ALABAMA ASSOCIATION FOR JUSTICE
JOURNAL
Volume 40 • Number 2
Spring 2020

ALABAMA ASSOCIATION FOR
JUSTICE

NEW LOGO — SAME MISSION

Good**Lawyers** | Good**Laws**

TIPS *from the Trenches*

BY AARON N. MAPLES

Why You Should Always Challenge General and Boilerplate Objections in Written Discovery Responses

We all have experienced general and boilerplate objections prefacing defendants' written discovery responses. The responding party incorporates these so-called "objections" into each and every subsequent response. Worse still, the responses also contain "specific" objections and all purported substantive responses are given "subject to" all the general, boilerplate and specific objections.

This article explains that while the tactic of asserting such objections to written discovery requests may be commonplace, it is improper and should not be tolerated. Failing to challenge such objections can be seriously prejudicial. But tools exist for attacking them, and there is plenty of state and federal precedent for striking them.

1. **<u>Discovery is Intended to Facilitate the Search for Truth.</u>**

> *[T]ruth is the cornerstone of our judicial system, and courts always strive to find it.*[1] *Court proceedings are held for the solemn purpose of endeavoring to ascertain the truth which is the sine qua non of a fair trial. Over the centuries Anglo–American courts have devised careful safeguards by rule and otherwise to protect and facilitate the performance of this high function.*[2]

Discovery in Alabama is governed by Ala. R. Civ. P. 26, which specifies that parties are entitled to discovery regarding any matter that is relevant to the subject matter of the case and not privileged. Ala. R. Civ. P. 26(b)(1). The 2015 Amendment to Rule 26 did away with the "reasonably calculated to lead to discoverable evidence" standard for discoverability. Relevance, and relevance alone, is now the threshold consideration for discoverability. Further, our Supreme Court has repeatedly made clear that "the Alabama Rules of Civil Procedure permit very broad discovery and the rules must be liberally construed." *Campbell v. Regal Typewriter Co., Inc.*, 341 So.2d 120, 123. (Ala. 1976) (internal citations omitted).

The rules of discovery "are designed to eliminate, as far as possible, concealment and surprise in the trial of lawsuits to the end that judgments be rested upon the real merits of cases and not upon the skill and maneuvering of counsel." *Ex parte McFadden Engineering, Inc.*, 835 So.2d 996, 1004 (Ala. 2002), quoting 23 Am.Jur.2d *Depositions and Discovery*, § 155 (1965). The underlying goal of discovery is "to avoid unfair surprise at trial." *Cone Builders, Inc. v. Kulesus*, 585 So.2d 1284, 1289 (Ala. 1991).

2. **<u>Alabama Jurisprudence Requires Objections to Discovery to be Stated with Specificity.</u>**

The Alabama Supreme Court established the standard for discovery objections in its seminal opinion *Ex parte Dorsey Trailers, Inc.*, 397 So. 2d 98 (Ala. 1981):

> **Objections to interrogatories must be specific and supported by a detailed explanation** of why the interrogatories are improper. **General objections may result in waiver of the objections.**

Id., at 104 (emphasis added). Later, in *Ex parte Ocwen Federal Bank F.S.B.*, 872 So.2d 810 (Ala. 2003), the Court went on to explain that "a general statement of inconvenience does not provide the Court with a sufficient basis for finding that discovery request is oppressive or burdensome." 872 So.2d 810, 815-16 (internal citation omitted).

Further, Pursuant to Ala. R. Civ. P. 33,

Aaron N. Maples practices with the law firm of Cunningham Bounds, LLC in Mobile, Alabama. His practice areas include personal injury, product liability, medical malpractice, industrial accidents, and wrongful death. Aaron began practicing law in New Orleans, Louisiana, where he earned substantial trial and appellate experience during the early stages of his career. A native Mobilian, Aaron returned home in 2018, determined to make a difference in the community. Aaron obtained his undergraduate degree from the University of South Alabama and his law degree from Loyola University New Orleans College of Law.

