

**UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

Secretary of Labor,	)	
	)	
Complainant,	)	
	)	
v.	)	OSHRC Docket No. 20-1001
	)	
Dura-Bond Steel Corporation,	)	
	)	
Respondent.	)	
	)	

**ORDER GRANTING COMPLAINANT’S MOTION TO COMPEL  
TO THE EXTENT INDICATED HEREIN**

**I. BACKGROUND**

Respondent is a Pennsylvania corporation doing business at 2658 Puckety Drive, Export, PA. Ex. B to Resp’t’s Mot. for Entry of Protective Order ¶ 3. As part of its regular business, Respondent “fabricates steel and spray coats fabricated items, pipe, and other steel shapes.” *Id.* at ¶ 4. According to Jason Norris, Respondent’s President, Respondent is involved in a highly competitive industry wherein customers regularly solicit bids from Respondent as well as its competitors. *Id.* at ¶¶ 5-7. Because of the high degree of competition in Respondent’s industry, Respondent does not disclose any financial information, including information regarding profits and losses or tax returns, to anyone other than “select shareholders, as well as Respondent’s select accountants, attorneys, banks, and customers who require proof of financial strength as part of [their] bids.” *Id.* at ¶¶ 8-12.

As laid out in Respondent’s Corporate Disclosure Statement,<sup>1</sup> Respondent is a subsidiary

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<sup>1</sup> Respondent filed a Corporate Disclosure Statement with its Answer on September 18, 2020, as required by Commission Rule 35, and a second Corporate Disclosure Statement on April 20, 2021. Respondent filed the second Corporate Disclosure Statement to clarify that “Respondent ... does not have any subsidiaries” and that all the entities listed in the Corporate Disclosure Statement [filed with the Answer] are subsidiaries of Dura-Bond Industries, Inc.” See App’x A to Corporate Disclosure Statement of Dura-Bond Steel Corporation, OSHRC Docket

company of another company called Dura-Bond Industries, Inc. See App'x A to Corporate Disclosure Statement of Dura-Bond Steel Corp., OSHRC Docket No. 20-1001 (filed April 20, 2021). Along with Respondent, Dura-Bond Industries has five other subsidiary companies: (1) Dura-Bond Pipe, LLC; (2) Dura-Bond Pipe I, LLC; (3) Dura-Bond Coating, Inc.; (4) D-B Air, LLC; and (5) Dura-Bond Development, Inc. Dura-Bond Industries and all of its subsidiaries, including Respondent, are "S Corporations." Ex. B. to Resp't's Mot. for Entry of Protective Order ¶ 14. Generally speaking, this means Respondent and its related corporations are "corporation[s] whose income is taxed through [their] shareholders rather than through the corporation itself." *Corporation – S corporation*, BLACK'S LAW DICTIONARY (11th Ed. 2019). The practical effect of this type of incorporation is that Respondent and its related corporations are generally not subject to federal or state taxation. See generally *In re Majestic Star Casino, LLC*, 716 F.3d 736, 742 (3d Cir. 2013); *In re Dobson's Estate*, 417 A.2d 138, 143 (Pa. 1980); see also *Marshall v. Commonwealth*, 41 A.3d 67, 90 n.31 (Pa. Commw. Ct. 2012).

Following a series of inspections occurring between January 14, 2020 and April 14, 2020, the United States Occupational Safety and Health Administration ("OSHA") issued to Respondent a six-item serious citation and a four-item other-than-serious citation (the "Citations") alleging violations of various provisions of OSHA's regulations.<sup>2</sup> The Citations

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No. 20-1001 (filed April 20, 2021). The Court will therefore only reference Respondent's second Corporate Disclosure Statement for purposes of this order.

<sup>2</sup> More specifically, the Citations alleged as follows:

Citation 1, Items 1a, 1b, and 1c related to spray finishing operations using flammable and combustible materials and alleged serious violations of 29 C.F.R. §§ 1910.107(a)(2), 1910.107(e)(4), and 1910.107(e)(5), respectively.

