisional remedy and to which both of the following apply: (a) The order in effect determines the action with respect to

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[31] Id. at ¶27.
[32] *Jenkins v. Metro. Life Ins. Co.* (1961), 171 Ohio St. 557, 15 O.O.2d 14, 173 N.E.2d 122, paragraph two of the syllabus.
[33] *Binkley v. Allen* (Feb. 5, 2001), 5th Dist. No. 2000CA00160, 2001 WL 111772.
[34] *Ingram v. Adena Health Sys.*, 149 Ohio App.3d 447, 2002-Ohio-4878, 777 N.E.2d 901, ¶15.
[35] *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 639 N.E.2d 83, paragraph seven of the syllabus. See also *Klein v. Bendix-Westinghouse Automotive Air Brake Co.* (1968), 13 Ohio St.2d 85, 86, 42 O.O.2d 283, 234 N.E.2d 587; *Walters v. The Enrichment Ctr. of Wishing Well, Inc.* (1997), 78 Ohio St.3d 118, 120-121, 676 N.E.2d 890.

> the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy. (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶ 30} The court finds that the provisional remedy—i.e., this motion to compel—prevents a judgment on the issue of confidentiality of medical records in favor of plaintiff, and an appeal would not provide an effective remedy to him because, by the time the court of appeals would have acted, plaintiff's confidentiality would already have been violated.[36]

{¶ 31} The court wishes to act cautiously here and minimize the invasion of plaintiff's medical confidentiality. Therefore, the motion to compel an answer to this interrogatory is granted, but stayed 30 days for plaintiff to file either a protective order suggesting how the invasion of privacy can be minimized or a notice of appeal. This order is declared a final appealable order as to this part only. If a notice of appeal is filed, the order to compel an answer to the examination interrogatory is stayed until further notice.

H. The Activity Interrogatory

{¶ 32} Rippl asked plaintiff:

> If there is any activity which you claim you cannot now or in the future fully or partially engage in as a result of the injuries allegedly sustained in [the car accident]; then give a description of each such activity and state whether you will be able to engage in the activity in the future.

{¶ 33} The reply was:

> Objection. This interrogatory is vague, overbroad[,] and unduly burdensome. Furthermore, this interrogatory requires no categorical response, leaves everything to the discretion of the party so directed, bears no relationship to the simple question and answer at trials as contemplated by the Rules[,] and is

[36] *Grove v. Northeast Ohio Nephrology Assoc., Inc.,* 164 Ohio App.3d 829, 2005-Ohio-6914, 844 N.E.2d 400, ¶9, citing *Callahan v. Akron Gen. Med. Ctr.,* 9th Dist. No. 22387, 2005-Ohio-5103, 2005 WL 2373916, at ¶28, and *Amer Cunningham Co., L.P.A. v. Cardiothoracic Vascular Surgery of Akron,* 9th Dist. No. 20899, 2002-Ohio-3986, 2002 WL 1800323, at ¶11.

improper. *Penn Cent. Transp. Co. v. Armco Steel Corp.* (1970), [27 Ohio Misc. 76, 56 O.O.2d 295,] 271 N.E.2d 877.

{¶ 34} *Penn Cent.* was written by Judge Robert L. McBride of the Montgomery County Court of Common Pleas, who decided the case under the new Rules of Civil Procedure that he had helped draft as a member of the Rules Advisory Committee.[37] McBride gave a very narrow construction of what was proper in an interrogatory.[38] He believed that questions that called for more than brief answers ought to be made in depositions, not interrogatories.[39] After being elevated to the Second District Court of Appeals, Judge McBride had cause to comment on his own decision when he said that an interrogatory that asked a party to identify certain things was perfectly proper.[40] Likewise, other Ohio courts have rejected the narrow use of interrogatories Judge McBride felt was proper.[41]

{¶ 35} The court declines to follow the narrow construction of *Penn Cent.* urged by plaintiff. The plaintiff claims that he has incurred "the loss of ability to perform usual functions and loss of enjoyment of life and will suffer further * * * loss of ability to perform usual functions."[42] The interrogatory posed is no more "vague" than the allegation in the complaint. It is hardly overbroad for Rippl, who plaintiff seeks to hold to account for this loss of ability, to inquire specifically as to how plaintiff was disabled. It is the sort of identification that appellate judge McBride found acceptable. The interrogatory is proper, and plaintiff shall answer it.