"[e]ach 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.**" Thus, answering subject to objections is inconsistent with the express language of Rule 33.

A Montgomery County District Court provided a helpful discussion of the problem of general objections in *Sanders-Cochran v. Prudential Ins. Co. of America*, No. 03-CV-2015-901735, 2016 WL 4548762, at *1 (Ala. Dist. Aug. 30, 2016). There, the District Court stated:

> [T]he Alabama and Federal Rules of Civil Procedure both require that an objector state the reasons for its objections, and a boilerplate general objection incorporated by reference to every response plainly does not accomplish this task. "Common sense should have been enough for Defendant to know that boilerplate, shotgun-style 'General Objections,' incorporated without discrimination into every answer, were not consistent with Fed. R. Civ. P. 33(b)(4)'s directive that '[t]he grounds for objecting to an interrogatory must be stated with specificity.'" *Covington v. Sailormen Inc.*, 274 F.R.D, 692, 693-94 (N.D. Fla. 2011). These objections simply do not serve any purpose. Moreover, these objections fail to comply with the rules of civil procedure and muddy the waters regarding Defendant's responses.

Despite the widespread use of boilerplate objections in discovery responses, the order in *Sanders-Cochran* makes plain that they are improper. Many circuit courts will upon request overrule general and boilerplate objections and compel supplemental responses or grant motions to strike the objections in their entirety. Representative orders include:

- *Cannon v. LG Chem America, Inc., et al.*, No. CV2018-900998 (Ala. Cir. Ct. Baldwin County, Dec. 17, 2018) (granting motion to strike general objections);
- *Maske v CenseoHealth, LLC*, No. CV2013900071, 2013 WL 12204390, at *1 (Ala.Cir.Ct. Jefferson County, June 25, 2013) (granting motion to strike general objections);
- *Rep, Inc. v Stmicroelectronics, Inc.*, No. CV03-2794JPS, 2009 WL 7215384 (Ala.Cir.Ct. Madison County, Jan. 14, 2009) ("This court considers non-specific, general objections to contravene proper and efficient discovery");
- *Morris v Farmers Ins. Group*, No. CV2010900355, 2011 WL 10482977 (Ala.Cir.Ct. Mobile County, Aug. 05, 2011) (granting motion to strike general objections);
- *Hill v. Jackson Hospital and Clinic, Inc., et al.*, CV-2014-901546 (ordering defendant to supplement discovery responses, remove all boilerplate objections, and support any specific objection with "a detailed explanation of why each such interrogatory is improper);
- *Andrews, et al. v. Mobile Gas Service Corp.*, et al., CV-2014-900806 (Ala. Cir. Ct. Mobile County, Sept. 5, 2014) (granting motion for sanctions for use of boilerplate discovery objections in violation of Court's pre-trial order regarding same).

3. **<u>Federal Courts Consistently Reprimand Litigants for Utilizing "Canned" or "Boilerplate" Objections to Discovery.</u>**

Federal courts also consistently reprimand litigants for including general and boilerplate objections in their discovery responses and incorporating these objections into each response *to the extent they apply*.[3] Some Courts have gone so far as to state that the idea that general or boilerplate objections preserve any objections is an "urban legend." See, *Liguria Foods*, Inc. v. *Griffith Laboratories, Inc.*, 320 F.R.D. 168, 187 (N.D. Iowa 2017) (citing *Jarvey, Boilerplate Discovery Objections*, 61 Drake L. Rev. at 925–26).

It is universally accepted that simply using the phrase "overly broad, burdensome, oppressive and irrelevant" does not adequately voice a successful objection.[4] As explained by the Third Circuit in *Josephs v. Harris Corp.*, 677 F.2d 985 (3rd Cir. 1982),

> The mere statement by a party that the interrogatory was "overly broad, burdensome, oppressive and irrelevant" is not adequate to voice a successful objection to an interrogatory. On the contrary, the party resisting discovery must show specifically how each interrogatory is not relevant and how each question is overly broad, burdensome or oppressive.