Citation 1, Items 2a, 2b, and 2c related to the employees' use of equipment during spraying operations and alleged serious violations of 29 C.F.R. §§ 1910.107(m)(1), 1910.94(c)(2), and 1910.134(g)(1)(i)(A).

Citation 1, Item 3 alleged a serious violation of 29 C.F.R. § 1910.244(b) for failure to have a blast cleaning nozzle equipment with an operating valve which had to be held open manually.

Citation 1, Items 4a, 4b, and 4c related to the employees' exposure to iron oxide fumes and alleged serious violations of 29 C.F.R. §§ 1910.1000(a)(2), 1910.252(c)(1)(iii), and 1910.1000(a), respectively.

Citations 1, Items 5a, 5b, 5c, and 5d related to measures and controls designed to limit employees' exposure to respirable crystalline silica and alleged serious violations of 29 C.F.R. §§ 1910.1053(c), 1910.1053(d)(3)(iv),

proposed a total penalty of \$35,085 for the alleged violations.

On June 25, 2020, Respondent submitted its Notice of Contest. Following an extension of time, the Secretary filed his Complaint on August 28, 2020. On September 18, 2020, Respondent filed its Answer. Among other affirmative defenses, Respondent asserted that compliance with certain standards would be technically and economically infeasible. Answer ¶ 14.

The parties have since engaged in written discovery. On February 12, 2021, the Secretary served his First Set of Interrogatories and First Set of Requests for Production of documents to Respondent. In his interrogatories, the Secretary sought, as is relevant here, information regarding the gross and net income for Respondent and its related companies as set forth in Respondent's Corporate Disclosure Statement. *See* Ex. C to Resp't's Mot. for Entry of Protective Order. The Secretary also sought information regarding the identity of the officers and ownership information for Respondent and its related companies. *Id.* In his request for documents, the Secretary sought, as is relevant here, Respondent's federal tax returns for the years 2018, 2019, and 2020. *Id.* In its responses to the Secretary's discovery requests, Respondent objected to producing the requested information, arguing, *inter alia*, that the Secretary's requests would seek information that is proprietary or confidential business or

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1910.1053(f)(1), and 1910.94(a)(3)(i), respectively.

Citation 1, Items 6a, 6b, 6c, and 6d related to the medical surveillance of employees exposed to respirable crystalline silica and alleged serious violations of 29 C.F.R. §§ 1910.1053(i)(2)(i), (ii), (iii), (v) and 1910.1053(i)(4), respectively.

Citation 2, Item 1 alleged an other-than-serious violation of 29 C.F.R. § 1910.134(c)(1)(vi) for the respiratory protection program failing to have procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators.

Citation 2, Item 2 alleged an other-than serious violation of 29 C.F.R. § 1910.1053(f)(2)(i)(B) for the failure of the respiratory crystalline silica exposure plan to address the ventilators used by employees.

Citation 2, Item 3 alleged an other-than-serious violation of 29 C.F.R. § 1910.1053(j)(2) for failure to post warning signs at the workplace regarding respiratory crystalline silica.

Citation 2, Item 4 alleged an other-than-serious violation of 29 C.F.R. § 1053(k)(1)(ii)(F) for the failure of the exposure measurement records to contain the type of respirator worn by employees.

commercial information or otherwise a trade secret. *Id.*

Regarding the Secretary's request for income, tax, and ownership information for Respondent and its related companies, the Secretary argues this information is relevant with regard to Respondent's affirmative defense of economic infeasibility. Particularly, the requested financial and ownership information may factor into Respondent's ability to offset the cost of abatement measures for the identified hazards. The Secretary argues that Respondent has not substantiated its allegations of harm from the disclosure of this information.

