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August 8, 2011

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Via Hand Delivery
The Honorable Stacey K. Hydrick
State Court of DeKalb County
DeKalb County Courthouse
556 North McDonough Street, Suite 2210
Decatur, GA 30030

Re: *Patrick C. Desmond and Mary C. Desmond, Individually, and Mary C. Desmond, as Administratrix of the Estate of Patrick W. Desmond v. Narconon of Georgia, Inc., Narconon International, Delgado Development, Inc., Sovereign Place, LLC, Sovereign Place Apartment Management, Inc., Lisa Carolina Robbins, M.D., and The Robbins Group, Inc.;*
State Court of DeKalb County; Civil Action File No. 10A28641-2

Dear Judge Hydrick:

Narconon of Georgia, Inc. respectfully requests that the Court reconsider the portion of its Order on Plaintiffs' Motion for Sanctions which requires this defendant to pay the costs of Mary Rieser's first deposition. We understand that the Court disagrees with the way the deposition was defended and will, of course, follow in the future the direction and guidance the Court now has provided. However, it is important to note that, at the time the deposition was taken, there was no Order from this Court regarding appropriate deposition conduct. Moreover, there was (and is) no Georgia statute, rule or case law providing any guidance to Georgia lawyers regarding whether an objection to the form of the question should or should not include some basis for the objection. As we noted at the hearing last week, the authority from other jurisdictions is conflicting, at best. Cf., *Hall v. Clifton Precision, a Div. of Litton Systems, Inc.* 150 F.R.D. 525 (E.D. Pa. 1993); *In re Stratosphere Corporation Securities Litigation*, 182 F. R. D. 614 (D. Nv. 1998); *Acri v. Golden Triangle Management Acceptance Co.*, 142 Pitts. L.J. 225, 228 (C.P Allegheny Co. 1994). The *Hall* Court basically limits attorneys' conduct at deposition to merely "objecting to form" and prohibiting any conversations with a witness during breaks during the deposition. However, other courts have expressly refused to follow this decision. *See e.g,. In re: Stratosphere Corp., supra.* ("While this court agrees with the Hall Court's identification of the problem, it feels Hall goes too far in its solution); *Acri, supra* (copy attached)("We need not turn the lawyer for the deponent into a fly on the wall in order to protect litigants' rights to obtain information for a witness in a witness's own language through

depositions by oral examination.) Given this dearth of Georgia authority and inconsistent instruction from other authorities on this limited issue, we respectfully submit that the imposition of costs is not warranted.

Narconon of Georgia also respectfully requests that the Court clarify how the seven hours of the second Mary Rieser deposition is to be allotted. In addition to Plaintiffs, there are the Robbins defendants, Defendant Delgado Development, and Defendant Narconon International who may have questions. How is the seven hours to be divided so that all parties', as well as the witness', rights are protected?

Thank you for your and consideration and assistance.

Respectfully submitted,

DREW ECKL & FARNHAM, LLP

Barbara A. Marschalk

BAM:KSW:jdl:cp

cc: Ms. Samantha Whaley (*via email w/encl.: swhaley@co.dekalb.ga.us*)
Rebecca Franklin, Esq. *(via email w/encl.)*
Jeffrey Harris, Esq. *(via email w/encl.)*
Robert Tanner, Esq. *(via email w/encl.)*
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Jeffrey Amason, Esq. *(via email w/encl.)*
Melanie Eyre, Esq. *(via email w/encl.)*

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVAN

RINALDO A. ACRI, an individual, and CAROLL V. ACRI, his wife, Plaintiffs	: CIVIL DIVISION : NO. GD93-12188
vs.	: CODE _____
GOLDEN TRIANGLE MANAGEMENT ACCEPTANCE COMPANY, a Pennsylvania corporation, Defendant	: OPINION AND ORDER OF COURT : HON. R. STANTON WETTICK, JR.

