

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NAUTILUS INSURANCE COMPANY, :
Plaintiff, :
v. : CA 09-192 ML
OPERATION STAND DOWN, RHODE ISLAND, :
Defendant. :

**MEMORANDUM AND ORDER
REQUIRING DEFENDANT TO ADMIT OR DENY**

Before the Court is Plaintiff's Motion to Determine the Sufficiency of Defendant's Responses to Requests to Admit (Doc. #11) ("Motion for Defendant to Admit" or "Motion"). A hearing was held on December 7, 2009.

Facts

This is a declaratory judgment action brought by Plaintiff Nautilus Insurance Company ("Plaintiff" or "Nautilus"). See Complaint (Doc. #1). Plaintiff seeks a declaration that it has no obligation to defend or indemnify Defendant Operation Stand Down, Rhode Island ("Defendant" or "Stand Down"), under an insurance policy (the "Policy") which Nautilus issued to Stand Down. See id. The Policy provided general liability coverage for an annual event organized by Stand Down to benefit homeless veterans. See id. ¶¶ 4, 8. The event is known as "Stand Down

Weekend”¹ and provides veterans with free shelter, clothing, and food for the weekend. See id. ¶ 4. In September of 2007, the event was held on the last weekend of the month at Diamond Hill State Park. See id. ¶ 5. The Policy provided coverage for the period September 21-24, 2007. See id. ¶ 8.

To assist with the setup for the event, Stand Down used minimum security work crews from the Adult Correctional Institutions (“A.C.I.”) operated by the Rhode Island Department of Corrections. See id. ¶ 15. Joel Langlais (“Langlais”), an A.C.I. inmate, was injured while loading a box of boots from a trailer onto the bed of a vehicle being driven by another person. See id. ¶¶ 17, 19. Langlais has sued Stand Down in the Providence Superior Court, alleging that his injuries were caused by negligent operation of a vehicle operated by an agent, servant, or employee of Stand Down. See id. ¶ 20. Stand Down has asked Nautilus to defend it, and Nautilus has provided a defense against the lawsuit with a reservation of rights. See id. ¶¶ 22-23.

The Policy provides that Nautilus will indemnify Stand Down for any sums that Stand Down becomes obligated to pay as damages because of bodily injury to which the Policy applies. See id. ¶

¹ Although the Complaint states that the event is known as “Standown Weekend,” Complaint ¶ 4, the Court assumes that this is a typographical error and that the correct name of the event is either “Standdown Weekend” or “Stand Down Weekend.” Based on the organization’s name, the Court chooses the latter.

10. The Policy does not apply to bodily injury to an "employee" arising out of and in the course of employment by Stand Down or while performing duties related to the conduct of Stand Down's business. See id. ¶ 11. The Policy defines "employee" as any person or persons:

who provide services directly or indirectly to any insured, regardless of where the services are performed or where the "bodily injury" occurs, including, but not limited to, a "leased worker," a "temporary worker," a "volunteer worker," a statutory employee, a casual worker, a seasonal worker, a contractor, a subcontractor, an independent contractor, and any person or persons hired by, loaned to, or contracted by any insured or any insured's contractor, subcontractor, or independent contractor.

Id. ¶ 12.

By the Motion, Nautilus asks that the Court determine the sufficiency of Stand Down's responses to two requests contained in Nautilus' request for admissions. See Nautilus' Memorandum² ("Nautilus' Mem.") at 4-5; see also id., Exhibit ("Ex.") A (Plaintiff's Request for Admissions). The requests and Stand Down's responses to those requests are reproduced below:

REQUEST NO. 7: At the time of his injury, Joel Langlais was providing services directly to Stand Down.

RESPONSE/OBJECTION: Objection is made to this Request on the grounds that it calls for a legal conclusion and presents a genuine issue for trial. Notwithstanding and

² The title of Nautilus' memorandum in support of the Motion is identical to the title of the Motion. To avoid confusion, the Court identifies the memorandum as "Nautilus' Memorandum" ("Nautilus' Mem.").

without waiving said Objection, this Request is denied to the extent that the services provided by Joel Langlais were provided to and compensated by the ACI, and the benefits of which extended to the homeless veterans participating in Stand Down Weekend. To the extent to which this Request suggests that Joel Langlais served as a volunteer for or was employed by Stand Down, this Request is denied.

To the extent that the ACI provided inmates to provide services to homeless veterans participating in Stand Down Weekend, this Request is admitted.

REQUEST NO. 8: At the time of his injury, Joel Langlais was providing services indirectly to Stand Down.