On April 21, 2020, the Secretary filed a Motion to Compel, seeking to compel Respondent to reply to six of the Secretary's interrogatories. The Secretary first highlights Citation 1, Item 2a, alleging a serious violation of 29 C.F.R. § 1910.107(m)(1) and Citation 1, Item 2b, alleging a serious violation of 29 C.F.R. § 1910.94(c)(2). The Secretary further highlights that Respondent has conceded that these standards applied and were violated. Instead of contesting those elements, Respondent is relying on the affirmative defense of technological and economic infeasibility.

As to Interrogatories 12 and 13, the Secretary is seeking some basic financial information to evaluate the merits of Respondent's defense of economic infeasibility. It would be unfair for Respondent to assert this defense and yet shield financial information that would allow the Secretary to rebut the defense. As to Interrogatory 12, the Secretary sought information regarding what Respondent believed the cost of compliance for the violations of Citation 1, Items 2a and 2b and how such cost would impact Respondent's finances. As to Interrogatory 13, the Secretary sought information on Respondent's gross and net income for calendar years 2018, 2019, and 2020 and what portion of this income was used in Respondent's spray coating operations. Respondent objected to both interrogatories and has refused to provide the

information.

The Secretary argues that Respondent has asserted only boilerplate objections for both Interrogatories 12 and 13. The Secretary sets forth the twelve separate grounds on which Respondent objected to the interrogatories. The Secretary also points to Respondent's "General Objections" to the whole set of interrogatories and argues such objections are improper and duplicative. Altogether, Respondent has cited 20 different objections to Interrogatories 12 and 13. The Secretary argues that the Third Circuit requires parties to raise particularized objections and that Respondent has failed to do so. The Secretary asks that the Court consider Respondent's objections waived as to Interrogatories 12 and 13.

The Secretary goes on to request that, even if the Court does not consider Respondent's objections waived, that the Court overrule these objections. Respondent has asserted the defense of economic infeasibility, which requires it to prove (1) that compliance with the standards is extremely costly and (2) the employer cannot absorb or pass on the cost. The Secretary argues that the information sought in Interrogatories 12 and 13 is relevant to Respondent's economic infeasibility defense. The Secretary therefore asks that Respondent be ordered to turn over this information.

In Interrogatories 14, 15, 16, and 17, the Secretary is seeking information related to the interrelationship and overlapping ownership between Respondent, its parent company, Dura-Bond Industries, Inc., and Dura-Bond Industries' five other subsidiary companies. Interrogatory 14 seeks the name, position, and percentage ownership of the parent and subsidiary companies. Interrogatory 15 seeks the gross and net income for the years 2018, 2019, and 2020 for the parent and subsidiary companies. Interrogatory 16 seeks the identify of all the officers of the parent and subsidiary companies. Interrogatory 17 seeks the names and titles of the managers of the parent

and subsidiary companies.

The Secretary argues that, as with Interrogatories 12 and 13, Respondent has only asserted boilerplate objection to Interrogatories 14 through 17 and that the Court should consider them waived. The Secretary goes on to argue that the information sought in these interrogatories is again relevant to Respondent's economic infeasibility defense. The Secretary argues that whether Respondent's business would be affected by the cost of compliance may be impacted by the relationship between Respondent, its parent, and its parent's other subsidiaries relationship to each other. The Commission's cases on economic infeasibility hold that it is improper to only focus on one facility owned by an employer. Rather, the cost of compliance may impact multiple worksites. Thus, if Respondent's parent company could reallocate resources to cover the cost of compliance, this would impact the viability of Respondent's economic infeasibility defense. Finally, the Secretary notes that the information sought in Interrogatories 14 through 17 need not necessarily be information admitted at trial. For purposes of discovery, the information only needs to be relevant to the subject matter and proportional to the needs of the case. Respondent has placed its economic status at issue by asserting the economic infeasibility defense, and the Secretary is entitled to information concerning it.

On May 4, 2020, Respondent filed its Response in Opposition to Secretary's Motion to Compel. Respondent argues that the Court should reject the Secretary's argument that Respondent has waived its objections by asserting boilerplate objections. Respondent submitted supplemental responses which clarified its objections to the interrogatories.