Counsel for Plaintiffs:

Edward B. Friedman, Esquire

900 Fifth Avenue

Pittsburgh, Pennsylvania 15219

Counsel for Defendant:

Gregg M. Rosen, Esquire

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Seventh Floor, Frick Building

Pittsburgh, Pennsylvania 15219

OPINION AND ORDER OF COURT

WETTICK, J.

The subject of this Opinion and Order of Court is defendant's motion to compel deposition testimony and for the imposition of sanctions, in its motion, defendant requests this court to prohibit plaintiffs' counsel from interrupting the deposition of plaintiff-husband (Rinaldo A. Acri) other than to instruct him not to answer a particular question under claim of privilege.

On July 26, 1993, plaintiffs instituted this lawsuit by filing a complaint in confession of judgment. On the same date, a judgment was entered by confession in plaintiffs' favor and against defendant in the amount of $58,729.58.

Plaintiffs' complaint was based on a January 5, 1993 note containing a confession of judgment clause under which G.T.M. Acceptance Corporation agreed to pay plaintiffs $50,000 plus interest upon demand. The note was executed on behalf of G.T.M. Acceptance Corporation by Mr. Acri in his capacity as treasurer of G.T.M. Acceptance Corporation.

On July 29, 1993, defendant filed a petition to open the confessed judgment. The petition raised the following defenses: (1} plaintiffs made no demand prior to the confession; (2) defendant never authorized Mr. Acri to execute the note on its behalf; (3) Mr. Acri breached his fiduciary obligations to the defendant by approving a loan with far less favorable terms than the terms available in the market; (4) defendant's obligations under the note were altered by a subsequent agreement between plaintiffs and defendant; (5) defendant is excused from performance because plaintiffs breached the underlying agreement by offering to sell proprietary information of defendant regarding its customers to third parties; (6) plaintiffs failed to join an indispensable partyS. Kent Rockwellwho assumed defendant's obligations to plaintiffs; and (7) in a separate transaction, Mr. Rockwell obtained a right of contribution against plaintiffs in the amount of $147,663 which can be asserted as a setoff.

On July 29, 1993, the Honorable Joseph M. James of this court issued a rule to show cause why the confessed judgment should not be opened. Plaintiffs then filed an answer to the petition in which they averred that (1) a demand was made; (2) Mr. Acri signed the note with the knowledge and consent of S. Kent Rockwell, defendant's president; (3) the terms and conditions of the note were discussed with and approved by Mr. Rockwell; {4} the subsequent agreement to which defendant refers did not give defendant the right to designate another party to assume its obligations under the note; (5) plaintiffs have never offered to sell any proprietary information of defendant to any third parties; (6) Mr. Rockwell is not an indispensable party because plaintiffs never agreed to allow him to assume defendant's obligations under the note; and (7) even if Mr. Rockwell has a valid claim against plaintiffs, which plaintiffs deny, this claim can be raised only in the other legal proceedings to which plaintiffs and Mr. Rockwell are parties.

On November 11, 1993, plaintiffs filed a praecipe for a rule compelling defendant to take depositions or to order the cause for argument on petition and answer. Defendant then scheduled the deposition of Mr. Acri. Defendant's motion arises out of this deposition.

Defendant correctly states that during the deposition plaintiffs' counsel frequently interrupted the questioning by raising objections and by instructing Mr. Acri not to answer various questions. The basis for most of the objections was that the information which defendant sought had nothing to do with this litigation. Plaintiffs' counsel also objected to questions on the grounds that they were ambiguous and confusing and that they mischaracterized prior testimony of Mr. Acri. Defendant is correct that none of the objections raised a claim that defendant's counsel was seeking information protected by a privilege.

After counsel for plaintiffs raised objections involving a photocopy of a check, defendant's counsel adjourned the deposition stating that plaintiffs' counsel had corrupted the deposition process and had made it impossible for defendant's counsel to proceed.

I.

Defendant contends that the type of objections and interruptions which plaintiff's counsel made frustrated the essential purpose of discovery through the use of an oral deposition-the right of a party to obtain information from an adverse party if, through an unobstructed question and answer interview, if counsel for the deponent can interrupt for any reason other than to protect privileged information, the information which the deponent produces will be filtered by his or her counsel in much the same fashion as answers to interrogatories.

