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It Is Too Relevant!

By Katherine Gallo

Attorneys easily spew out the objection "***the information you are seeking is not relevant to the subject matter of the litigation***" as easily as they say "*Good morning*." If you are the propounding party your reaction is probably to be to yell out "***It is too relevant***!" because it doesn't even appear that the responding party actually thought it through before spewing out the objection. But what exactly is relevancy? It seems to be a nebulous term that invokes images of catching clouds with your hands or like Supreme Court Justice Potter Stewart's definition of pornography "***I know it when I see it***"?

The standard for relevancy in Discovery is set forth in C.C.P. Section 2017.010 which states

> "Any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence."

However, this definition isn't exactly helpful either. Unfortunately, there is no bright line test to determine what is relevant. Instead you must rely on numerous cases that bounce you from flipper to flipper like a pinball to get a sense as to what relevancy means for Discovery.

The overriding philosophy of the Discovery Act is that discovery should be liberally construed in order to take the "game" element out of trial preparation by enabling the parties to obtain evidence necessary to evaluate and resolve their dispute before a trial is necessary. Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2010) ¶ 8:1, citing Greyhound Corp. v. Superior Court (1961) 56 C2d 355 (pdf) at 391. Any doubt is generally resolved in favor of permitting discovery, particularly where the precise issues in the case are not yet clearly established. Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2010) ¶ 8:71 citing Colonial Life & Accident Insurance Co. v. Superior Court (1982) 31 C3d 785,790

"Relevant to the subject matter" is broader than relevancy to the issues which determines admissibility of evidence at trial. Weil and Brown, *Cal Prac. Guide: Civil Procedure Before*

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Trial (TRG 2010) ¶8:66 citing Bridgestone-Firestone Inc. v. Sup. Ct. (1992) 7 CA4th 1384 (pdf),1392 In fact, admissibility at trial is not the test. See Davies v. Superior Court (1984) 36 C3d 291 (pdf),301. You may discover heresay (Smith v. Superior Court (1961) 189 CA2d 6 (pdf),11 or inadmissible opinions and conclusions (*Greyhound Corp. v. Superior Court*, Supra at 391). You may also discover irrelevant matters so long as their revelation may lead to the discovery of admissible evidence. Dodge, Warren & Peters Insurance Services, Inc. v. Riley (2003) 105 CA4th 1414 (pdf). Remember that you are not limited to the pleadings as the pleadings can always be amended when you discover new facts or causes of action. Anti-Defamation League of B'nai B'rith v. Superior Court (1998) 67 CA4th 1072 (pdf). The phrase "subject matter involved in the pending action has been defined to include not only the acts that constitute the cause of action, but also circumstances and physical facts which the action arises, including the property, contract, or other things in dispute. See CEB California Civil Discovery Practice (2010) 4th Ed 1:37 citing Darbee v. Superior Court (1962) 208 CA 2d 680 (pdf),688. However, Weil and Brown said it best: "***the scope of permissible discovery is one of reason, logic and common sense.***"See Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2010) ¶ 8:67

Hint: If you can articulate why you think this information might lead to the discovery of admissible evidence then you should be able to discover it.