As to Interrogatory 12, Respondent argues that it has fully complied with this interrogatory. Respondent produced documents detailing the cost of compliance and the efforts Respondent was undertaking to evaluate the impact of those costs. Respondent provided not

only factual considerations for economic infeasibility but also the caselaw on which those considerations were based. Respondent provided further information by incorporating its response to Interrogatory 11 in its response to Interrogatory 12. Respondent further argues that the potential cost and impact are complex issues often requiring consultations with experts and implicating privileged and confidential information. Such information is privileged as work-product and non-discoverable. Respondent made clear in its objections that it was objecting to supplying any information that implicated these protections. Respondent rejects the Secretary's contentions that its objections were not specific enough. There is no basis to find waiver, but to the extent there was waiver, Respondent has fully answered Interrogatory 12 to the extent it is required to respond. Finally, Respondent continues to contend that Interrogatory 12 is overly broad, unduly burdensome, vague, and ambiguous, and not limited as to time. The Secretary has not identified what additional discoverable information he is seeking with regard to Interrogatory 12. The Court should decline to compel any further information.

As to Interrogatory 13, Respondent objects to the Secretary's request during the pendency of its motion for a protective order.<sup>3</sup>

As to Interrogatories 14 through 17, Respondents argues that the Secretary has failed to demonstrate that the requested information is both relevant and proportional to the needs of the case. None of the other entities listed on Respondent's Corporate Disclosure Statement are named parties in this case. The entities are separate and distinct legal entities under Pennsylvania law and do not own or operate the facility that was the subject of the Secretary's investigation. As the interrogatories relate to the economic infeasibility defense, Respondent contends that only Respondent's business is at issue, not other entities that were not named in the

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<sup>3</sup> On June 14, 2021, the Court granted Respondent's Motion for a Protective Order.

Citations.

Respondent also argues that the information sought in Interrogatories 14 through 17 is not proportional to the needs of the case. The non-party entities for which the Secretary seeks information are separate and distinct legal entities, and so the information will not assist the parties or the Court in the resolution of the case. Respondent also asserts that if the Secretary's Motion to Compel is granted, it will potentially open the floodgates for further inquiries into the non-party entities. Thus, Respondent argues, the information sought by the Secretary is not important for the resolution of this case, and the burden and expense will substantially outweigh any benefit.

The Court heard oral argument on the Secretary's Motion to Compel on Monday, May 17, 2021. At the conclusion of oral argument, the Court indicated its intention to grant the Secretary's Motion to Compel. The Court now issues this order to substantiate its rulings made at oral argument. For the reasons that follow, the Court grants the Secretary's Motion to Compel, to the extent indicated below.

## II. ANALYSIS

Under Federal Rule of Civil Procedure ("FRCP") 26(b)(1), "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." FED. R. CIV. P. 26(b)(1).<sup>4</sup> Where one party has refused the other's request for discovery, the other party may move to compel discovery on a particular

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<sup>4</sup> Commission Rule 52(b) likewise states:

The information or response sought through discovery may concern any matter that is not privileged and that is relevant to the subject matter involved in the pending case and proportional to the needs of the case, considering the importance of the issues at stake, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.



matter it believes to be discoverable. FED. R. CIV. P. 37(a); *see also Montanez v. Tritt*, 2016 WL 3035310, at \*2 (M.D. Pa. May 26, 2016). “The moving party must demonstrate the relevance of the information sought to a particular claim or defense. The burden then shifts to the opposing party, who must demonstrate in specific terms why a discovery request does not fall within the broad scope of discovery or is otherwise privileged or improper.” *Id.*, citing *Goodman v. Wagner*, 553 F. Supp. 255, 258 (E.D. Pa. 1982). Trial courts are granted broad discretion on matters of discovery. *See Wisniewski v. Johns-Manville Corp.*, 812 F.2d 81, 90 (3d Cir. 1987); *Marroquin-Manriquez v. I.N.S.*, 699 F.2d 129, 134 (3d Cir. 1983). When solving discovery disputes, it is appropriate for the Court to consider the need of the moving party for the information sought, any undue burden to the party from whom the discovery is sought, and any undue delay in the proceedings that may occur if discovery is compelled. *KLI, Inc.*, 6 BNA OSHC 1097, 1098 (No. 13490, 1977).

