

The Effect of the Interrogatory Form on the Sufficiency of the Answer - *Britt v. Snyder*

Herbert J. Belgrad

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Medical Jurisprudence Commons](#)

Recommended Citation

Herbert J. Belgrad, *The Effect of the Interrogatory Form on the Sufficiency of the Answer - Britt v. Snyder*, 20 Md. L. Rev. 74 (1960)
Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol20/iss1/9>

This Casenotes and Comments is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

**The Effect Of The Interrogatory Form On
The Sufficiency Of The Answer**

*Britt v. Snyder*¹

The plaintiffs in this case are the widower and the two infant children of a patient who died as a result of an operation performed at the South Baltimore General Hospital. In a suit to recover damages for alleged malpractice against two physicians — a surgeon and an anaesthetist — and the hospital, the plaintiff submitted the following interrogatory to each of the defendants individually: "Give a concise statement of the facts upon which you base your

¹ DAILY RECORD, July 23, 1959 (Md. 1959).

defense to this suit that you were not negligent as alleged in the plaintiff's declaration."²

The defendant surgeon merely answered that the operation was carefully and prudently performed by him "without any negligence on his part."³ The anaesthetist, in addition to asserting that he "exercised ordinary care, skill, and judgment," denied the truth of the plaintiff's allegations of fact.⁴ The hospital's supplementary answer set out the principal steps taken by the hospital as shown by its records.⁵

The plaintiff excepted to these answers⁶ on the grounds that the answers (a) were tantamount to the general issue plea of the defendants; (b) gave no affirmative statements of facts upon which the defense was based; and (c) that the plaintiffs were entitled to receive, in answer to their

² *Ibid.*

³ The answer filed on behalf of Dr. Snyder is as follows:

"For answer to Interrogatory No. 4, the defendant states that the operation performed by the defendant in this case was carefully and prudently performed by the defendant without any negligence on the part of the defendant, and that the subsequent death of Sylvia Britt was not in any way caused by any act or acts of the defendant."

⁴ The answer filed on behalf of Dr. Wiecech is as follows:

"A concise statement of facts upon which this defendant will base his defense that he was not negligent as alleged in plaintiffs' declaration is that such allegations of negligence are not true and are denied; that this defendant exercised ordinary care, skill and judgment in the performance of what he did as an anaesthetist and that the death of the patient was not the result of any negligence or want of ordinary care, skill or judgment on his part."

⁵ The supplementary answer filed by the hospital listed the following steps: furnishing all drugs ordered by the physicians in attendance, furnishing all the equipment ordered by the physicians in attendance, furnishing all the qualified nursing and lay personnel required to facilitate the orders of the physicians in attendance, and employed and furnished all the house doctors necessary to carry out the orders of the physicians in attendance. The answer listed the names of the doctors and also the various drugs and equipment which were furnished by the hospital in response to the orders of the physicians.

Originally the hospital filed the following answer:

"That there was nothing that the defendant did, or should have done but did not do, which caused or hastened the death of Mrs. Sylvia Britt, there was no indication that Mrs. Britt was in any danger until after the operation, and as soon as it became evident that she was not reacting properly, all possible steps were taken to revive her. The steps that were taken are too numerous to list in a concise statement but, as far as known to this defendant, they are set out in detail in the copy of the record of the South Baltimore General Hospital which has been furnished to the plaintiff."

⁶ MARYLAND RULE 417C, Exceptions, does not set out a specific procedure for filing an exception to an interrogatory, but Chief Judge Niles in *Mazor v. Plein*, DAILY RECORD, July 21, 1958 (Md. 1958), has stated that except under special circumstances, the Court will require, with respect to Exceptions hereafter filed, that as to each Exception the following be set forth in full: (1) The Interrogatory excepted to, in full; (2) The answer, if any, filed thereto, in full; (3) The reason for the exception. See also *Wolf v. Hellman*, DAILY RECORD, Dec. 28, 1956 (Md. 1956).

interrogatory, specific factual information in response to each charge in the declaration alleging negligence on the part of each defendant.

The only issue before the court in the instant case was the sufficiency of the respective answers. In overruling the objection to the answers to the interrogatories, the court held that a broad and generalized interrogatory does not require a specific answer. It cited a similar case⁷ in which the court had found that an interrogatory requesting a concise statement of the facts supporting an adversary's position was proper. There, the court pointed out that an interrogatory based on conciseness and simplicity would not take the place of specific inquiries as to specific facts.