Id. at 992 (internal quotation marks, ellipsis, and citations omitted). "An objection must show specifically how a [discovery request] is overly broad, burdensome or oppressive, by submitting evidence or offering evidence which reveals the nature of the burden." *Coker v. Duke & Co.*, 177 F.R.D. 682, 686 (M.D. Ala. 1998) (internal citation omitted). To be adequate, objections . . . should be "plain enough and specific enough so that the court can understand in what way the interrogatories are alleged to be objectionable." *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1559 (11th Cir. 1985) (citing *Davis v. Fendler,* 650 F.2d 1154, 1160 (9th Cir.1981), quoting *Roesberg v. Johns-Manville Corp.,* 85 F.R.D. 292, 296–97 (E.D.Pa.1980) ("party resisting discovery 'must show specifically how ... each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive....'")).

Boilerplate objections "operate to render the producing party the final arbiter of whether it has complied with its discovery obligations under Rule 26 because the requesting party lacks sufficient information to understand either the scope of the objections, or to frame any argument as to why that objection is unfounded." *Suell v. United States* [Case 1:13-cv-00252-WS-BJ] (S.D. Ala. May 20, 2014) (Steele, Senior District Judge (not reported in Fed. Supp. 3d) (citing *Williams v. Taser Int'l, Inc.*,

2007 WL 1630875, at *9 (N.D. Ga. June 4, 2007).

In sum, by requiring objections to be specifically stated such that the requesting party may evaluate the merits of each objection before requesting the intervention of the trial court, Alabama appellate opinions are perfectly aligned with federal jurisprudence.

4. **General Objections Give Your Opponent the Ability to Withhold Discoverable Information.**

It may be easy to view general objections as harmless and not worth the time and effort to challenge. At times this may prove true. However, letting these objections stand allows the defendant to attempt to "hedge its bets," reserving its purported right to change its interpretation of an interrogatory or document request at some later date.

Consider this hypothetical: you send discovery requests to Defendant Company in a product liability action. Defendant Company responds and its answers are preceded by a list of general objections that state every conceivable general and frivolous objection and incorporate these objections into each response "to the extent the objection may be applicable" to any request.

One of your interrogatories asked Defendant Company to identify the manufacturer of the defective product and each of its component parts. In its answer, Defendant Company objected on the grounds that it is vague and ambiguous, but then answered subject to that objection that the Defendant Company was the manufacturer of the product. You chose to ignore the objection and chalked-it-up to *standard* defense tactics.

Months later, you depose the corporate representative and various employees of Defendant Company. When you ask the representative where, as in, "in which physical plant," was the product manufactured, he explains to you that the product was manufactured overseas. This revelation is particularly surprising to you because you know that Defendant Company does not have any manufacturing plants outside of the United States. Through some additional prying, you learn that the product was actually manufactured by an unrelated company in Thailand.

When you ask defense counsel to explain the discrepancy between the company's interrogatory response and the testimony of its corporate representative, he reminds you that he objected to that request because it was unclear what was intended by the term, "manufactured." He explains that Defendant Company "assembles" the component parts of the product at a plant in the United States. Now what?

Though this hypothetical may seem absurd, it is taken from a real-life experience. And though it may seem obvious that a trial judge in this situation might be perturbed by this type of conduct and be inclined to grant the Plaintiff just about any relief requested, consider the impact on the case. Putting aside the time invested in developing a particular theory, now the deponent knows your strategy. More importantly, what if the statute of limitations has run and you are no longer able to add the additionally necessary manufacturer defendant?

The point is, you only truly get one shot and you need to know, really know, that you have locked the defendant into its written responses before you move to the next stage of litigation. You cannot allow defendants to use meaningless general and boilerplate objections as a shield or escape hatch. Make it a habit to challenge each and every general and boilerplate objection and lock the Defendants into their responses before you move forward with your case.