## 1. Waiver

At issue are six interrogatories, served on Respondent as part of the Secretary’s First Set of Interrogatories and Request for Production of Documents. Respondent initially submitted its Objections and Responses to these interrogatories on March 15, 2021. *See* Ex. A. to Sec’y’s Mot. to Compel. Respondent submitted its First Supplemental Responses to the interrogatories on April 9, 2021. *See* Ex. B. to Sec’y’s Mot. to Compel. The Secretary has argued that Respondent’s objections to these interrogatories are so general and “boilerplate” that the Court should consider them waived. *See* Sec’y’s Mot. to Compel 4, 9. The Court disagrees.

A party objecting to a discovery request “must provide reasoning and specificity with each objection.” *Porter v. Nationscredit Consumer Disc. Co.*, 2004 WL 1753255, at \*1 (E.D. Pa. July 8, 2004); *see also* FED. R. CIV. P. 34(b)(4) (“The grounds for objecting to an

interrogatory must be stated with specificity.”). “[S]imply objecting to request as overly broad, burdensome, oppressive, and irrelevant, without showing specifically how each [request] is not relevant or how each question is overly broad, burdensome, or oppressive, is inadequate ...”

*Ceuric v. Tier One, LLC*, 325 F.R.D. 558, 561 (W.D. Pa. May 17, 2018).

The Court does not find that Respondent’s objections are so broad or “boilerplate” as to constitute complete waiver of its objections. To be sure, as the Secretary has noted, Respondent asserted numerous objections with regard to each of the interrogatories at issue. *See* Ex. A to Sec’y’s Mot. to Compel 1-4, 16-20. However, Respondent is entitled to assert any objections in good faith; indeed, it is required to timely assert all objections or else risk having them waived. *See* FED. R. CIV. P. 34(b)(4) (“Any ground not stated in a timely objection [to an interrogatory] is waived unless the court, for good cause, excuses the failure.”). Respondent’s First Supplemental Responses clarified the nature of its objections to each of the interrogatories. *See* Ex. B to Sec’y’s Mot. to Compel 23-30. Any remaining ambiguity in the nature of Respondent’s objections was further clarified in its Opposition to the Secretary’s Motion to Compel. *See, e.g., Proofpoint, Inc. v. Vade Secure, Inc.*, 2020 WL 7398791, at \*3 (N.D. Cal. Nov. 11, 2020); *Cotracom Commodity Trading Co. v. Seaboard Corp.*, 189 F.R.D. 655, 662 (D. Kan. Nov. 19, 1999) (“When ruling upon a motion to compel, the court generally considers those objections which have been timely asserted and relied upon in response to the motion.”). The Court therefore does not find that Respondent has waived its objections to the interrogatories at issue. *Cf. Ceuric*, 325 F.R.D. at 561 (dismissing “general and boilerplate” objections where the exact same objections were made as to all of the opposing party’s discovery requests and no clarification was provided); *Parisi v. State Farm Mut. Ins. Co.*, 2017 WL 4403326, at \*1 (W.D. Pa. Oct. 2, 2017) (declining to dismiss a party’s “general objections” where the objections

merely preceded more detailed responses and objections); *Younes v. 7-Eleven, Inc.*, 312 F.R.D. 692, 704-05 (D.N.J. Dec. 11, 2015) (striking a party's objections where the only objections asserted were "boilerplate objections that the interrogatory was overly broad, unduly burdensome, irrelevant and confidential" with no greater specificity).

## **2. Relevance and Proportionality**

To succeed on his motion to compel, the Secretary must demonstrate the relevance of the information being sought. *Montanez*, 2016 WL 3035310, at \*2. Relevance for the purpose of discovery is to be "construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case."

*Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Relevance for the purpose of discovery is construed more broadly than for admissibility of evidence at trial. *Groark v. Timek*, 2014 WL 3556367, at \*8 (D.N.J. July 18, 2014); *Frazier v. Shinseki*, 2014 WL 16181448 (W.D. Pa. April 22, 2014); *Nestle Food Corp. v. Aetna Cas. & Sur. Co.*, 15 F.R.D. 101, 104 (D.N.J. Nov. 13, 1990). "Once the relevancy of the materials being sought has been established, the objecting party then bears the burden of showing why discovery should not be permitted."

*United States ex rel. Shamesh v. CA, Inc.*, 2016 WL 74394, at \*8 (D.D.C. Jan. 6, 2016); *see also Corrigan v. Methodist Hosp.*, 158 F.R.D. 54, 57 (E.D. Pa. Oct. 5, 1994).

The Secretary has demonstrated that the information sought in the disputed interrogatories is relevant to a claim or defense at issue in this case. Specifically, Respondent has asserted the defense of economic infeasibility. Answer ¶ 14. This requires Respondent to set forth evidence that "the costs [of complying with the cited standards] were unreasonable in light of the protection afforded and [show] what effect, if any, these added costs would have on the contract or business as a whole." *Walker Towing Corp.*, 14 BNA OSHC 2072, 2077 (No. 87-

1359, 1991), quoting *Dun-Par Engineered Form Co.*, 12 BNA OSHC 1962, 1966 (No. 82-928, 1986). The information sought in the interrogatories concerning the basic financial information and the interrelationship of Respondent and the companies listed on its Corporate Disclosure Statement, at the very least “encompasses a matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be” raised by Respondent’s economic infeasibility defense. *Oppenheimer*, 437 U.S. at 351; *see also Walker Towing Corp.*, 12 BNA OSHC at 2077 (describing the parameters of the defense of economic infeasibility); *Dun-Par Engineered Form. Co.*, 12 BNA OSHC at 1966 (same); *W. Point Pepperell, Inc.*, 9 BNA OSHC 1784, 1796 (No. 77-4297, 1981) (same).

Respondent has not shown why it should not be required to respond to any of the disputed interrogatories.

As to Interrogatory 12, the parties largely agreed to the disposition of this interrogatory at oral argument. Respondent’s main contention is that it has already fully responded to this interrogatory, with the exception of any expert or consultant’s evaluation of the potential costs of compliance. Respondent goes on to assert that it is premature to require it to divulge such information at this time. At oral argument, the Secretary’s attorney accepted Respondent’s representation that it has fully complied to the interrogatory at his time, subject to the future production of materials in the event Respondent retains an expert. The Court accepts Respondent’s representation that it has fully complied with Interrogatory 12 at this time; subject to the future production of materials in the event Respondent retains and identifies a testifying expert.

As to Interrogatory 13, Respondent objects to responding while its Motion for Entry of Protective Order is pending. As the Court has now granted that motion, Respondent’s objection

is moot. Respondent has pointed to no further objections as to this interrogatory. The Court therefore orders Respondent to respond to Interrogatory 13, subject to the provisions of the Dura-Bond Protective Order.

As to Interrogatories 14 through 17, Respondent objects to responding on several grounds. Foremost of these grounds is that the parent and subsidiary companies listed on the Corporate Disclosure Statement are “wholly separate and distinct entities that are in no way implicated in the present proceeding.” Resp’t’s Resp. in Opp’n to Sec’y’s Mot. to Compel 14. Respondent further rejects the Secretary’s contention that multiple entities may be taken into account when analyzing Respondent’s economic infeasibility defense and cites cases purporting to hold as much. *Id.* at 15-16, citing *Faultless Div., Bliss & Laughlin Indus. v. Sec’y of Labor*, 674 F.2d 1177, 1190 (7th Cir. 1982); *Cont’l Can Co.*, 4 BNA OSHC 1541 (No. 3973, 1976) (consol.). However, the exact contours of the economic infeasibility defense are not before the Court at the discovery stage of this proceeding. The Secretary has made a colorable argument that the information sought is at least relevant to the defense, and that minimal showing is all that is necessary to compel Respondent to produce the information for purposes of discovery. *Groark*, 2014 WL 3556367, at \*8; *Frazier*, 2014 WL 1618448, at \*1; *Nestle Food Corp.*, 15 F.R.D. at 104.

Nor has Respondent demonstrated that the Secretary’s requests are not proportional to the needs of the case.<sup>5</sup> In arguing that the Secretary’s requests are not proportional, Respondent

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<sup>5</sup> Contrary to Respondent’s assertion, the Secretary bears no burden in the first instance to demonstrate that the requested information is proportional to the needs of the case. See *Howard v. LVNV Funding, LLC*, 2020 WL 7130562, at \*4 (W.D. Pa. Dec. 4, 2020) (“The party moving to compel discovery ... bears the initial burden of proving the relevance of the material requested.” (emphasis added)); see also, e.g., *Allen-Pieroni v. Sw. Corr., LLC*, 2016 WL 1750325, at \*4 (N.D. Tex. May 2, 2016) (“[A] party seeking to resist discovery on these grounds still bears the burden of making a specific objection and showing that the discovery fail[ed] the proportionality calculation mandated by Rule 26(b) by coming forward with specific information to address [the proportionality factors].”); *State Farm Mut. Auto. Ins. v. Fayda*, 2015 WL 7871037, at \*2 (S.D.N.Y. Dec. 3, 2015) (“The burden of

largely repeats its arguments regarding relevance, i.e., that the information concerns non-party entities. As in finding the information relevant, the Court finds the information requested will aid the parties in addressing Respondent's economic infeasibility defense. The Court does not find the burden or expense will outweigh the benefit of providing the information. The Secretary is seeking only limited information on the companies listed in Respondent's Corporate Disclosure Statement. Respondent is only required to answer the Interrogatories to the extent its officers or agents have knowledge of the information requested. *See* FED. R. CIV. P. 33(b)(1)(B) (interrogatories must be answered: ... if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party."). Thus, Respondent's burden in producing the information is minimal. The Court further finds no basis for Respondent's claims that granting the Secretary's requests here would "open the floodgates" or that the Secretary's requests are "a classic fishing expedition." Resp't's Resp. in Opp'n to Sec'y's Mot. to Compel 18.

Based on the foregoing, the Court makes the following orders on the pending discovery requests:

Interrogatory No. 12: If Respondent contends that compliance with 29 C.F.R. § 1910.107(m)(1) and/or 29 C.F.R. § 1910.94(c)(2) with regard to its spraying/coating operations performed in the coating building is economically infeasible, explain in as much detail as possible what Respondent believes would be the cost associated with compliance, and explain in as much detail as possible how such cost would impact Respondent's finances.

Order: The Secretary accepted Respondent's representation that Respondent has fully complied with Interrogatory 12 at this time. The Court sees no basis to find otherwise.

Respondent may be required to produce further materials further in the litigation process in the

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demonstrating relevance remains on the party seeking discovery, but [FRCP 26(b)(1)] does not place on that party the burden of addressing all proportionality considerations.").

event it retains and identifies a testifying expert regarding the cost of compliance and how such cost would impact Respondent's finances.

Interrogatory No. 13: Set forth Respondent's gross and net income for calendar years 2018, 2019 and 2020, and identify approximately what portion of such amounts were related to jobs where Respondent performed work that included spray coating products.

Order: The Court finds the information requested in Interrogatory 13 is relevant and proportional to the needs of the case. Respondent is ordered to respond to Interrogatory 13 with any non-privileged, responsive information. Any such response is subject to the provisions of the Dura-Bond Protective Order entered in this matter.

