

Code of Civil Procedure Article 1461

Art. 1461. Production of documents and things: entry upon land: scope

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect, ~~and copy, test and sample~~ any designated documents or electronically stored information, including writings, drawings, graphs, charts, photographs, phono-records, sound recordings, images and other data or data compilations in any medium from which information can be obtained, translated, if necessary, by the respondent through detection and other devices into reasonably usable form, or except as provided in Article 1462(E), to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Articles 1422 through 1425 and which are in the possession, custody, or control of the party upon whom the request is served; or (2) except as provided in Article 1462(E) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Articles 1422 through 1425.

COMMENTS

Prior to their amendments, Articles 1461 and 1462 allowed requests for production of documents and other designated materials and direct access to inspect, test and sample any operations or tangible things in the control of the responding party which contained the requested information.

The articles were enacted in 1976 and made no reference to procedures for the discovery of the now widely used electronic storage of information on computers. The 2007 changes to Articles 1461 and 1462 make it clear that a requesting party may, within the scope of Articles 1422 through 1425, inspect and copy in its native form the product of a computer such as a printout of electronically stored information on paper or on a disc resulting from the translation of the stored information. However because direct access to a computer may present novel and difficult problems and risks for the responding party, including the burden of locating and segregating the requested information and protecting from disclosure proprietary, privileged, personal, or irrelevant material, the amended articles do not give the requesting party the right initially to conduct the actual search of the responding parties' computer.

Article 1461 now permits direct access during discovery to computers and other types of such devices to inspect, copy, test and sample the requested electronically stored information

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which such devices may contain only after the responding party has had an opportunity to search for and produce the information in a reasonably usable form. Absent an agreement between the parties, a requesting party, dissatisfied with an initial response, must successfully prosecute a motion to compel discovery under Article 1469 and obtain an order permitting direct access to the responding parties computer in the form of an inspection, copying, testing or sampling of its contents to determine if there has been a failure to comply with the discovery request. Such an order should be granted only when the requesting party has shown good cause that the initial production of electronically stored information for inspection and copying may not have been in compliance with an appropriate discovery request, and the order should provide for protections of the type set forth in Article 1426 as to the manner and scope of the search necessary to protect the responding party from an undue burden and disclosure of protected information. As stated in the Advisory Committee Notes to the 2006 amendments to FRCP 34(a), the parallel provision of the amended article, “courts should guard against undue intrusiveness resulting from inspecting and testing” computer systems. See *In Re Ford Motor Co.*, 345 F.3d 1315 (11th Cir. 2003).

Code of Civil Procedure Article 1462

Art. 1462. Production of documents, electronically stored information, and things; entry upon land; procedure

A. The request under Article 1461 may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the petition upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

B. The party upon whom the request is served shall serve a written response within fifteen days after service of the request, except that a defendant may serve a response within thirty days after service of the petition upon that defendant. The court may allow a shorter or longer time. With respect to each item or category, the response shall state that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Article 1469 with respect to any objection to or other failure to respond to the request, or any part thereof, or any failure to permit inspection as requested. If objection is made to the requested form or forms for producing electronically stored information, or if no form was specified in the request, the responding party must state in its response the form or forms it intends to use.

C. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories of the request. If a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable.

D. Unless otherwise ordered by the court, a party need not produce the same electronically stored information in more than one form.

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E. If the requesting party considers that the production of designated electronically stored information is not in compliance with the request, the requesting party may move under Article 1469 for an order compelling discovery, and in addition to the other relief afforded by Article 1469, upon a showing of good cause by the requesting party, the court may order the responding party to afford access under specified conditions and scope to the requesting party or the representative of the requesting party to the computers or other types of devices used for the electronic storage of information to inspect, copy, test and sample the designated electronically stored information within the scope of Articles 1422 and 1425.

COMMENTS

See Comments to 2007 Amendments to Article 1461.