I. The Subrogation Interrogatory

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[37] *Babcock Swine, Inc. v. Shelbco, Inc.* (S.D.Ohio 1989), 126 F.R.D. 43, 44.
[38] Id.
[39] *Penn Cent.*, 26 Ohio Misc. at 79.
[40] *Turner v. Greenline Equip., Inc.* (Feb. 15, 1980), 2d Dist. No. 6493, 1980 WL 352524.
[41] E.g., *Stai v. Kroger Co.* (June 30, 1983), 10th Dist. No. 82AP-816, 1983 WL 3593.
[42] Complaint, ¶12.

{¶ 36} Rippl asked plaintiff whether his claims arising from the car accident had "assigned any right, title, or interest to any benefit or value received" out of the accident. Plaintiff's reply was:

> Objection. This interrogatory calls for a legal conclusion form [sic] the Plaintiff. Plaintiff is not an attorney and cannot and will not give opinion testimony regarding the legal rights of third parties.

{¶ 37} "Subrogation" refers to a situation in which "an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy."[43] Plaintiff was asked if he had assigned any of his interest in the tort claim arising out of the car accident. While plaintiff may not be an attorney, his counsel who answered the interrogatories is. And counsel surely has access to any documents that might have arisen out of plaintiff's interactions with his insurers. Plaintiff has disclosed that he is covered by a policy issued by the other defendant in this case, USAA.[44] Counsel ought to know the terms of that policy as well as those of any agreement arising out of payments made under the policy.

{¶ 38} All the question seeks is information as to whether there are agreements affecting plaintiff's interest in his tort claim. This is a perfectly reasonable question to ask, because Rippl rightly should be concerned as to whether plaintiff is the real party in interest or if there are any subrogees lurking in the background. Plaintiff shall answer this interrogatory.

J. The Benefit Interrogatory

{¶ 39} Plaintiff was asked what benefits he had received or was entitled to receive from the accident. The response was:

> Objection. This interrogatory calls for a legal conclusion form [sic] the Plaintiff. Plaintiff is not an attorney and cannot and will not give opinion

[43] Black's Law Dictionary (7th Ed.1999) 1440.
[44] Complaint, ¶15.

> testimony regarding the legal rights of third parties. Furthermore, the information requested is irrelevant and not reasonably calculated to the

{¶ 40} And there the answer stops in midsentence. The court can guess the rest of the sentence was supposed to be "discovery of any admissible evidence." But since the information sought is merely a natural continuation of the Subrogation Interrogatory, it is proper as outlined in the previous section. Plaintiff surely knows this information and is no more entitled to ignore this interrogatory than he was the Subrogation Interrogatory. Plaintiff shall answer it.

K. The Penalty for Failure to Work and Play Well With Others

{¶ 41} The Civil Rules exist "to effect just results by eliminating delay, unnecessary expense[,] and all other impediments to the expeditious administration of justice."[45] This prime directive is a "'power-packed' sentence. The first phrase of [it] seeks the elimination of delay in the adjudication of disputes; it, undoubtedly, is the cornerstone of the Rules of Civil Procedure."[46] Both the letter and the spirit of the rules giveth life.[47]

{¶ 42} The modern regime of discovery is intended to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practical extent."[48]

{¶ 43} "Generally, the purpose of discovery is to remove surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve their dispute. Toward this end, Rule 26(b) is liberally interpreted to permit wide-ranging discovery of information even though the information may not be admissible at the trial."[49]