Defendant supports its motion by citing Hall v. Clifton Precision, 150 F.R.D 525 (E.D. Pa. 1993), an opinion by Federal District Judge Robert S. Gawthrop, III, which established specific rules of conduct for counsel at a discovery deposition Since the relevant Federal Rules of Civil Procedure governing Discovery and Depositions are very similar to the relevant Pennsylvania Rules of Civil Procedure governing Depositions and Discovery, defendant's counsel contends that I should adopt the Hall v. Clifton Precision guidelines for discovery depositions.

The Hall v. Clifton Precision guidelines are set forth in a July 29, 1993 Order which accompanied the Opinion:

ORDER

AND NOW, this 29th day of July, 1993, upon consideration of the oral arguments and letter briefs of the parties regarding the dispute over the conduct of counsel at depositions, it is ORDERED that the following guidelines for discovery depositions are hereby imposed:

1. At the beginning of the deposition, deposing counsel shall instruct the witness to ask deposing counsel, rather than the witness's own counsel, for clarifications, definitions, or explanations of any words, questions, or documents presented during the course of the deposition. The witness shall abide by these instructions.

2. All objections, except those which would be waived if not made at the deposition under Federal Rules of Civil Procedure 32(d)(3)(B), and those necessary to assert a privilege, to enforce a limitation on evidence directed by the court, or to present a motion pursuant to Federal Rules of Civil Procedure 30{d), shall be preserved. Therefore, those objections need not and shall not be made during the course of depositions.

3. Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court.

4. 4. Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct and verbally economical, stating the basis of the objection and nothing more.

5. 5. Counsel and their witness-clients shall not engage in private, off-the-record conferences during depositions or during breaks or recesses, except for the purpose of deciding whether to assert a privilege.

6. Any conferences which occur pursuant to, or in violation of, guideline (5) are a proper subject for inquiry by deposing counsel to ascertain whether there has been any witness-coaching and, if so, what.

7. Any conferences which occur pursuant to, or in violation of, guideline (5) shall be noted on the record by the counsel who participated in the conference. The purpose and outcome of the conference shall also be noted on the record.

8. Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about them.

9. Depositions shall otherwise be conducted in compliance with the Opinion which accompanies this Order. Id. at 531-32.

Judge Gawthrop adopted these standards because of discovery abuses that he found to commonly occur.[1]

I choose not to follow the Hall v. Clifton Precision guidelines because (1) they prohibit counsel for a party being deposed from raising objections that our discovery rules specifically allow; (2) they provide insufficient protection to the deponent; (3) they can produce results that could not have been intended; (4) they fail to recognize the proper role of counsel; (5) they increase the burden and expense of litigation; and (6) they are not necessary to curb the discovery abuses which are described in the Hall v. Clifton Precision opinion.

Pennsylvania Rule of Civil Procedure No. 4011 prohibits discovery that is sought in bad faith; that would cause unreasonable annoyance, embarrassment, oppression, burden or expense; or that relates to a matter which is privileged. There is no exception in Rule 4011 for depositions by oral examination; Rule 4011 expressly provides that "[no discovery or deposition shall be permitted" which is sought in bad faith or which would cause unreasonable embarrassment or burden. Consequently, a ruling that counsel for the deponent may not object to discovery that is sought in bad faith or would cause unreasonable embarrassment or burden unless the discovery also relates to a matter which is privileged would eliminate grounds for objection that Rule 4011 explicitly authorizes.[2]

Hall v. Clifton Precisioncurtailed the traditional role of counsel for the deponent because depositions by oral examination are not effective if counsel for the deponent constantly interrupts the deposition for the purpose of thwarting the deposing counsel's proper use of the deposition process. A rule prohibiting counsel for the deponent from interfering with the question and answer conversation between the deposing attorney and the deponent insures that it is the witness-and not the lawyer for the witness-who is the witness. However, Hall v. Clifton Precision did not discuss the costs of such a rule. While the Hall v. Clifton Precision guidelines silence the unethical attorney when I (an ethical attorney) am deposing his or her client it also silences me when this unethical attorney goes after my client at my client's deposition. This is a bad tradeoff because of the enormous damage that the unethical attorney can do to my client and

to the relationship between my client and myself if I am silenced while my client is being unfairly deposed.