RESPONSE/OBJECTION: Objection is made to this Request on the grounds that it calls for a legal conclusion and presents a genuine issue for trial. Notwithstanding and without waiving said Objection, this Request is denied to the extent that the services provided by Joel Langlais were provided to and compensated by the ACI, and the benefits of which extended to the homeless veterans participating in Stand Down Weekend. To the extent to which this Request suggests that Joel Langlais served as a volunteer for or was employed by Stand Down, this Request is denied.

To the extent that the ACI provided inmates to provide services to homeless veterans participating in Stand Down Weekend, this Request is admitted.

Nautilus' Mem., Ex. B (Defendant Operation Stand Down Rhode Island's Response to Plaintiff Nautilus Insurance Company's Request for Admissions ("Response")) at 3-5 (bold omitted) (italics added).

Law

Although a court may not strike a response to a request for admission, a court can, upon motion by a party, "determine the sufficiency of an answer or objection." Fed. R. Civ. P. 36(a);

see also Anaheim Gardens v. United States, NO. 93-665 C, 2008 WL 1992133, at *4 (Fed. Cl. Feb. 29, 2008). "When a request is denied, the court must consider: (1) whether the denial fairly meets the substance of the request; (2) whether good faith requires that the denial be qualified; and (3) whether any 'qualification' which has been supplied is a good faith qualification." Anaheim Gardens, 2008 WL 1992133, at *4 (quoting Thalheim v. Eberheim, 124 F.R.D. 34, 35 (D. Conn. 1988)). "The objecting party must show that the objection to the request is warranted or that the answer to the request is sufficient." Id. (quoting Thalheim) (internal quotation marks omitted).

Discussion

Addressing Stand Down's objections in the order in which they appear, the Court is of the opinion that neither of the requests seeks a "legal conclusion." Response at 3, 4 (bold omitted). Rather, both requests seek factual information, i.e., was Joel Langlais providing services, directly or indirectly, to Stand Down at the time he was injured. In the Court's view, there are only three possible factual scenarios which could exist with respect to this matter: 1) Langlais was providing services directly to Stand Down, 2) he was providing services indirectly to Stand Down, or 3) he was not providing services, directly or indirectly, to Stand Down. Thus, the requests are seeking admissions as to facts and not conclusions of law.

Even if the Court were to treat the requests as seeking opinions or conclusions of law from Stand Down, they would still not be objectionable.

"Requests for admission ... are not objectionable even if they require opinions or conclusions of law, as long as the legal conclusions relate to the facts of the case." Ransom v. United States, 8 Cl. Ct. 646, 648 (1985). "Requests for admissions seeking the application of law to the facts of the case are proper under Fed. R. Civ. P. 36." Employers Commercial Union Ins. Co. of Am. v. Browning-Ferris Indus. of Kan. City, Inc., No. 91-2161-JWL, unpublished op. at 10 (D. Kan. Dec. 16, 1993) "Opinions on abstract propositions of law are still objectionable, but requests seeking admission of the truth of statements applying law to the facts of the case are specifically sanctioned." Ransom, 8 Cl. Ct. at 647 (quoting 4A James Wm. Moore, Moore's Federal Practice ¶ 36.04).

Audiotext Commc'ns Network, Inc. v. US Telecom, Inc., Civ. A. No. 94-2395-GTV, 1995 WL 625744, at *6 (D. Kan. Oct. 5, 1995); accord S.A. Healy Co./Lodigiani USA, Ltd. v. United States, 37 Fed. Cl. 204, 205 (Fed. Cl. 1997) (quoting Audiotext Commc'ns Network). Accordingly, Stand Down's objections to the requests on the ground that they call for a "legal conclusion" are overruled.

With respect to Stand Down's objection that the requests "present[] a genuine issue for trial," Response at 3, 4, this objection is also overruled. Although prior to the 1970 amendment of Rule 36(a) courts disagreed as to whether an objection on this ground was permissible, the Rule now states explicitly that "[a] party must not object solely on the ground that the request presents a genuine issue for trial." Fed. R.

Civ. P. 36(a)(5). The effect of the amendment has been explained in a leading treatise:

One of the 1970 amendments of Rule 36(a) resolved this conflict in the cases. It provides that a party may not object to a request for an admission on the ground that it presents a genuine issue for trial. The party is required either to deny the matter or set forth reasons why it cannot admit or deny it. An answer, rather than an objection, is now the only proper response if a party considers that it has been asked to admit something that it disputes.

8A Charles Alan Wright, Arthur R. Miller, et al., Federal Practice and Procedure § 2256 (2d ed. 1994).