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[45] Civ.R. 1(B).
[46] *Toth v. Klein's Estate* (M.C.1971), 27 Ohio Misc. 37, 40, 56 O.O.2d 236, 272 N.E.2d 215.
[47] Cf. 2 Corinthians 3:6.
[48] *United States v. Procter & Gamble Co.* (1958), 356 U.S. 677, 682, 78 S.Ct. 983, 2 L.Ed.2d 1077.
[49] *United States ex rel. Schwartz v. TRW, Inc.* (C.D.Cal 2002), 211 F.R.D. 388, 392, citing *Oakes v. Halvorsen Marine, Ltd.* (C.D.Cal.1998), 179 F.R.D. 281, 283, and *Jones v. Commander, Kansas Army Ammunitions Plant, Dept. of the Army* (D.Kan.1993), 147 F.R.D. 248, 250.

{¶ 44} "[H]ardball tactics" in discovery have been strongly criticized by the justices of the Ohio Supreme Court:

> The problems brought to lawyers by their clients are difficult enough to resolve in a professional manner without adding to the expense and waste of time necessitated by gamesmanship during discovery * * * [S]uch conduct should never be condoned and * * * courts should * * * exercise sound discretion in curbing it through imposition of sanctions.[50]

{¶ 45} A decade ago one of the members of the Ohio Supreme Court saw ignoring discovery rules as a growing problem.[51] The ignoring of discovery rules is still too common.[52] As the court stated above, discovery is intended to take place without its intervention. And it does not appear that the full disclosure that the rules intend has happened in this case.

{¶ 46} "Litigation is the pursuit of practical ends, not a game of chess."[53] Especially if one shares Shaw's opinion of chess as "a foolish expedient for making idle people believe they are doing something very clever, when they are only wasting their time."[54] While the court welcomes zealous advocacy on behalf of clients, the court is mindful that sometimes advocates "are like managers of pugilistic and election contestants in that they have a propensity for claiming everything."[55]

{¶ 47} The court wishes to iterate that litigation is indeed aimed at achieving practical results. Gameplaying must be discouraged. Litigation should be like chess or boxing only in that all three endeavors are governed by rules that put the contestants on an even footing and that must be obeyed. Judge McBride and his colleagues who drafted the rules were, in a sense, the Jack

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[50] *Nakoff v. Fairview Gen. Hosp*. (1996), 75 Ohio St.3d 254, 261-262, 662 N.E.2d 1 (Cook, J., concurring).
[51] *Nakoff*, 75 Ohio St.3d at 260 (Pfeifer, J., concurring)
[52] See, e.g., *In re Stincer* (2008),284 Ga. 451, 668 S.E.2d 257.
[53] *Indianapolis v. Chase Natl. Bank of City of New York* (1941), 314 U.S. 63, 69, 62 S.Ct. 15, 86 L.Ed. 47 (Frankfurter, J.).
[54] George Bernard Shaw, The Irrational Knot (1905), ch. 14.
[55] *First Iowa Hydro-Elec. Coop. v. Fed. Power Comm.* (1946), 328 U.S. 152, 187, 66 S.Ct. 906, 90 L.Ed. 1143 (Frankfurter, J., dissenting).

Broughtons of our ring laying down the ground rules.[56] The refinements under the Marquess of Queensberry's rules banned gouging and wrestling.[57] The Civil Rules, notwithstanding the beliefs of some attorneys, banned the equivalents in litigation.

{¶ 48} The rules instruct a party how to respond to an interrogatory he believes is overly invasive. Either specific objection must be made or a protective order sought. Parties are not, as plaintiff has done, to ignore interrogatories they dislike and force the other side to seek the intervention of the courts.

{¶ 49} Rippl's counsel attempted to resolve this matter, as evidenced by his correspondence. Plaintiff, in his reply brief, has made no claim that his counsel attempted to resolve the dispute or did anything other than ignore the letters of Rippl's counsel. The rules impose a "duty to resolve" disputes on discovery.[58] The court finds that Rippl made "a reasonable effort to resolve the matter" before filing his motion to compel.[59]

{¶ 50} The plaintiff submitted a three-paragraph statement in opposition. It elaborated only slightly on the objections to the income, medical, and examination interrogatories. It claimed that the expert interrogatory had been met by its statement filed with the court on August 25. Mainly, "Plaintiffs [sic] stand on their [sic] objections as stated in their [sic] responses."