Our discovery rules seek to achieve two goals: (1) to provide a fairer outcome to the litigation and (2) to reduce the burden that the litigation imposes on the litigants and other participants. The second goal requires that rude and abusive behavior toward litigants and other witnesses not be a part of the discovery process. Consequently, every attorney who is involved in the process must have the ability to prevent the mistreatment of any witness.

If Hall v. Clifton Precision is literally followed, in a lawsuit by a contractor against a subcontractor involving the construction of an office building, defense counsel can ask the contractor about his sexual preference, his relationship with his ex-wife and children, his record for paying child support, and the names and addresses of persons whom he is dating. Defense counsel can also learn whether the contractor served in Vietnam; whether he ever used drugs (did he inhale?); whether he has ever seen a psychiatrist; and whether he has ever paid kickbacks to obtain a contract. I assume that Hall v. Clifton Precision did not intend to go this far; but if Hail v. Clifton Precision intended to allow counsel for the deponent to object at some point, it is unclear why we should substitute undefined standards for the standards set forth in Rule 4011.

The underlying assumption of the Hall v. Clifton Precision opinion is that on the whole interruptions cause more harm than good because more frequently than not the purpose of the interruption is to prevent the deposing counsel from obtaining unfiltered information which the discovery rules are intended to provide. This assumption does not take into account the differing responsibilities that the discovery rules and the Rules of Professional Conduct place on counsel for the deponent. Before the deposition, counsel for the deponent has a duty to instruct his or her client to provide complete and honest answers even if this is information that the client would prefer not to reveal. Also, counsel should instruct the client that the client shall not engage in arguments with the deposing counsel and that the client shall behave in the same fashion as if a jury was observing the deposition. During the deposition, counsel for the deponent is required to intervene if the client's answers are not accurate and complete or if the client's behavior interferes with the deposition.

Frequently, it is not an easy job to convince a client that the client should provide honest and complete answers to the questions of the lawyer for the "enemy" in order to help the "enemy" prepare for trial. Counsel needs to be able to assure the client that an open and fair exchange of information will assist all parties in resolving the litigation. Counsel can do so only if counsel can promise the client that he or she will intervene if counsel for the other party tries to abuse the deposition process or if the client becomes confused or disoriented. There must be a quid pro quo: "It is your job as the client to explain the facts to opposing counsel in the same way that you are going to explain the facts to a jury. It is my job as your lawyer to make sure that the other party's attorney does not trick, confuse, or embarrass you."

If courts take away the ability of counsel for the deponent to protect the client, the client is going to be getting a mixed message from his or her attorney. "You have a duty to provide full and honest answers to questions that are fair, but I am not allowed to say anything during your deposition so you must speak up any time you think the other side is being unfair. Do not let the other attorney bully you or take advantage of you. Refuse to answer whenever you think they have gone too far or whenever they are using questions that are intended to put their words in your mouth."[3]

It is not possible for an attorney to maintain a satisfactory relationship with a client if the attorney sits quietly while responding counsel unfairly beats up the client. The procedures which courts develop should not force an attorney to choose between meeting the essential needs of a client or complying with judicial requirements.

