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Discovery Objections After Sting Soccer Presented by Michelle O'Neil



Highlights of In re Sting Soccer

- The party may not use interrogatories to require the responding party to marshal all of its available proof or the proof the party intends to offer at trial. TEX. R. CIV. P. 197.1. Marshaling means “[a]rranging all of a party's evidence in the order that it will be presented at trial.” Relators’ interrogatories asked Vola to identify facts of which Vola is specifically aware that Vola contends establishes, demonstrates or proves specific allegations made by Vola in its pleadings. Such requests fall within the parameters of Rule 197.1 and do not require a marshaling of evidence.
- Discovery requests seeking a party’s legal or factual contentions are excepted from the work product doctrine and cannot be protected from discovery even if they otherwise fit the definition of work product. See TEX. R. CIV. P. 192.5(c)(1). Because work product is not a proper objection to contention interrogatories, the trial court had no discretion and could only overrule Vola’s work product objections. Vola should have been required to answer, at least to the extent the rule provides.
- A party may serve no more than 25 interrogatories. TEX. R. CIV. P. 190.3(b) (3). Each discrete subpart is considered a separate interrogatory. A discreet subpart calls for information that is not logically or factually related to the primary interrogatory. The Swepi court reviewed an objection to the number of interrogatories with “subparts” and found that those “subparts” should not be counted as separate interrogatories because they simply identified the type of facts the serving party would like to know with respect to the primary interrogatory. The same analysis applies here. Coralli’s interrogatories do not include numerous discreet subparts. Rather, they identify the types of facts Coralli would like to know with respect to the primary interrogatory.



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Highlights of In re Sting Soccer continued

- Requests for production may properly ask a party to provide “all,” “each,” or “every” document pertaining to a relevant, narrow subject of the litigation.
- “Marshalling the evidence” is not considered a valid objection to a request for production because, unlike the rule of civil procedure regarding interrogatories and requests for disclosure, the rules regarding requests for production does not include any language concerning the marshalling of evidence.
- The rules permit parties to seek discovery supporting its adversary’s specific factual and legal contentions. E.g., TEX. R. CIV. P. 192.3(j), 197.1. The requests at issue here simply asked Vola to produce documents it possessed that supported the specific allegations in Vola’s petition. Such requests are not objectionable for seeking legal conclusions.
- Vola’s objection that the information sought is equally available is an invalid objection. Texas law does not allow a party to evade discovery requests by simply asserting that the other party already has the information. Not only do such requests ensure that the parties have the same basic documents, requiring your opponent to produce certain documents enables the party seeking discovery to activate the automatic authentication rights provided by Rule 193.7. See TEX. R. CIV. P. 193.7.
- Vola’s objections that the requests for production are overbroad, burdensome, and an improper fishing expedition should not have been sustained by the trial court because Vola presented no evidence to support those objections. Because the trial court below was neither presented with arguments nor actual evidence to support these objections before ruling to limit discovery, the trial court abused its discretion in sustaining these objections.



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General rules for objecting



- The objection must be written and contained within the actual response or a separate document within the time allowed for the original response.
- The objection must state specifically its legal or factual basis and the extent of refusal of compliance.
- Failure to properly object, object within the time period allotted, or to obscure the response with numerous, unfounded objections waives the objection unless the court excuses the waiver for good cause shown.
- The portion unobjected to must be complied with.
- When the objecting party objects to time or place, the objecting party must state a reasonable time or place for compliance and must comply.
- Objections may be amended or supplemented once made to include additional or new bases for objections that were inapplicable, not know, or could not have been known at the time of the initial response.
- Each objection must be specifically described as to its factual and legal basis. It is insufficient to simply state "unduly burdensome" or "harrassing".
- Be prepared to produce evidence at a hearing to support objecitons.
- Objections are different than a privilege statement. Separate the two into separate assertions.
- Withholding information based on privilege requires a statement that information has been withheld, which request the information pertains to, and what privilege is asserts. The propounding party can send a request for a privilege log and the response is due within 15 days of the request.