It is important to remember when framing an interrogatory that the function of the discovery procedure is to obtain from one's opponent exact information as to the true ground of attack or defense by discovering specific facts on which the opponent relies.⁸ In this case the defendants relied on a negative defense rather than an affirmative one — they denied that the operation was negligently and unskillfully performed. Therefore, their answers to the interrogatory sufficiently apprised the plaintiff of the nature of the defense.

There are two aspects of this case which warrant consideration — the form of the interrogatory and the sufficiency of the answer.⁹ According to Chief Judge Niles, interrogatories should be directed to specific facts relevant to the case as distinguished from blanket inquiries, the answers to which might be either useless or impossible to frame conscientiously.¹⁰ Interrogatories which are directed to such facts as the operation and speed of vehicles, the maintenance and repair of vehicles, the position and operation of traffic lights, the nature and extent of injuries, and the calculation of damages, are proper.¹¹

In several federal cases, based on the Federal Rules of Civil Procedure which closely parallel those of Maryland, the same principle has been followed. The United States

⁷ Wilhelm v. Serio, DAILY RECORD, Dec. 28, 1956 (Md. 1956).

⁸ *Supra*, n. 6. See also Barnett v. Middleton, DAILY RECORD, April 2, 1955 (Md. 1955).

⁹ For a more complete discussion of the Maryland deposition and discovery process see Pike and Willis, *The New Maryland Deposition and Discovery Procedure*, 6 Md. L. Rev. 4 (1941), and Foreman, *Depositions and Discovery — Digest of Maryland Decisions*, 18 Md. L. Rev. 1 (1958).

¹⁰ Currier v. States Marine Corp., DAILY RECORD, March 16, 1956 (Md. 1956).

¹¹ Rapacky v. Stanley Co., DAILY RECORD, Oct. 13, 1956 (Md. 1956).

District Court for the District of New Jersey has ruled that an interrogatory which is too general and all inclusive need not be answered.¹² In *May v. Baltimore and Ohio Railroad Company*,¹³ the court disallowed the following interrogatory: "State in detail the alleged negligence on the part of the plaintiff contributing to the occurrence of the accident, etc.?", on the ground that it went too far in asking for information in detail. The court suggested that the plaintiff serve this interrogatory in its place: "What are the facts upon which the defendant bases its allegation that the plaintiff was guilty of negligence contributing to the occurrence of the accident?"

Numerous controversies have arisen over the form of interrogatories which are an outgrowth of Federal Rule 26 (b) and Maryland Rule 410 (a) (3).¹⁴ This portion of the rule permits inquiry as to "the identity and location of persons having knowledge of relevant facts." However, interrogatories seeking this particular kind of information that are framed in general terms rather than particular ones, have been found to be too broad; they should be directed toward identifying persons having knowledge as to specific facts or classes of facts.¹⁵ The more particular the request, the better reception it will probably receive from the court in case of objection.¹⁶ Thus, for example, a request for names and addresses of all eye-witnesses to an accident would probably be held proper.¹⁷ However, an interrogatory requiring the names of "all persons who have any knowledge" about material facts of an accident or the instrumentality involved is too general when it is filed in addition to proper interrogatories asking the names of persons who were at the scene and who actually witnessed the accident.¹⁸ To allow such a broad question would lead to confusion rather than to order and precision in the preparation of the case.¹⁹ The United States District Court for the District of Maryland has ruled that a party is not

¹² *Auer v. Hershey Creamery Co.*, 1 F.R.D. 14 (D.C. N.J. 1939).

¹³ 17 F.R.D. 288 (D.C. Md. 1955).

¹⁴ MARYLAND RULE 410a(3) provides:

"Unless otherwise ordered by the court, a deponent may be examined . . . regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . (3) including any information of the witness or party, however obtained, as to the identity and location of persons having knowledge of relevant facts . . ."

¹⁵ *Supra*, n. 10.

¹⁶ See 6 Md. L. Rev., *supra*, n. 9, 29.

¹⁷ *Supra*, n. 10.

¹⁸ 6 Md. L. Rev., *supra*, n. 9, 29.