If counsel for the deponent is relegated to the position of a fly on the wall because unethical attorneys abuse the discovery process, the "question and answer session" between a lawyer and a witness that Hall v. Clifton Precision seeks to achieve in order to uncover the facts in a lawsuit can become an exercise in which these unethical attorneys will substitute their words for the words of the deponent and create sound bites for the jury. For example, defendant claims that plaintiff's lane jumping and excessive speed were contributing factors in causing the accident. Plaintiff has testified that the accident occurred after plaintiff left the office of a customer and was driving toward his home. Plaintiff testified in detail that he knows the road, he knows that it was rush hour, he was not in a hurry, he was always in the right-hand lane, and he never drove more than 30-40 miles per hour. When asked what time he left the customer's office and the distance between the customer's office and the site of the accident, he said that he is not sure and that any answer would be a "very, very inaccurate guess." When asked to give his best guess, he testified that he had left at about 4:00 and that the client's office was approximately twenty miles from the site of the accident. He is now shown the police report showing that the accident occurred at 4:20. Next he acknowledges that a person going twenty miles in twenty minutes is driving at sixty miles an hour and that the actual speed would be higher if the driver had stopped at red lights. Plaintiff is now asked, "How can you reconcile your testimony that you were going between 30 and 40 miles an hour with the facts that you have given us that you covered twenty miles in twenty minutes of driving time?"

Scenarios such as this are normally thwarted because counsel for the deponent wiil intervene to bar counsel for the deposing party from framing questions based on an inaccurate interpretation of the witness's testimony and to object to questions which ask for the witness's best guess. Scenarios such as this cannot be effectively cured by having counsel for the deponent come back to the issue when questioning the client later in the deposition because neither the trial judge nor the jury will be aware of the context of the "sound bite" that defendant's counsel reads to the jury. Instead, the witness will appear to be backtracking after having been caught by defendant's attorney.

Also, counsel for the deponent needs to intervene when a question is ambiguous because the answer can come back to haunt the deponent at trial. The deponent is asked, "On May 21, didn't you approve the extra work?" You know from your previous conversations with your client that there were two requests for extra work on that date. The client approved the request involving $10,000 on that date but rejected the request involving $100,000. Unless the client remembers that there were two requests, the answer will not be accurate. Consequently, counsel for the deponent needs to be able to object to the form of the question.

It is my experience that more often than not intervention by counsel for the deponent shortens the deposition by requiring the deposing counsel to focus on relevant matters and to allow the witness to fully respond in the witness's own language. Depositions taken by certain attorneys would never end if other counsel could not raise objections that the questions are repetitive or argumentative. Also, it is not uncommon for there to be a breakdown in communication; the deposing counsel's questions do not elicit the information which deposing counsel is seeking because of problems with the questions or because the witness is confused. Either by talking to the witness or suggesting different questions, counsel for the deponent can have the witness provide the information that the deposing counsel is seeking.

We need not turn the lawyer for the deponent into a fly on the wall in order to protect litigants' rights to obtain information from a witness in a witness's own language through depositions by oral examination. If the misbehavior of the deponent's counsel becomes a reoccurring and serious problem, counsel for the deposing party can discontinue the deposition and request judicial intervention. As a discovery judge, I will review a transcript of the discontinued deposition and if I agree with counsel for the deposing party that counsel for the deponent was attempting to sabotage proper efforts to obtain discovery, I will tailor an order that will protect the interests of the deposing party. For example, in extreme cases I have appointed a discovery master to supervise depositions.

Our discovery rules will not work unless the norms of the legal profession are consistent with the standards of behavior described in the Preamble to the Rules of Professional Conduct. If small numbers of lawyers deviate, judicial intervention will be effective. However, if large number of lawyers seek to thwart the discovery process, I agree with Judge Gawthrop that courts must develop different approaches. On the basis of my experience in Allegheny County, I do not believe that we have a problem. An extremely high percentage of lawyers want discovery to work and comply with the letter and spirit of the discovery rules.

Also, if we have large numbers of attorneys abusing our discovery rules, I do not believe that the solution is to expand discovery by removing an attorney's ability to raise objections based on bad faith, embarrassment, and unreasonable burden and expense. If I believed that the discovery rules are not working because too many lawyers are abusing these rules, I would move in the direction of curtailing discovery rather than giving lawyers who cannot be trusted broader discretion to do what they wish with the methods of discovery provided for in our rules.

II.

