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Order (HOLCOMBE T. GREEN)

Elizabeth E. Long
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

HOLCOMBE T. GREEN, and
HTG CORP.,

Plaintiffs,
v.

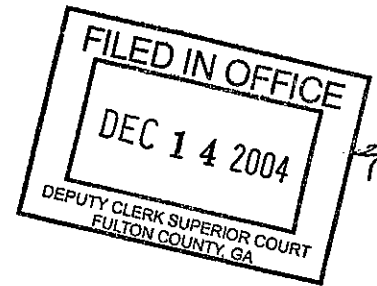
MCKESSON CORP., F/K/A
MCKESSON, INC., ET AL.,

Defendants

HALL FAMILY INVESTMENTS
L.P.,
Plaintiff .

v.

MCKESSON CORP., F/K/A
MCKESSON, INC., ET AL.,
Defendants.



CIVIL ACTION FILE NO.
2002cv48407

CIVIL ACTION FILE NO.
2002cv48612

ORDER

The above styled case came before this Court for decision on Plaintiffs' Motion to Have Requests for Admission Deemed Admitted, or in the alternative, to Compel Appropriate Responses and for Sanctions. Having considered the record, briefs submitted by both parties and the argument of counsel for the parties, the Court hereby finds as follows:

As a general matter, this Court finds that it is entirely proper and appropriate for Defendant to qualify its responses to various requests as it has done in its General Responses, subject to limitation as outlined by the Court. O. C.G.A. §9-11-36 (a)(2).

General Response #1 relates to requests for admissions concerning the

“knowledge or intent” of HBOC and/or its former management. The Court rejects as irrelevant Defendant’s argument that it cannot answer as to former employees’ knowledge because there is an issue regarding whether their knowledge is attributable to HBOC. Based upon the SEC investigation, its own internal investigation, as well as plea agreements entered into by former HBOC managers, HBOC has the necessary information to either admit or deny requests relating to the knowledge of HBOC and/or its former management regarding the issues addressed in General Response #1. However, HBOC is not required to respond to requests relating to the intent of its managers. As a general rule, a party need not admit to another’s state of mind, particularly as to one who has adverse interests. T. Rowe Price Small-Cap Fund, Inc., v. Oppenheimer & Co., Inc., 174 F.R.D. 38 (S.D.N.Y. 1997).

General Response #2 relates to requests for admissions concerning the accuracy of HBOC news releases. HBOC contends that it lacks sufficient knowledge to admit or deny the requests because the individuals who made the statements are no longer employed by HBOC. The Court rejects this argument and ORDERS these requests admitted unless and until HBOC can affirmatively show that any of the officers did not make the statements contained in the news releases.

General Response #3 relates to requests for admissions concerning whether statements made in news releases or SEC filings were “false and misleading.” As a basis for its general response Defendant propounds that “false and misleading” connotes intention and reliance and that as such, Defendant is ill-equipped to fully respond to the request. For purposes of the instant Motion, the Court finds that the terms “false and misleading” as set out in the Plaintiff’s requests for admission are terms of fact.

Accordingly, Defendant is required to respond more adequately to the corresponding requests for admission. Furthermore, any discussion of reliance or in particular, reliance by Mr. Green, shall be stricken from the response as irrelevant.

General Response #4 relates to requests for admissions concerning whether HBOC expected investors to rely on the information provided in the news releases when making investment decisions. By way of response, Defendant admits that it expected investors to rely on such information but disputes that a reasonable investor would rely solely on that information to support investment decisions. The Court finds that this response and qualifying statement is proper. However, the Court strikes any and all language incorporated into the General Response which includes a discussion of Mr. Green and his status as an “insider” because it is not responsive to the specific request.

General Response #5 relates to requests for admissions concerning whether it was reasonable for an investor to rely on the statements in the news releases. The Court finds that Defendants’ General Response is proper except to the extent that it contains a discussion of Mr. Green for the reasons as stated previously. Therefore, any and all language concerning Mr. Green contained within General Response #5 shall be stricken from the response.

General Response #6 relates to requests for admissions concerning overstatements of HBOC’s revenue and earnings in news releases and SEC filings, as well as to individual items contained on income statements and balance sheets. Defendant responded that it lacked sufficient information or knowledge to either admit or deny the request based upon its restatement method wherein adjustments were made in the aggregate as opposed to stand alone, itemized adjustments. Therefore, Defendant asserts

that in order to obtain the information necessary to respond to the request, it would have to spend hundreds of thousands of dollars to pay for an analysis and reorganization of the financial data. This assertion is further supported by affidavit testimony of Ms. Julie Garlock, a Director at PricewaterhouseCoopers (PwC) who participated in the review of HBOC revenue recognition that led to the restatements.

The purpose behind requests for admission is to expedite the trial by identifying undisputed facts, as well as to obviate the necessary expenses that are inherent to proving disputed facts at trial. Hobbs v. New England Ins. Co., Inc., 212 Ga. 513 (1956).

Consistent with the purpose behind requests for admission, a party is not required to undertake extraordinary expense in order to respond to requests for admission. SIG Swiss Indus. Co. v. Fres-Co Systems, USA, Inc., 1993 WL 147241 (E.D. Pa. 1993).

Defendant has set forth sufficient evidence that it would have to spend hundreds of thousands of dollars in order to admit or deny the requests regarding its revenue recognition as posed by the Plaintiff. The Court finds that Defendant is not required to undertake this expense; therefore, General Response #6 is proper as stated.

Based upon the foregoing, the Court hereby ORDERS and RULES as follows:


- General Response 1 – Defendant must adequately respond to requests regarding knowledge, but not intent.
- General Response 2 – Responses are deemed admitted unless and until Defendant can affirmatively show the falsity of the statements.
- General Response 3 – Defendant must adequately respond to requests regarding whether news releases were “false and

misleading.” Furthermore, all extraneous language regarding Mr. Green shall be stricken.

- General Response 4 - Defendant’s response is adequate except to the extent that it discusses Mr. Green, which shall be stricken in its entirety.
- General Response 5 – Defendant’s response is adequate except to the extent that it discusses Mr. Green, which shall be stricken in its entirety.
- General Response 6 – Defendant is not required to undertake expense required in order to admit or deny requests.

Furthermore, in light of the foregoing rulings, the Court reserves judgment on the Plaintiffs’ specific requests for admission with the intent that the above rulings provide guidance for resolving discovery issues. Finally, Plaintiff’s Motion for Sanctions is hereby DENIED.

SO ORDERED this the 14th day of December, 2004.


Senior Judge Elizabeth E. Long

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