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appellant had been convicted. These two subsections read in conjunction with subsection (h) authorize the court to divide the 5-year maximum sentence between prison term and supervised release as the court sees fit. The language of § 3583(e)(3), (g) and (h) makes clear that the length of additional supervised release and prison term upon revocation is not bound by the original term of supervised release but by the class of felony of which the appellant is convicted. Thus “the aggregate of pre-revocation and post-revocation supervised release terms may exceed the maximum length of supervised release that § 3583(b) dictates should attach to the underlying offense.” *Gresham*, 325 F.3d at 1268.

Counsel’s Motion to withdraw is GRANTED, and the revocation and sentence are AFFIRMED.



**In re: FORD MOTOR COMPANY,
Petitioner.**

No. 03-10440.

United States Court of Appeals,
Eleventh Circuit.

Sept. 22, 2003.

Motorist brought claims against automobile company alleging that seatbelt buckle of automobile was defectively designed because the buckle inertially unlatched during an accident, causing her injury. The United States District Court for the Northern District of Alabama, No. 01-01759-CV-S, U.W. Clemon, Chief Judge, granted motorist’s motion to compel, allowing motorist direct access to company’s databases. Automobile company filed petition for a writ of mandamus or prohibition. The Court of Appeals, Edmondson, Chief Judge, held that motor-

ist was not entitled to direct, unlimited access to automobile company’s computer databases.

Petition granted.

1. Mandamus ⇌1

Mandamus is an extraordinary remedy available only to correct a clear abuse of discretion or a usurpation of judicial power.

2. Federal Courts ⇌820

An appellate court reviews a district court’s discovery orders for a clear abuse of discretion.

3. Federal Civil Procedure ⇌1581

Motorist was not entitled to direct, unlimited access to automobile company’s computer databases, in motorist’s action against automobile company alleging that seatbelt buckle of motorist’s vehicle was defectively designed, causing injury during an accident, absent findings, express or implied, that automobile company had failed to comply properly with discovery requests. Fed.Rules Civ.Proc.Rules 26(b)(1), 34(a), 28 U.S.C.A.

4. Federal Civil Procedure ⇌1271

While a court has discretion to grant or deny a motion for discovery, it should not grant the motion in the face of well-developed, bona fide objections without a meaningful explanation of its decision.

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Appeal from the United States District Court for the Northern District of Alabama.

Before EDMONDSON, Chief Judge, CARNES, Circuit Judge, and CARNES*, District Judge.

EDMONDSON, Chief Judge:

Appellant Ford Motor Company seeks a writ of mandamus or prohibition directing Chief Judge Clemon of the Northern District of Alabama to vacate a discovery order. The order required Ford to allow Plaintiff Elizabeth Russell access to Ford's Master Owner Relations Systems I, II, and III ("MORS") and Common Quality Indicator System ("CQIS") databases.

Russell filed suit against Ford. The suit alleges that the seatbelt buckle of Russell's Ford vehicle was defectively designed because the buckle "inertially unlatched" during an accident, causing her injury. After filing several document requests, Russell filed a motion to compel seeking direct access to Ford's MORS and CQIS databases to conduct searches for claims related to inertial unlatching of the RCF-67 seatbelt buckle. MORS records all customer contacts with Ford, and CQIS records contacts by dealers, personnel, and other sources.

In fewer than fourteen days of the filing of the motion to compel, the district court, without a hearing and *before* Ford had responded, granted Russell's motion to compel. Then, Ford filed a motion for reconsideration; and the parties submitted briefs and evidence. After a hearing, the district court ordered Ford to allow Russell direct access to the MORS and CQIS databases. Ford filed this petition for a writ of mandamus or prohibition.

* Honorable Julie E. Carnes, United States District Judge for the Northern District of Georgia, sitting by designation.