I now consider defendant's motion to compel deposition testimony and for the imposition of sanctions on the basis of the standards of Rule 4011 and the rules of law governing forms of questions and relevancy/materiality.[4]

I sustain plaintiff's objections to discovery requests seeking information involving his personal affairs. After plaintiff provided answers to questions concerning his age, birthday, place of birth, present address, and length of time that he had lived at that address {eight years), he refused to answer questions as to whether he owned or leased the property where he lived. After he testified that he was married, he objected to the question of whether he was "in a state of separation, or anything" because his marital status had nothing to do with the issues that were involved in the case. After he identified the corporation where he was employed and stated that he was a shareholder, he objected to discovery concerning the percentage of stock that he owned on the ground that his ownership in this company had nothing to do with the litigation. After he described his work history, including a job that he held for approximately two years at a large accounting firm following his obtaining a master's degree in 1983, he objected to the question of whether he had left voluntarily. In each instance, plaintiff's counsel stated that this information had nothing to do with the case and defendant's counsel never offered any explanation as to why this information was relevant to the subject matter involved in the pending action.

Defendant's counsel asked plaintiff if he was familiar with real estate on Penn Avenue called the "Convention Tower," whether this real estate is owned by defendant, whether plaintiff ever negotiated on defendant's behalf with regard to the acquisition of that building, and whether plaintiff ever negotiated with respect to the borrowing of money for the acquisition of this property. Plaintiff's counsel objected to each question, directing him not to answer until defendant's counsel could give some indication as to how this information relates to this case.[5] Defendant's counsel never offered an explanation as to why any of these matters are relevant to the subject matter involved in the pending action. It is not apparent to me why these matters have anything to do with the issues before this court in this lawsuit. Consequently, i sustain the objections.

There were also objections based on the form of the question:

BY MR. ROSEN:

Q Mr. Acri, did you ever attend shareholders' meetings for Golden Triangle Management Acceptance Company?

MR. FRIEDMAN: Just to clarify the question... are you referring to shareholders' meetings of Golden Triangle Management Acceptance Company, or shareholders' meetings of other entities on their behalf?
...

MR. ROSEN: Do you understand the question, Mr. Acri?

MR. FRIEDMAN: If you want to ask him if he attended their shareholders' meetings, I just want to understand the question.

BY MR. ROSEN:

Q Did you ever attend a meeting of the share- holders of Golden Triangle Management Acceptance Company?

A I'm not sure. I don't know if we ever had any.

Q Did you ever attend a meeting of the directors of Golden Triangle Management Acceptance Company?

A I'm not sure if we ever had any.

Q I'm not asking -- I didn't ask if you were sure. I asked if you had any meetings.

MR. FRIEDMAN: You can't - you can ask . . . him a question, but you can't criticize him. He said he doesn't believe he ever had any. That was his answer to the question.

The objections were properly made. The initial question was ambiguous for the reasons that Mr. Acri's counsel stated. The second question about attendance at meetings of the shareholders had been answered. Follow-up questions based on the answer were appropriate, but there was no basis for asking plaintiff to give a different answer to the same question.

There was a series of questions regarding whether there is a difference between Golden Triangle Management Acceptance Corporation and Golden Triangle Management Acceptance Company and whether G.T.M. Acceptance Corporation (the party on the note) is Golden Triangle Management Acceptance Company (the defendant). Plaintiff stated that G.T.M. stands for Golden Triangle Management. Defendant's counsel then showed plaintiff the front of a copy of a check dated January 5, 1993 payable to the order of G.T.M.A.C. in the amount of $50,000 apparently executed by plaintiff. Defendant's counsel asked plaintiff whether he recognized the document. At that time, the following exchange occurred:

BY MR. ROSEN:

Q Mr. Acri, I would like to hand you what I have marked as Deposition Exhibit 2, and ask you if you recognize the document which is shown on this page.

MR. FRIEDMAN: Before he does, I would like to ask you a question. You have given him a photocopy of a check, but there is not a photocopy of the back of this check. Do you have the check, or have you seen the original of this check?

. . .

Why isn't there a full photocopy? If you know the answer, that's all you have to do is tell me.