{¶ 51} When a motion to compel is granted, "the court *shall*, after opportunity for hearing, require the party * * * who opposed the motion * * * to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified."[60] Note that the word used by

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[56] See Nat Fleisher & Sam Andre, A Pictorial History of Boxing (1981) 9-10.
[57] "Boxing," Columbia Encyclopedia (5th Ed.1993) 348.
[58] Civ.R. 37(E).
[59] See Civ.R. 37 (E).
[60] (Emphasis added.) Civ.R. 37(A)(4)

the Rule is "shall"—and not "may"—an indication that sanctions are mandatory and not discretionary.

{¶ 52} While the court did deny the motion to compel on a single interrogatory, the court finds the opposition to the motion was not substantially justified. The plaintiff supplied incomplete answers to numerous interrogatories, failed to supply requested documents, and provided an expert list that is inadequate. Plaintiff had five months to cure these defects before the motion to compel was filed. Plaintiff failed to do so and, to the court's knowledge, still has failed to answer. Plaintiff's opposition was terse and nonresponsive and made no effort to justify his conduct.

{¶ 53} Because this failure to comply with the discovery rules was not justified, the court orders Rippl to submit within 28 days of the filing of this order a statement of the expenses incurred in securing this motion to compel. Upon Rippl's filing his statement of expenses, plaintiff shall have 14 days to file a brief in opposition and to ask for a hearing. The court will at a later date consider what sanctions are appropriate.

{¶ 54} Because the parties have been unable to resolve their disputes, the court intends to keep a close watch on future discovery so that future problems may be resolved more expediently. Rippl shall, within 30 days of this order, file a status report on plaintiff's compliance with this order and all of his other discovery requests. Rippl shall file status reports every 60 days thereafter. Plaintiff shall be entitled to file objections to those status reports.

{¶ 55} The court does not like to involve itself in these disputes. The court had to referee such a dispute exactly once before, which came earlier this year; in all the other cases, the parties were able to work their dispute out themselves.

{¶ 56} However, when parties refuse to cooperate and to follow the rules, the court is obligated to make a call. The parties should reflect on the length of this order and the amount of time that was consumed in creating it. They should also consider that it has been six months since the interrogatories were posed, six months of unnecessary delay.

L. A Split Decision

{¶ 57} Because of the length and complexity of this order, the court will offer a summation of its terms.

{¶ 58} The court grants Rippl's motion to compel answers to interrogatories No. 8 on expert witnesses, No. 16 on special damages, No. 17 on reimbursements, No. 20 on plaintiff's disabilities, No. 22 on subrogation, and No. 23 on benefits. The plaintiff shall answer within 21 days.

{¶ 59} The court grants the motion to compel an answer to interrogatory No. 15 on lost income, but stays its order for 21 days from the filing of this order to permit plaintiff is to file a motion for a protective order. If no request for a protective order is filed, an answer with the requested documents shall be made within 21 days of this order.

{¶ 60} The court grants the motion to compel an answer to interrogatory No. 19 on medical examinations, but stays its order for 30 days from the filing of this order to permit plaintiff to file a motion for a protective order or a notice of appeal. This part, and this part alone, of this order is declared a final appealable order.

{¶ 61} The court orders that all answers to interrogatories shall comply with the rule by being answered by the plaintiff—not his counsel—and plaintiff shall sign the answers personally under oath.

{¶ 62} The court denies the motion to compel an answer to interrogatory No. 19 on past medical treatment.

{¶ 63} The court orders Rippl within 30 days to submit a statement of expenses incurred in securing this motion to compel, to which plaintiff shall have 14 days to respond. The issue of costs will be set before a magistrate of this court for hearing.

{¶ 64} The court orders Rippl within 30 days, and every 60 days thereafter, to file a status report on the status of plaintiff's compliance with all this order and all other discovery requests.

So ordered.