Interrogatory No. 14: Identify every owner of the following companies, including full name of person or entity; position and title if a person; and percentage ownership: Dura-Bond Industries, Inc.; Dura-Bond Pipe, LLC; Dura-Bond Pipe I, LLC; Dura-Bond Coating, Inc.; D-B Air, LLC; Dura-Bond Development, Inc.

Order: The Court finds the information requested in Interrogatory 14 is relevant and proportional to the needs of the case. To the extent Respondent has knowledge of the information requested therein, Respondent is ordered to respond to Interrogatory 14 with any non-privileged, responsive information. Any such response is subject to the provisions of the Dura-Bond Protective Order entered in this matter.

Interrogatory No. 15: Set forth the gross and net income for calendar years 2018, 2019 and 2020 for each of the following entities: Dura-Bond Industries, Inc; Dura-Bond Pipe, LLC; Dura-Bond Pipe I, LLC; Dura-Bond Coating, Inc.; D-B Air, LLC; Dura-Bond Development, Inc.

Order: The Court finds the information requested in Interrogatory 15 is relevant and proportional to the needs of the case. To the extent Respondent has knowledge of the information requested therein, Respondent is ordered to respond to Interrogatory 15 with any non-privileged, responsive information. Any such response is subject to the provisions of the Dura-Bond Protective Order entered in this matter.

Interrogatory No. 16: Identify all officers (President, Vice-President, CEO, COO, Secretary, Treasurer, etc.) of the following companies, including full name, position, and contact information: Dura-Bond Industries, Inc.; Dura-Bond Pipe, LLC; Dura-Bond Pipe I, LLC; Dura-Bond Coating, Inc.; D-B Air, LLC; Dura-Bond Development, Inc.

Order: The Court finds the information requested in Interrogatory 16 is relevant and proportional to the needs of the case. To the extent Respondent has knowledge of the information requested therein, Respondent is ordered to respond to Interrogatory 16 with any non-privileged, responsive information. Any such response is subject to the provisions of the Dura-Bond Protective Order entered in this matter.

Interrogatory No. 17: Identify all individuals who are considered to be part of the management team of each of the following companies, including full name, position/job title, and contact information: Dura-Bond Industries, Inc.; Dura-Bond Pipe, LLC; Dura-Bond Pipe I, LLC; Dura-Bond Coating, Inc.; D-B Air, LLC; Dura-Bond Development, Inc.

Order: The Court finds the information requested in Interrogatory 17 is relevant and proportional to the needs of the case. To the extent Respondent has knowledge of the information requested therein, Respondent is ordered to respond to Interrogatory 17 with any non-privileged, responsive information. Any such response is subject to the provisions of the Dura-Bond Protective Order entered in this matter.

Request for Production of Documents No. 2: Produce Respondent's federal tax returns for years 2018, 2019, 2020.

Order: Though not specifically addressed in the Secretary's Motion to Compel, the parties agreed to a disposition on this pending request for production of documents at oral argument on the instant motion. Respondent's attorney represented that Respondent, as an S corporation, is not required to file income tax returns. However, he agreed to respond to the Secretary's request with any tax filings Respondent is required to file for state and federal tax purposes, subject to the provisions of the Dura-Bond Protective Order. The Court orders



Respondent's to respond to the Secretary's Request for Production of Documents 2 with any non-privileged documents in accordance with the terms agreed to at oral argument. Any such response is subject to the provisions of the Dur-Bond Protective Order entered in this matter.

### **III. ORDER**

WHEREFORE IT IS ORDERED that Complainant's Motion to Compel is GRANTED, to the extent indicated herein; and

IT IS FURTHER ORDERED that Respondent shall supplement or amend its answers to Interrogatories 12 to 17 and produce documents in response to Request for Production of Documents 2 within fifteen (15) days of the date of this order.

**SO ORDERED.**

/s/  
The Honorable Dennis L. Phillips  
U.S. OSHRC Judge

Date: June 14, 2021  
Washington, D.C.