MR. ROSEN: Mr. Friedman, my role is to ask questions, and my role is not to answer your questions.

MR. FRIEDMAN: Well, I disagree with you, because your role is also to comply with the rules of evidence . . . . Do you have a complete copy of the back of the check available to you, the back of the check, so that would be a total exhibit, if not, I'm not even going to let him answer the questions about it. If you do or not, I would like to know, but I'm entitled to receive a response from you.

. . .

Q Mr. Acri, do you recognize this exhibit?

MR. FRIEDMAN: You are directed not to answer because it is half of an exhibit and because I have not received the courtesy of a response from counsel.

MR. ROSEN: So we will take a break in the deposition now, and I will serve you with a copy of the motion to compel that I intend to file after we have the deposition transcribed, and then after we get a ruling from the court, then we will proceed with the deposition.

Plaintiff's objection to the form of the inquiry was proper. Under the best evidence rule, an original writing shall be produced where the terms or contents of a writing are in issue. The purpose is to avoid fraud, confusion, or mistakes that can occur if there is a difference between the copy and the original writing. During the discovery stage of the proceedings, counsel may seek discovery based on a copy of a document if counsel does not have the original writing in his immediate possession. However, whenever counsel requests a witness to provide answers based on the examination of a partial copy, opposing counsel is entitled to ask whether the originalwriting or a copy of the entire writing is available before any questioning is based on a partial copy.

III.

This deposition of Mr. Acri illustrates the need to allow counsel for the deponent to raise objections that are not based on privilege. Under the Hall v. Clifton Precision guidelines, plaintiff would have been required to provide information regarding his marital and financial affairs and work history that have absolutely nothing to do with this litigation. Plaintiff would have been required to provide answers to questions that were ambiguous and argumentative. Plaintiff would have been required to provide answers seeking information that is relevant only to other litigation involving the parties. Plaintiff would have been required to answer questions based on a partial copy of a document.

Throughout the deposition, plaintiff's counsel acted appropriately. When he objected, he stated his reasons for the objection in a clear and concise fashion. He also said that he would withdraw the objection if opposing counsel addressed the objection with an explanation supporting the contested discovery request.

For these reasons, I enter the following Order of Court:

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

RINALDO A. ACRI, an individual, and CAROLL V. ACRI, his wife, Plaintiffs	:	NO. GD93-12188
vs.	:	
GOLDEN TRIANGLE MANAGEMENT ACCEPTANCE COMPANY, a Pennsylvania corporation, Defendant	:	

ORDER OF COURT

On this 22nd day of April, 1994, it is hereby ORDERED that defendant's motion to compel deposition testimony and for the imposition of sanctions is denied.

BY THE COURT:

WETTICK, J.

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[1] In the Hall v. Clifton Precision case, there had been only two interruptions before the parties contacted the Court. Consequently, the guidelines were not developed in response to problems that specifically arose in the Hall v. Clifton Precision litigation.

[2] Also, a ruling that counsel for the responding party may raise only objections based on privilege is inconsistent with Pa.R.C.P. No. 4016. Under Rule 4016, objections as to relevancy, materiality, and competency, and objections based on errors and irregularities occurring in the manner of taking the deposition, including the form of the question and the conduct of the parties, are waived as to any matters

that could have been obviated or removed if the objections had been made at the deposition.

[3] Perhaps counsel will find it necessary to give the client some words that he or she can use--"this is irrelevant and has nothing to do with the case so f am not going to answer the question;" "this is unfair;" "this is confusing so please start again." Counsel might also place a copy of Rule 4011 in front of the client so the client can raise objections based on the precise language of the rule whenever the client thinks that it is appropriate.

[4] In the discovery stage of the litigation, objections based on relevancy/materiality are governed by Pa.R.C.P. No. 4003.1. This Rule allows a party to obtain discovery regarding any matter which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, and content of any written materials and the identity and location of persons having knowledge of any discoverable matter. Furthermore, it is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

[5] There are other pending lawsuits involving the same parties and the information which defendant was seeking would apparently be relevant in some of this other litigation.