

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

CHRISTOPHER ROLLER)	Civ. 06-04098
)	
Plaintiff,)	
)	DEFENDANT’S RESPONSE TO
vs.)	PLAINTIFF’S MOTION TO COMPEL
)	
GE MEDICAL SYSTEMS)	
INFORMATION TECHNOLOGIES, INC.)	
)	
Defendant.)	

INTRODUCTION

Defendant GE Medical Systems Information Technologies, Inc. (“GEMS IT”) requests that this Court deny Plaintiff Christopher Roller’s Motion to Compel responses to interrogatories. The Federal Rule of Civil Procedure under which this discovery was promulgated only allows discovery directed to parties. Because the interrogatories are directed to witnesses, GEMS IT is under no duty to respond to them.

FACTUAL BACKGROUND

On April 6, 2006, Plaintiff served eight sets of Interrogatories and Document Requests on GEMS IT pursuant to Federal Rules of Civil Procedure 33 and 34. (Affidavit of Judith Williams-Killackey, ¶2, Ex. A.) One set of Interrogatories was addressed to GEMS IT. (Id., ¶3) The other seven sets of Interrogatories were addressed to the following individuals: Bob Moore, Rich Adcock, Troy Wollman, Noah Allard, Kevin Impecoven, Kristi Hensley and Hethe Henrickson.¹ (Id.) Only one of these individuals, Bob Moore, is currently employed as a manager for GEMS IT. (Id., ¶4) Of the others, Messrs. Adcock, Allard and Impecoven no

¹ In his requests, Plaintiff spelled Mr. Henrickson’s name incorrectly, addressing him as “Heath Henrickson.”
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longer work for GEMS IT. (Id.) Messrs. Henrickson and Wollman are employed by GEMS IT in non-managerial capacities, as is Ms. Hensley. (Id.)

After it received this discovery from Plaintiff, GEMS IT informed Plaintiff that it would answer the discovery directed to it and Mr. Moore. (Id., ¶5, Ex. B.) GEMS IT further explained that it would not respond to the other sets of Interrogatories and Document Requests as they were not directed to a party as required by Federal Rules of Civil Procedure 33 and 34. (Id.) On May 8, 2006, GEMS IT timely served Plaintiff with responses to the discovery directed to GEMS IT and Mr. Moore. (Id., ¶6)

ARGUMENT

Plaintiff has filed a motion to compel responses to the sets of Interrogatories directed to the non-parties.² In his motion, Plaintiff simply states that it was his understanding that an interrogatory's purpose is to question individuals of the defense. Plaintiff cites to no authority that allows interrogatories to be directed to non-parties under Rule 33.

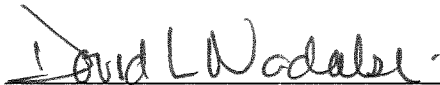
In fact, Rule 33 is entitled, "Interrogatories to Parties." Rule 33 further provides, in relevant part, as follows: "(a) Availability. Without leave of court or written stipulation, *any party* may serve upon *any other party* written interrogatories . . . to be answered by the party served" Fed. R. Civ. P. 33(a) (emphasis added); see also Wright, Miller & Marcus, Federal Practice & Procedure: Civil, Vol. 8A, § 2171 at 275 (2d Ed. 1994) ("Depositions may be taken of any person but interrogatories are limited to parties to the litigation."); Waider v. Chicago, R.I. & P. Ry. Co., 10 F.R.D. 263 (D.C. Iowa 1950) (holding that it is not proper to address interrogatories to potential witnesses even if they are employed by a party).

Because the six individuals at issue are not *parties* to the litigation, interrogatories cannot

² Plaintiff has not brought a motion to compel responses to the Document Requests he served. However, Fed. R. QBMAD\390086.00033\420334.2

be directed to them. Instead, interrogatories and document requests can only be directed to GEMS IT. Because GEMS IT has responded to the discovery directed to it, it requests that Plaintiff's Motion to Compel be denied.³

Respectfully submitted this 30th day of June, 2006.


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Civ. P. 34 also only allows document requests to be directed towards parties.

³ GEMS IT would further note that the number of interrogatories issued by Plaintiff exceeds the 25 allowed by the Scheduling Order currently in effect. Thus, if Plaintiff's motion were granted, he should be required to identify the interrogatories to which responses must be made.

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