[1, 2] Mandamus is an extraordinary remedy available only to correct a clear abuse of discretion or a usurpation of judicial power. *In re Lopez-Lukis*, 113 F.3d 1187, 1187 (11th Cir.1997); *In re Fink*, 876 F.2d 84, 84 (11th Cir.1989).¹ "In the context of discovery orders which will compromise a claim of privilege or invasion of privacy rights, mandamus has been found appropriate due to the importance of the privilege, the seriousness of the injury if discovery is obtained, and the difficulty of obtaining effective review once the privileged information has been made public." *In re Fink*, 876 F.2d at 84. We review a district court's discovery orders for a clear abuse of discretion. *Id.*

Under Federal Rule of Civil Procedure 26(b)(1), parties "may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." Fed.R.Civ.P. 26(b)(1). Although the parties agree that the information that Russell seeks is discoverable, they disagree on the need for direct access to Ford's computer databases.

Under Rule 34(a), parties may request the other party to "produce and permit the party making the request . . . to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form)." Fed. R.Civ.P. 34(a). But Rule 34(a) does not grant unrestricted, direct access to a respondent's database compilations. Instead, Rule 34(a) allows a requesting party to inspect and to copy the product—whether it be a document, disk, or other device—resulting from the respondent's

1. Chief Judge Clemon was invited to respond to the petition for mandamus. No response was filed by Chief Judge Clemon.

translation of the data into a reasonably usable form.

The Advisory Committee Notes to Rule 34(a) support this interpretation. Commenting on data compilations, the Committee stated, “[W]hen the data can as a practical matter be made usable by the discovering party only through respondent’s devices, respondent may be required to use his devices to translate the data into usable form. In many instances, this means that respondent will have to supply a print-out of computer data.” Fed.R.Civ.P. 34(a) advisory committee’s note (1970 amend.). Like the other discovery rules, Rule 34(a) allows the responding party to search his records to produce the required, relevant data. Rule 34(a) does not give the requesting party the right to conduct the actual search. While at times—perhaps due to improper conduct on the part of the responding party—the requesting party itself may need to check the data compilation, the district court must “protect respondent with respect to preservation of his records, confidentiality of nondiscoverable matters, and costs.” *Id.*

[3] In this case, Ford and Russell dispute whether Ford properly responded to Russell’s earlier requests for production. Although Russell asserts that Ford has not been forthright in providing documents, Ford contends that it has produced all relevant information. The district court was in the best position to determine whether Ford had improperly dealt with the earlier discovery requests. But the district court made no findings—express or implied—that Ford had failed to comply properly with discovery requests.

[4] The district court also did not discuss its view of Ford’s objections and provided no substantive explanation for the court’s ruling. Ford objected to the search on the grounds that (1) Russell had established no discovery abuses by Ford,

(2) Ford had already searched the database and produced all relevant, non-privileged materials, and (3) the discovery rules did not allow the court to grant Russell free access to the databases regardless of relevance, privilege, or confidentiality. When a party objects to a motion for discovery, a court should rule on the objections and ordinarily give at least some statement of its reasons. “While [a court] has discretion to grant or deny the motion, it should not grant the motion in the face of well-developed, bona fide objections without a meaningful explanation of its decision.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1370 (11th Cir.1997).

Furthermore, in its order, the district court granted Russell unlimited, direct access to Ford’s databases. The district court established no protocols for the search. The court did not even designate search terms to restrict the search. Without constraints, the order grants Russell access to information that would not—and should not—otherwise be discoverable without Ford first having had an opportunity to object.

While some kind of direct access might be permissible in certain cases, this case has not been shown to be one of those cases. Russell is unentitled to this kind of discovery without—at the outset—a factual finding of some non-compliance with discovery rules by Ford. By granting the sweeping order in this case, especially without such a finding, the district court clearly abused its discretion.

Accordingly, the petition for a writ of mandamus is GRANTED. The pertinent discovery order of 12 December 2002 must be VACATED.

Petition is GRANTED.