¹⁹ *Currier v. States Marine Corp.*, DAILY RECORD, March 16, 1956 (Md. 1956). In this case Chief Judge Niles gives an illustration of the kind of question which is impossible to answer, which would lead only to recrimi-

required to furnish his adversary with the names of witnesses on whose testimony he intends to rely; however, the party may be required to furnish names of persons known to him to have a specified connection with the controversy.²⁰ Similarly, the United States District Court for the Southern District of New York has held that an interrogatory demanding the names of officers knowing anything about a particular accident was too broad.²¹

The emphasis on specificity has even been extended to the requests for the submission of documents for inspection.²² According to one court, these requests should be in the form of a definite statement directed to a party for such things as may be in his possession, custody, or control, specifically designating them.²³ An interrogatory or request for "all", with reference to evidence, is improper.²⁴ Thus, a motion for production of documents requesting "all written reports, memoranda, or other records of conferences of officers or members of the technical staff of the defendants" in which certain manufacturing processes were discussed, was too general and comprehensive.²⁵

Just as important as the form of the interrogatory is the sufficiency of the answer. In the instant case, the court decided that the answer to the defendants' request for a concise statement of the defense was sufficient because of the form of the question. In many cases, however, the court has found it necessary to sustain an exception to the answer. For example, the court has ruled that an answer, "See Declaration," was an insufficient response to an interrogatory requesting the defendant's own version of the incident described in the declaration.²⁶ Since the object of an interrogatory is to obtain a simple answer to a simple question, the court did not think it should be necessary for a pleader to attempt to distill the essential facts upon

nation and confusion, and which produces no effective result in the conduct of the case:

"Does the defendant, his agent, attorney, or insurer have any information which could be used for the purposes of surprise or impeachment of the plaintiff at the time of the trial of this case? If the answer to this Interrogatory is 'yes', then state in full detail all such information."

²⁰ *Coca Cola Co. v. Dixi-Cola Laboratories*, 30 F. Supp. 275 (D.C. Md. 1939).

²¹ *Barter v. Eastern Steamship Lines*, 1 F.R.D. 65 (D.C. N.Y. 1939).

²² MARYLAND RULE 419a.

²³ *Sheffield Corp. v. George F. Alger Co.*, 16 F.R.D. 27 (D.C. Ohio 1954).

²⁴ *Ibid.*

²⁵ *Lever Bros. Co. v. Proctor and Gamble Mfg. Co.*, 38 F. Supp. 680 (D.C. Md. 1941).

²⁶ *Robinson v. Baltimore Transit Co.*, DAILY RECORD, Nov. 13, 1957 (Md. 1957).

which his opponent relies from a technical and legally-drawn declaration. The interrogatory demanding or requiring a concise account of the happening should be answered concisely and simply in order to clarify, rather than obscure the issues involved. Such an approach will further the purposes of discovery by enabling a party to acquire accurate and useful information with respect to testimony which is likely to be presented by an opponent and to obtain information which appears reasonably calculated to lead to the discovery of admissible evidence.²⁷ In a case²⁸ in which the interrogatory demanded an accounting of the plaintiff's medical expenses, the answer, "Hospital bill not received," was found to be insufficient under normal circumstances. As the court pointed out, both parties have a duty to obtain all reasonable information relative to the facts when the information is under their control, especially when the information sought normally must be obtained prior to trial. Similarly, an answer that the "information has not been received," or that the "information will be furnished later" is normally insufficient.²⁹ In still another case,³⁰ the court has ruled that the defendant may require definite answers as to the nature, extent, and permanence of injuries claimed in a personal injury suit. The answer, "See attached medical report," referring to certain reports of doctors which differ in scope and detail was found to be too indefinite.

In conclusion, the effectiveness of the discovery procedure will be determined to a great extent by the form of the interrogatory and the sufficiency of the answer. As indicated in the principal case, an interrogatory itself must be specific in nature.

HERBERT J. BELGRAD

²⁷ *Supra*, n. 9.

²⁸ *Jones v. Salvation Army*, DAILY RECORD, Apr. 23, 1955 (Md. 1955).

²⁹ *Jones v. Baltimore Transit Co.*, DAILY RECORD, Oct. 8, 1956 (Md. 1956).

³⁰ *Brooker v. Stevens, Inc.*, DAILY RECORD, Mar. 29, 1955 (Md. 1955).