Stand Down also complains that Nautilus "is trying to use the discovery device of Rule 36(a) to have the Defendant admit or deny critical facts which form the very basis of the instant controversy." Defendant Operation Stand Down Rhode Island's Memorandum of Law in Support of Objection to Plaintiff's Motion to Determine the Sufficiency of Defendant's Responses to Requests to Admit ("Defendant's Mem.") at 5. However, a request to admit is not objectionable merely because it relates to an ultimate fact or to an issue of fact that is dispositive of the case. See Campbell v. Spectrum Automation Co., 601 F.2d 246, 253 (6th Cir. 1979) ("That a request seeks admissions on 'ultimate facts,' or is dispositive of the entire case, is irrelevant."); id. ("[T]he fact that an admission of prior sales of the patented device by [plaintiff] would have effectively ended the litigation did not make objectionable the request for such admission."); Bilaal v.

Defiance Publ'g Co., No. 3:04CV07189, 2005 WL 38172889, at *2 (N.D. Ohio Oct. 27, 2005) ("Rule 36 ... allows a party to request admissions of matters ultimately dispositive of the case."); see also S.A. Healy Co./Lodigiani USA, Ltd., 37 Fed. Cl. at 205 ("Nor is a request objectionable merely because it relates to an ultimate fact or to an issue of fact that is dispositive of one aspect of the case.") (internal quotation marks omitted).

At the hearing, counsel for Stand Down argued that the term "providing services" was not defined and that this rendered the requests objectionable. The Court is not so persuaded. The term "providing" needs no definition, and the word "services" is reasonably understood, in the context of this case, to mean either "the performance of work commanded or paid for by another," Webster's Third New International Dictionary 2075 (1993), or "an act done for the benefit or at the command of another,"³ id. Stand Down can respond to both of these meanings

³ In concluding that these are the applicable meanings of "services" as used in the requests for admission, the Court is strongly influenced by Stand Down's answer to Interrogatory No. 20 in the underlying civil action. In that answer Stand Down indicated that Langlais was engaged in work which assisted or benefitted someone or something.

INTERROGATORY NO. 20 Please state what duties [Langlais] was performing on behalf of [Stand Down] on the date of the incident from the time he first arrived at the site where the incident occurred up until the time he was taken away by rescue.

ANSWER NO. 20

On the day of the incident, [Langlais] arrived in the

and stipulate to any other meaning to which it *could* admit. See S.A. Healy Co./Lodigiani USA, Ltd. v. United States, 37 Fed. Cl. at 206 (overruling objection that term “observable conditions” was too vague to permit a response where dictionary defined “observable” as “visible” or “measurable” and “the meaning of the request is not so unclear as to prevent defendant from responding to both of these meanings, and stipulating to any other meaning to which it *could* admit”); see also Holmgren v. State Farm Mut. Auto. Ins. Co., 976 F.2d 573, 580 (9th Cir. 1992) (“epistemological doubts speaks highly of [requested party’s] philosophical sophistication, but poorly of its respect for Rule 36(a)”).

In short, the Court concludes that Stand Down has not shown that its objections to the requests are warranted.⁴ The Court further concludes that Stand Down’s denials do not fairly meet the substance of the requests. Specifically, the denials do not allow a determination of which of the three possible factual circumstances which could exist with respect to the provision of

morning, along with other inmates, to help Operation Stand Down volunteers set up for the events to take place during Stand Down Weekend. [Langlais] and another inmate were loading boxes onto the back of a golf cart in order to bring the boxes to a dumpster. Once the boxes were loaded onto the cart, the driver and the two inmates would go to the dumpster.

Nautilus’ Mem., Ex. C (Defendant’s Answers to Plaintiff’s Interrogatories) at 5.

⁴ As previously noted, see n.3, the answers which Stand Down has already provided in the underlying civil actions are a significant factor in the Court’s determination that Stand Down’s objections should be overruled and the instant Motion granted.

services, see Discussion supra at 5, Stand Down contends applies. Such a determination is necessary in order for Nautilus to take advantage of the provisions of Fed. R. Civ. P. 37(c)(2), which allows a party to recover reasonable expenses when another party fails to admit what is requested under Rule 36 and the requested party is put to the burden of proving that matter. See Fed. R. Civ. P. 37(c)(2). The Court is unpersuaded that good faith requires that any denials be qualified and, to the extent the responses provided by Stand Down contained "qualification[s]," Anaheim Gardens, 2008 WL 1992133, at *4, the Court is unpersuaded that they satisfy the requirement of being "a good faith qualification," id. Accordingly, Stand Down's responses are found to be insufficient.

Conclusion

For the reasons stated above, the Motion for Defendant to Admit is GRANTED. Stand Down's objections to Nautilus' request for admissions Nos. 7 and 8 are overruled, and Stand Down is ordered to provide responses which fully and fairly respond to these requests to admit within fourteen days of the date of this Memorandum and Order.

So ordered.

ENTER:

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
December 11, 2009