5. **Conclusion**

In sum, remember that discovery is designed to aid in the search for truth. Improper general and boilerplate objections to discovery requests run afoul of that goal. Make defendants state every objection with specificity as required by the rules. If your opponent sets forth general or boilerplate objections to your written discovery requests, you should challenge these objections with a motion to strike in order to ensure that you are receiving full and complete responses. Allow these objections to stand and you may seriously prejudice your client's case. Remember, while you may have many cases, your client has only one.

1. *Ex parte Doster Const. Co., Inc.* 772 So. 2d 447, 450-451 (Ala. 2000).
2. Id., at 451, quoting *Estes v. Texas*, 381 U.S. 532, 540, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965).
3. See, e.g., *Meggit (Orange Cnty.), Inc. v. Nie*, 2015 WL 12743695, at *1 (C.D. Cal. Feb. 17, 2015) ("The practice of making boilerplate general objections couched in terms of 'to the extent' and then incorporating those general objections into each interrogatory response is improper"); *Cafaro v. Zois*, 2016 WL 903307, at *1 (S.D. Fla. Mar. 9, 2016) ("Boilerplate objections may also border on a frivolous response to discovery requests"); *Heller v. City of Dallas*, 303 F.R.D. 466, 482-85 (N.D. Tex. 2014) ("Counsel should cease and desist from raising these free-standing and purportedly universally applicable 'general objections' in responding to discovery requests."); See also, *Jones v. Bank of Am., N.A.*, 2015 WL 1808916, at *5 (S.D. W. Va. Apr. 21, 2015) (Eifert, Mag.) ("Quite frankly, the undersigned is astounded and troubled that, even after appearing in many cases in this district and despite clear and established circuit case law holding that such objections are improper, counsel for Defendant persists in asserting a litany of insupportable general objections in response to discovery requests."). Reliance upon general objections to the exclusion of specific, targeted objections to interrogatories or discovery requests constitutes a waiver of whatever objection the party was trying to make. See, e.g., *St. Farm Fire & Cas. Co. v. Admiral Ins. Co.*, 2016 WL 8135417, at *7 (D. S.C. Feb. 4, 2016) ("Boilerplate, general objections standing alone waive any actual specific objections.")
4. *See, e.g., McLeod, Alexander, Powel & Apffel v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990); *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1559 (11th Cir. 1985); *Peat Marwick Mitchell & Co. v. West*, 748 F.2d 540 (10th Cir. 1984); *See also Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3rd Cir. 1986) (it is not sufficient to merely state a generalized objection, but rather the objecting party must demonstrate that a particularized harm is likely to occur if the discovery is had by the party seeking it).

WORKING REMOTELY?

NEED TO DEPOSE WITNESSES, EXPERTS, OR CONNECT REMOTELY FROM THE SAFETY OF YOUR HOME OFFICE? **TRY VERITEXT VIRTUAL 3.0!**

Proceed Safely.

Veritext's virtual technology provides a convenient solution for deposing remote witnesses domestically or internationally. Easily connect with just your web-cam-equipped laptop, computer or mobile device.

NO TRAVEL NECESSARY
Avoid the cost and health risks of travel by remote connection.

ACCOMMODATES UP TO 100 PARTICIPANTS
Streaming realtime video lets you view witness demeanor and body language for up to 100 participants.

EXHIBIT SHARING
Securely view, share, annotate and digitally stamp exhibits. Easily delegate control to other participants.

STREAMING REALTIME TEXT
Scrolling text of the deposition can be highlighted, annotated and saved, without the need for additional software.

WORLD-CLASS SECURE PLATFORM
Built on user-friendly Zoom platform.

LIVE TECHNICAL SUPPORT
24/7 technical support assists you in participating wherever there is an internet connection.

SCHEDULE YOUR REMOTE PROCEEDING: **calendar-al@veritext.com | (877) 373-3660**

BIRMINGHAM | DOTHAN | HUNTSVILLE | MOBILE | MONTGOMERY | TUSCALOOSA