

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DEMARAY LLC,

Plaintiff

v.

SAMSUNG ELECTRONICS CO., LTD
(A KOREAN COMPANY), SAMSUNG
ELECTRONICS AMERICA, INC.,
SAMSUNG SEMICONDUCTOR, INC.,
and SAMSUNG AUSTIN
SEMICONDUCTOR, LLC,

Defendants.

Case No. 6:20-cv-00636-ADA

JURY TRIAL DEMANDED

FILED UNDER SEAL

ORDER ON DISCOVERY DISPUTE

Issue	Demaray LLC's Position	Samsung's Position
Indemnity Agreements	<p>Under FRCP Rule 26(e), Samsung has a continuing obligation to supplement its discovery responses if they are incomplete or inaccurate. But Samsung refuses to confirm that its response to Demaray's Interrogatory 17 regarding indemnification remains complete and accurate.</p> <p>Interrogatory 17 requests information regarding "whether any claims for indemnification or potential indemnification related to this case have been made, and if so, describe them and identify any related documents." See also RFP 26 ("All agreements between You and any other person or entity Relating To indemnity obligations").</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Samsung already confirmed to Demaray that nothing has changed since it served its interrogatory response <i>over two years ago</i>; therefore, there is nothing to supplement. Yet, Demaray is pressing forward on its attempt to obtain additional discovery regarding indemnity issues that it could have raised during fact discovery.</p> <p>Samsung responded to Interrogatory 17 on July 29, 2021 with objections based on, <i>inter alia</i>, relevance and privilege. Demaray raised a dispute over Samsung's response and [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Demaray never, in the subsequent two years of fact discovery, raised any issue as to the sufficiency of</p>

<p>[REDACTED] [REDACTED] [REDACTED] Samsung has never updated its response.</p> <p>This dispute arises because, on October 10, 2023, Samsung disclosed that it intends to rely upon three employee-witnesses of its reactor supplier, Applied, to testify on Samsung's behalf at trial. On October 17, 2023, in advance of the depositions of these three witnesses, Demaray requested that Samsung confirm that its response to Demaray's Interrogatory 17 regarding indemnification remains complete and accurate. Despite its obligation under Rule 26(e), Samsung has refused to provide the requested confirmation or to supplement its response.</p> <p>On October 25, Demaray served a discovery dispute letter regarding this issue on Samsung. On November 2, Samsung replied that that "circumstances regarding indemnity have not changed since Samsung served its supplemental interrogatory response on September 20, 2021." However, Samsung again refused to confirm that the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>Given the fact that Samsung intends to rely upon the testimony of Applied witnesses for key issues relating to infringement, validity, and damages, and has submitted a collective 35 pages of witness</p>	<p>this response. Demaray's motion is therefore improper and should be denied.</p> <p><i>First</i>, Samsung already confirmed to Demaray in response to its request that circumstances regarding indemnity have not changed since Samsung served its response, and thus Demaray's requested relief is moot.</p> <p><i>Second</i>, Demaray's request is really an untimely discovery dispute disguised as a "request to supplement." Fact discovery closed on July 14, 2023 and Samsung's response was served over two years ago. The deadline to raise a complaint as to the sufficiency of Samsung's interrogatory response has long passed.</p> <p>Implicitly admitting that this is highly untimely, Demaray couches its request as "aris[ing]" in October because Samsung disclosed Applied witnesses under Rule 26(e). But Samsung disclosed all three witnesses no later than February 16, 2023 as witnesses that Samsung may rely on at trial, well within the fact discovery period. Moreover, <i>all three witnesses were deposed</i> in March or May 2023. The three witnesses and Samsung's indemnity agreement with Applied were thus fully disclosed during the fact discovery period such that to the extent that Demaray felt Samsung's response or disclosures were inadequate, it should have raised those issues during the fact discovery period. See Local Rule CV-16(e). Instead, Demaray waited over three months to raise this purported dispute and only after raising indemnity issues in the co-pending California case (during the fact discovery period) and ultimately withdrawing its motion there. See <i>Smith v. Twin Vill. Mgmt. LLC</i>, No.</p>
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	<p>disclosures on behalf of those Applied employee-witnesses, Demaray is entitled to information regarding indemnification obligations between Samsung and Applied. Such evidence is relevant to at least the issue of witness bias arising from their employment by a company that has potentially agreed to indemnify Samsung. <i>See, e.g., ZiiLabs Inc., Ltd. v. Samsung Elecs. Co.</i>, No. 2:14-cv-203, 2015 WL 13617214, at *3 (E.D. Tex. Oct. 28, 2015) (“[I]f Samsung relies on a third-party witness whose employer has an indemnification agreement with Samsung, ZiiLabs may rely on the indemnification sections to show bias.”); <i>Powell v. Home Depot USA, Inc.</i>, No. 07-80435-CIV, 2008 WL 11320008, at *5 (S.D. Fla. June 26, 2008) (“Because indemnification agreements would be relevant as potential impeachment evidence, ... such indemnification agreements would be discoverable.”).</p> <p>Relief Requested:</p> <p>Demaray respectfully requests that the Court order Samsung to confirm that its response to Interrogatory 17 is complete and accurate as to the current indemnity obligations between Samsung and Applied, or otherwise supplement its response to accurately identify the current indemnity obligations.</p>	<p>1:19-CV-406-DAE, 2020 WL 5995694, at *1 (W.D. Tex. Oct. 9, 2020) (motion to compel filed a month after the close of fact discovery was untimely).</p> <p>Third, Demaray does not establish exceptional circumstances that warrant filing a motion to compel more than 14 days after the close of fact discovery. Given that these witnesses were all previously disclosed to and deposed by Demaray during the fact discovery period, there is nothing “late” about Samsung’s October 10, 2023 Rule 26(a)(2)(C) disclosures, which were served in accordance with the Federal Rules and case schedule. Demaray thus fails to establish that there are exceptional circumstances that warrant the Court taking up this motion after the fact discovery deadline. <i>Bob Daemmrich Photography, Inc. v. Scholastic, Inc.</i>, No. 1:15-CV-1150-RP, 2018 WL 6265026, at *1 (W.D. Tex. Sept. 12, 2018).</p> <p>Relief Requested:</p> <p>Samsung respectfully requests that Demaray’s motion be denied.</p>
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COURT'S RULING

On November 7, 2023, the parties in the above-captioned case submitted their discovery dispute chart above to the Court. On November 30, 2023, the Hon. Derek T. Gilliland heard the arguments of the parties regarding this dispute. Having considered the written submissions and arguments of the parties, the Court **ORDERS** as follows:

Given the Court's understanding of the accuracy of Samsung's response to Interrogatory No. 17 based upon Samsung's representations at the hearing, Demaray's motion is **DENIED**.

SIGNED this 15th day of December, 2023.

By: 
HON. DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE