THE HIGH COURT

[2022] IEHC 189

[2010 No. 10685 P]

BETWEEN:

GOODE CONCRETE

PLAINTIFF

–AND –

CRH PLC, ROADSTONE WOOD LIMITED AND KILSARAN CONCRETE

DEFENDANTS

JUDGMENT of Mr Justice Max Barrett delivered on 31st March, 2022.

SUMMARY

This judgment follows on applications by the defendants to strike out certain interrogatories that have been delivered by the plaintiff and related applications for security for the costs of answering the various interrogatories (in the event that the strike-out applications are unsuccessful or successful in part only). The court will strike out, in their entirety, the delivered interrogatories. So it is not necessary to treat with the application for security for costs.

I. Facts

1. The background to these proceedings has helpfully been summarised in the written submissions of the first and second defendants, the following extracts from which are respectfully adopted by the court as a true statement of the factual background to the applications now presenting:

"***Factual background***

9….. [T]*he proceedings were commenced on 19 November 2010 and were originally entered into the Competition List of the High Court by Order dated 26 November 2010.*

10. *On 13 November 2012, Mr Justice Cooke recused himself from any further involvement in the proceedings. By that time, Mr Justice Cooke had made three Orders, all of which were appealed by the Plaintiff. By Orders dated 10 February 2016, the Supreme Court allowed the Plaintiffs' appeals.*

11. *Following the determination of the Supreme Court appeal, discovery motions were issued by the parties. By Orders dated 31 October 2017, the High Court made an order for discovery against the Plaintiff and against the CRH Defendants and the Third Named Defendant ('Kilsaran').*

12. *The CRH Defendants issued a motion for security for the costs of making discovery against the Plaintiff in December 2016. This motion was adjourned pending the determination of the discovery motions and has not yet been heard and determined. A replying affidavit was delivered by the Plaintiff to that motion in January 2017.*

13. *The Plaintiff appealed the discovery orders to the Court of Appeal. By Orders dated 4 March 2020, the Court of Appeal dismissed the Plaintiffs appeal, subject to a variation of the High Court Order in respect of category 5 of the discovery to be provided by the CRH Defendants and made an order for costs in favour of the CRH Defendants. This order for costs is not subject to a stay.*

14. *The Plaintiff then allowed the proceedings to become entirely dormant until 10 February 2021, when new solicitors and counsel came on record for the Plaintiff….*

15. [Thereafter, the]…*Plaintiff issued a motion to re-admit the proceedings to the Competition List, which was not grounded on affidavit and did not specify the directions sought. That motion, having issued without a Notice of Intention to Proceed having been served, was struck out and a second motion to enter the proceedings to the Competition List issued.*

15. *After the proceedings were re-admitted to the Competition List, the Plaintiff indicated through its counsel that the Plaintiff no longer required the Defendants to make discovery at all. This position was adopted, notwithstanding that the Plaintiff had spent years appealing the discovery Orders made by the High Court to the Court of Appeal and appears to have been prompted by the indication by the Defendants of their intention to proceed with the motion for security for the costs of discovery.*

16. *Counsel for the Plaintiff indicated that, instead of requiring the Defendants to make discovery, the Plaintiff intended to deliver interrogatories.*

17. *On receipt of the interrogatories, the reason for this approach became clear. The interrogatories delivered contain extensive requests for documents and evidence and constitute a*[n]…*impermissible attempt to obtain discovery by way of interrogatories.*

18. *In addition, the Plaintiffs have* [thus far] *failed to discharge orders for costs made in favour of the CRH Defendants*".

2. The form and substance of the interrogatories that have been delivered is remarkable. They run to 873 pages. They consist of approximately 8,000 individual questions. Many of the 'interrogatories' – close on 3,000 of them – are actually requests for documents or categories of documents that are, in substance, requests for discovery. A lot of the interrogatories sought are irrelevant, having no connection to any issues in dispute on the pleadings. Some seek granular details of matters of evidence, or the identity of witnesses, or privileged communications. The majority of the interrogatories are not capable of a 'yes' or 'no' answer.

Many expressly require narrative or elaboration or cannot be answered without conditionality. A sample portion of the interrogatories is set out in the Appendix hereto. However, the court should note at this juncture its respectful but complete disagreement with the following averment in an affidavit sworn for the plaintiff in the context of the within applications:

> "*The Interrogatories delivered relate to matters dealt with in the pleadings, mainly to the large numbers of tenders contained in the Schedule. Almost all the Interrogatories are required to be answered with a simple 'yes' or 'no'. In a very small number of instances, where the answer is 'yes', documentation is sought; this is documentation which would go to support a fact.*"

3. These assertions are, with all respect, just wrong when one has regard to the substance of the interrogatories, a sample number of which, as stated, are considered in the Appendix.

II. Law

i. Applicable Rules of Court

4. Order 63B(8) of the Rules of the Superior Courts ('RSC') provides, in material part:

> "*A party to proceedings entered in the Competition List may at any time after delivering his statement or points of claim … deliver interrogatories in writing for the examination of any other party to the proceedings…provided also that interrogatories which do not relate to any matters in question in the proceedings shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.*"

5. Two points might usefully be made regarding the just-quoted text.

6. First, it is not necessary to apply for leave to deliver interrogatories.

7. Second, the power is to deliver interrogatories in writing for the examination of "*any other*

party". The significance of that phrase has acquired a significance in these proceedings. This is because in its interrogatories, the plaintiff has purported to direct which company officers within the defendants should answer the interrogatories. That is not appropriate. This is because of O.31(5)/RSC, which provides as follows:

> "*If any party to a cause or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.*"

8. As can be seen, the leave of the court should have been obtained if the intention was (and it was) to deliver interrogatories requiring a particular corporate officer to answer those interrogatories. Absent such leave, the normal arrangement applies whereby a corporate entity answers via its secretary.

9. Moving on, Order 63B(9)/RSC provides that interrogatories delivered in accordance with rule 8 must be in a prescribed (negative) form. The reason for this was explained as follows by Walsh J. in *J & L.S. Goodbody Ltd v. Clyde Shipping Co. Ltd* (Unreported, Supreme Court, 9th May, 1967):

> "*The form set out in the Appendix requires that all interrogatories should be phrased in the form of a negative question ... Interrogatories are supposed to be confined to facts which there is some reason to think are true and the negative form of the question is intended to emphasise assertion as distinct from unfounded query.*"

10. It is, of course, always open to a party to elect of its own volition to answer an interrogatory that it is not obliged to answer and it is now common practice in competition law proceedings for parties to answer interrogatories that are *not* posed in the negative. Nevertheless, even in competition law proceedings, the principle that Walsh J. identifies still holds entirely good in the sense that interrogatories ought to be confined to facts "*which there is some reason to think*

are true", the object of this principle being "*to emphasise assertion as distinct from unfounded query*" in terms of what may be asked.

11. Order 63B(12)/RSC provides as follows:

> "*The provisions of rules 3, 5, 6, 7, 10 and 11 of Order 31 of these Rules shall, with any necessary modifications, apply to any interrogatories delivered or to be delivered in accordance with this rule.*"

12. Order 31(1)/RSC is not one of the rules mentioned in O.63B(12)/RSC. However, the argument has been made (by Goode Concrete) that because O.31(1)/RSC makes express provision for leave to be granted for the delivery of interrogatories "*upon such terms as to security for costs or otherwise as the Court may direct*", the absence of equivalent express provision in O.63B/RSC yields the necessary conclusion that no order for security for costs can be made when it comes to interrogatories delivered pursuant to O.63B. But that is not so: the court enjoys an inherent jurisdiction to order security for the costs of answering interrogatories delivered in competition law proceedings. It would, in truth, be most strange if matters were otherwise, for were matters otherwise (and they are not) that would:

- disadvantage litigants in the competition law context for no good reason.
- deprive a court concerned with competition law proceedings from weighing against the arguments made in support of a set-aside application the alternative possibility that justice in any one case might be met by ordering some level of security for costs (thus yielding a curtailment of the discretion of the court in this regard that would be to the potential detriment of the respondents to such applications, again for no good reason).
- have the result that a court which *can* order security for costs in discovery applications – see *Betty Martin Financial Services Ltd* v. *ESB DAC* [2020] IEHC 543; that was a case decided in the context of the Commercial List but it holds good in the Competition List context also – could not exercise an inherent jurisdiction to order security for costs when it comes to interrogatories, yet again for no good reason.

13. Moving on, O.31(7)/RSC provides as follows:

> "*Any interrogatories may be set aside on the ground that they have been*

exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous, and any application for this purpose may be made within seven days after service of the interrogatories."

14. This rule conforms to the still-correct proposition identified by Collins MR in the long-ago case of *White v. Credit Reform Association* [1905] 1 K.B. 653 (CA), when he observed, at p.612, that "[T]*here is one general principle underlying the whole law as to interrogatories, namely that they must not be of such a nature as to be oppressive, and to exceed the legitimate requirements of the particular association*".

15. The court should perhaps note before proceeding that the seven-day requirement has been met in the applications now before it.

ii. Case-Law

16. The court turns next to a consideration of some applicable case-law.

a. *J&LS Goodbody v. Clyde Shipping Company Limited*
(Unreported, Supreme Court, 9th May, 1967)

17. This case has already been mentioned above. It involved an appeal and cross-appeal concerning a High Court order dealing with an application for leave to deliver interrogatories. In the course of his judgment in that case, Walsh J. observes, amongst other matters, as follows (at pp.5-6 of his judgment):

"The plaintiff's notice of motion did not, as it could have done…apply for an order allowing the plaintiffs to deliver interrogatories to some particular member or officer of the defendant company. Prima facie the Secretary is the person to whom they should be delivered and, in the absence of any order to the contrary, it is to be assumed that what was intended in the present case, it is important to bear in mind, however, that it is not the Secretary who is being interrogated but the company. The Secretary is not answering for himself but for the company and in

doing so he must get such information as he can from the other servants of the company who have personally conducted the transaction in question and have personal knowledge of the facts sought. The Secretary's function is to give the answer of the company. When the secretary answers on the basis of information obtained from other servants of the company he is answering according to information. On behalf of the company he is bound to answer according to information and belief acquired or formed from personal knowledge or from information obtained from others who are servants or agents of the company and have acquired the information in that capacity."

18. The relevance of those observations to this case is that they provide one of various grounds on which the interrogatories fall to be struck out in their totality.

b. *Mercantile Credit Co. of Ireland v. Heelan*
[1994] 2 I.R. 105 (HC)

19. This was a case in which objection was taken to various interrogatories that were delivered and in which Costello J. observed, amongst other matters, as follows:

– at p.111:

"[W]*hen information is sought the interrogatories must relate to the issues raised in the pleadings and not to the evidence which a party wishes to adduce to establish his case*."

[Court Note: The applicable case-law contains repeated observations to the same effect as the just-quoted text (albeit that, though undoubtedly correct, the distinction identified in the said text can be difficult to apply in practice, with genuine disputes frequently arising between advisors/parties as to where exactly the line exists between the permissible and the impermissible, as identified by Costello J.).]

– at pp.114-115:

"*Whilst some of the interrogatories required* information *(as distinct from admissions) relating to the issues raised in the pleadings (and are therefore allowable), I think by far the greatest number of these relate to information which the plaintiffs seek so as to obtain evidence for the purpose of proving their case against the defendant and as such liberty to deliver them should not be granted.*

[Court Note: So, interrogatories seeking evidence for the purposes of proving a case against the defendants are not permissible.]

As to the interrogatories which seek admissions*, I draw attention to paragraph 9 of the affidavit sworn by Mr. McAuley…in which he states 'a considerable number of these interrogatories deal with the acknowledgment of documents, the acknowledgment of signatures to documents and the acceptance that documents were sent by a particular defendant or received in turn by a particular defendant.*' *Subject to the qualifications, which I will mention in a moment, interrogatories seeking admission of these facts may be allowable, but it seems to me that the admissions sought by the plaintiffs go, in a number of instances, beyond the admission of documents and signatures to documents but seek evidence about the documents and admissions about the facts surrounding the documents. Interrogatories which fall into this class may not be allowable as they may relate to the evidence to be adduced and not to the issues raised in the pleadings.*"

[Court Note: So, if it is relevant to the pleaded issues the signature of a document or the existence of a document can be the subject of an interrogatory, but it cannot raise ancillary questions seeking to establish facts surrounding the documents.]

"….In the light of the above considerations I can summarise my conclusions as follows:

(1) A considerable number of the interrogatories are not allowable. Rather than attempt to identify those that fall within the scope of the rules, I think the relief claimed should be refused but liberty given to re-apply in the light of the views that I have expressed."

[Court Note: Point (1) touches on a point raised by the defendants in these proceedings: they claim that rather than having the High Court parse and analyse every single one of the many thousands of queries raised by the plaintiff, and rather than having the High Court decide what should be allowed and what not, the court should proceed as Costello J. indicates in point (1).]

c. Bula Ltd (in receivership) v. Tara Mines Ltd
(Unreported, High Court, 16th November, 1994)

20. This judgment of Lynch J. essentially reiterates certain of the points already touched upon. So, for example, he observes, at p.6 of his judgment, that interrogatories, to be allowable "*must be as to facts in issue or facts reasonably relevant to establish facts in issue*", moving on to observe that "*Interrogatories as to mere evidence as distinct from facts or as to opinions or matters of law such as the meaning or effect of documents or statements or conduct are not permissible.*"

21. The judgment in *Bula* is also notable for its invocation of *American Flange & Manufacturing Co. Inc. v. Rheem (Australia) Pty Ltd (No 2)* [1965] NSWR 194 (NSWSC). There, the plaintiff issued a summons seeking, amongst other matters, liberty to file and serve interrogatories. These were numbered 1 to 27, but each numbered interrogatory had been so subdivided that there were, in the result, approximately 300 interrogatories. Many of these were not permissible because either they infringed the rule relating to documents, or were directed to evidence only, or were merely 'fishing', or unfairly sought disclosure of the defendant's trade secrets, or were otherwise oppressive in nature. As can be seen there are several overlaps between that case and this. But what are especially notable from a legal perspective are the observations made by Myers J., in his judgment for the Supreme Court of New South Wales, at p.196, where he observes:

> "*Next I must say something with relation to interrogatories as to documents. It is well established that the proper method of ascertaining what documents a party has or has had in his possession or power is by an order for discovery of documents and that interrogatories for that purpose will not be allowed except in special circumstances. In my experience, the special circumstances have always been treated as circumstances existing after an affidavit of discovery of documents has been filed and I do not know any case in which it has been decided otherwise. See, for example,* Hall *v.* Truman, Hanbury & Co. *(1885), 29 Ch. D. 307. It is also well established that interrogatories, as to the contents of documents in existence, will not be allowed, in any event, unless the document is produced to the party interrogated and, further, that a party will not in general be permitted to use interrogatories for the purpose of getting secondary evidence of a document which he is able to produce. That could cause manifest injustice*."

22. That, if the court might respectfully observe is a thoroughly sensible series of observations and, given their good sense, they were (unsurprisingly) invoked with approval (albeit not ultimately relied upon) by Lynch J. in the course of his judgment in *Bula*, almost 30 years ago. Yet the reliance which counsel for defendants vicariously placed on *American Flange* through their reliance, amongst other matters, on the decision in *Bula*, was the subject of criticism at hearing by counsel for the defendant, who observed as follows:

> "*Judge, I cannot overstate the importance of this, this is Ireland, the legislation is the Competition Act and the rules derive from that. Unless the foreign case law that has been opened to the Court has exactly the same legislation it is out. The New South Wales decision is out…otherwise essentially this Court would be applying the rules applying in other jurisdictions. So I would ask the Court to simply disregard any foreign law or foreign rules or any reliance on foreign rules that have been opened to the Court….I appreciate, Judge, that it is common practice and you often see it in company law cases to refer to judgments from other jurisdictions. Without exception, in my submission, that is always wrong where there is a statute* [in] *place, it*

can only be decisions from this jurisdiction."

23. This contention, with respect, is wrong in a number of respects:

– first, it proceeds on a false premise, namely that counsel for the defendants sought to rely directly on *American Flange*. Counsel for the defendants did not in fact do so. They sought to rely on previous *Irish* case-law which invoked *American Flange* (albeit that counsel for Kilsaran helpfully brought the court directly to the text of *American Flange*).

– second, even if counsel for the defendants had sought to rely directly on *American Flange* before this Court it was entirely open to them to do so. I respectfully adopt as a correct statement of law in this regard, the (uncontroversial) observations of the learned authors of *Byrne and McCutcheon on the Irish Legal System*, 7th ed. (Dublin: Bloomsbury Professional, 2020), when they write, at para.[12.08], that:

> "[T]*he decisions of…foreign courts are of persuasive authority and as such may be followed at the option of…*[an Irish] *court. The decisions of foreign courts are regularly cited in and adopted by the Irish courts, especially where there is an absence of relevant Irish authority*".

– third, there is no general carve-out from the just-quoted proposition in respect of areas that are the subject of Irish statutory provision, albeit that when treating with a case from a foreign jurisdiction an Irish judge will naturally be heedful that the cultural and legal (including statutory) context is different, but it would be an imprudent judge who closed her mind to, and an imprudent legal system that prohibited courts or counsel from relying upon, the wealth of wisdom and reasoning now available at the tap of a computer button from courts around the world.

24. In this case the court's attentions have been drawn to certain notably helpful observations of Myers J. in *American Flange* (as invoked, but not ultimately relied upon, by Lynch J. in *Bula*). The court cannot but also recall in this regard that in a recent family law case, it had regard to the still-helpful judgment of Lord Denning MR in *Wachtel v. Wachtel* [1973] EWCA Civ.10 (CA) – and family law is an area of law in which there is an abundance of Irish statute-law. I respectfully see no reason in law or logic why an Irish court would blinker itself to the

insights and reasoning of innumerable great judges, past and present, simply because those judges have proceeded in an area in which Ireland, previously or since, enacted its own statutory regime. Caution is required when it comes to a consideration of foreign case-law but so too is a recognition that truth, principle and wisdom invariably enjoy an inherent potential to transcend international boundaries.

25. The above-quoted observations of Myers J. in *American Flange* were invoked with approval (albeit not ultimately relied upon) by Lynch J. in *Bula*. Though iterated in the Australian context, they hold good in the Irish context also.

d. *Woodfab Ltd v. Coillte Teo*.
[2000] 1 I.R. 20

26. This was a competition law case in which issues as to the legal propriety of certain interrogatories arose and in which Shanley J. observed, at p.31, that "*The fact that a case is a Competition Act case…does not constitute, in my view, a 'special exigency*' *warranting the delivery of interrogatories*" (as to the internal operations and market actions of a company, those being aspects of a corporate actor's behaviour that arise in many other causes of action involving commercial enterprises).

e. *Money Markets International Stockbrokers Ltd (in liq.) v. Fanning*
[2000] 3 I.R. 215 (HC)

27. This was a case in which a large number of interrogatories had been delivered relating to the tracing of a paper trail in respect of an allegedly fraudulent transfer of funds. Of note in the judgment of O'Sullivan J. are his observations:

– at p.230, that "*The directing of replies must…at all times be subject to the overriding principle that compelling such replies would not work injustice upon the party interrogated*".

– at p.235, that "*Interrogatories may seek* admissions *about facts in issue (both directly and facts tending to support those facts) provided they are not fishing for the other side's evidence*".

– at p.237, that:

> "*I am not prepared to compel any of the defendants to reply to questions No 1 and 2. I consider that in the context of the allegation of fraud it would be unjust to the defendants to require them to answer these two questions as they raise queries in relation to authorisation which goes close to the heart of the case. Not only would it be unjust but it seems to me that these questions relate to facts which are capable of supporting the defendant's case (given that wrongdoing is denied), and these questions therefore seek the defendant's evidence which is not permissible."*

28. The court has also been referred to *IBRC v. Fitzpatrick* [2017] IEHC 715, *McGregor v. HSE* [2017] IEHC 504, and, perhaps most notably, *NAHJ Company for Services v. RCSI* [2020] IEHC 539. All of them are helpful cases but the court respectfully does not consider that, in the context of the particular facts and issues in this case, they add so much to the foregoing analysis as to require detailed treatment herein.

Conclusion

29. At least ten reasons, it seems to the court, present why the defendants should succeed in their strike-out applications:

- the interrogatories are unreasonable and prolix; requiring the defendants to engage with circa. 8,000 interrogatories would be oppressive.
- many of the questions posed would involve a great deal of time being expended in giving answers. For example, the plaintiff seeks, in respect of multiple contracts from more than a decade ago (i) details of the average total cost, the elements comprising same, and the documents substantiating that calculation. It would undoubtedly be extremely costly, time-consuming and complex for the parties to answer such questions (not least as average total/variable cost are not concepts that correspond precisely to the figures typically contained recorded in audited financial accounts).
- the costs arising for the defendants in terms of answering the questions posed would be enormous. One need merely take the number of queries, the cost of engaging a solicitor for an hour's work, and a rough 'guesstimate' of how long it would take to answer each

question to realise that the cost of answering the interrogatories would be hundreds of thousands of euro.

- many of the requests (perhaps as high as one-third) are impermissible requests for documents or categories of documents.
- many of the requests relate not to identified documents but seek categories of documents relating to an issue. All this comes in a context where the plaintiff has already made a very substantial discovery request of the parties, with two courts delivering judgments in the matter and many of the categories of documents now sought by the plaintiff as part of its interrogatories having previously been refused. It is simply not permissible for a plaintiff to seek in effect to re-open a discovery process and 'go around' previous refusals of discovery by then requesting categories of documents by way of interrogatories. That is the clearest abuse of process.
- many of the questions posed are irrelevant to the facts in issue on the pleadings.
- a large number of the questions posed relate to granular details which (to the extent that they are relevant) involve matters of evidence.
- some of the questions involve impermissible attempts to ascertain the identity of witnesses.
- a large number of the interrogatories cannot be answered 'yes' or 'no' or by some other short statement of fact but require (considerable) narrative.
- the interrogatories are oppressive.

30. No good answer has been made to the applications that the defendants have brought. Indeed, it was striking at the proceedings that counsel for the plaintiff did not really seek to engage with the substantive criticisms made of the interrogatories but suggested that instead matters should simply be left as they are, with the interrogatories to go unanswered and matters now swiftly to proceed to trial. The court, however, does not see that the right answer to the applications now brought is to leave things lying as they are: the interrogatories should not have been formulated as they were; the defendants have been put to the trouble and cost of bringing their set-aside applications; and it would be no answer to the defendants for the court to state in effect: 'You have succeeded in every respect in your application for the strike-out you have come seeking. You are right in every legal point that you have made. Your contentions as to the application of the law to the facts at hand are entirely correct. You have demonstrated that you are completely eligible for the strike-out relief that you have come seeking. Yet the court nonetheless considers that the best way to proceed would be for it to do

nothing'. The correct and fair way for the court to proceed is in like manner to that taken by Costello J. in *Mercantile Credit*, when he stated as follows, at p.115:

> "*A considerable number of the interrogatories are not allowable. Rather than attempt to identify those that fall within the scope of the rules, I think the relief claimed should be refused but liberty given to re-apply in the light of the views that I have expressed.*".

31. That approach, consistent with the transparently correct observations of Myers J. in *American Flange* (as quoted previously above), is the approach that this Court will adopt here.

32. The defendants in advance of the hearing met with the objection from the plaintiff that their applications should be refused because the objections being made were not addressed in an affidavit answering each question. However, as a matter of law, this, with respect, is wrong: O.31(7)/RSC clearly contemplates that a set-aside application may be brought without need to swear an affidavit responding to the interrogatories to which objection is taken. (And if one steps back for a moment, it is consistent with logic that this should be so. It would be thoroughly illogical if in bringing an application in which claim is made that 'I should not have to do X because it is not required of me by law' that the person so claiming should have to do that to which she objects in order to bring her application properly before a court.)

33. As the court is striking out the interrogatories, it is not necessary for it to adjudicate on the associated security for costs applications.

34. It became the practice during the successive Covid lockdowns for the courts to give a preliminary view as to costs. Here the defendants have completely triumphed and the plaintiff has completely failed. It seems to the court that there is no reason presenting why costs should not be ordered in favour of each of the defendants. If any party objects to this they should let the registrar or the court's judicial assistant know and the court will schedule a brief costs hearing; of course the costs of any such costs hearing will also then fall to be ordered.

APPENDIX

SAMPLE INTERROGATORIES

35. By way of example of the deficiencies presenting in the interrogatories as delivered, the court considers below certain of the interrogatories directed to CRH. Throughout this Appendix, the square bracketed text after each interrogatory contains the court's observations on each question posed. Where an interrogatory fails as irrelevant (*i.e.* having no connection to any issues in dispute on the pleadings) other potential grounds of objection are not listed.

36. Turning first, to section A, the questions here are concerned with a multiplicity of contracts. So the court confines itself to Interrogatory No.1, which relates to a company that the court will call XYZ.

> *"1.In respect of the request for tenders by XYZ for the STATED SITE for the STATED PRODUCT CATEGORY which the plaintiff has pleaded was won by CRH, by which the plaintiff means Roadstone:*
>
> *1.1 'Yes' or 'no', was Roadstone awarded the contract?* [There is no problem with this question. As will be seen this is a repeated feature of section A. One gets an initial question that is unproblematic followed by a succession of objectionable questions.]
>
> "*1.2 If 'yes', please exhibit the request for tenders in your affidavit and answer*." [*Objectionable*. Inappropriate request for documentation in lieu of discovery (and with no provision as to the form of confidentiality ring that this Court ordered as part of the discovery process).]
>
> "*1.3: If 'yes', please state the date and place of the publication of the request for tenders.*" [*Objectionable*. Request for information/evidence – and it is not in any event CRH's act or

document].

"*1.4: If 'yes', on what date was the contract signed.*" [*Objectionable*. Request for information/evidence].

"*1.5: If 'yes', who signed the contract?*" [*Objectionable*. Irrelevant].

"*1.6: If 'yes', exhibit a copy of your tender.*" [*Objectionable*. Request for documentation in lieu of discovery.]

"*1.7: If 'yes', please exhibit the contract awarded in your affidavit and answer.*" [*Objectionable*. Request for documentation in lieu of discovery.]

"*1.8: If 'yes', please exhibit all and any information connected to any changes to the original request for tender.*" [*Objectionable*. Request for documentation in lieu of discovery.]

"*1.9: Please exhibit any and all amendments to the original signed contracts.*" [*Objectionable*. Request for documentation in lieu of discovery.]

"1.10 'Yes' or 'no', was the win price € STATED SUM?" [This question can be answered. A problem that presents, however, is that there is no arrangement as to a confidentiality ring (such as the court ordered in the discovery application).]

"*1.11: If the win price was not € STATED SUM, what was the win price?*" [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. It is a request for information and evidence and, again, the confidentiality issue presents].

"*1.12: 'Yes' or 'no', did Roadstone proceed to carry out the contract?*" [There is no problem with this question].

"*1.13: 'Yes' or 'no', did the volume of product vary during the course of the contract from the volume specified in the tender?*" [*Objectionable*. Irrelevant].

"*1.14: 'Yes' or 'no', did the sales price of the product supplied vary during the course of the contract?*" [*Objectionable*. Request for information/evidence. Involves 'fishing' by way of interrogatory. Again, the confidentiality issue presents.]

"*1.15: If 'yes', then what were the other prices or price?"* [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. Request for information/evidence. Arguably confidential. Again, the confidentiality issue presents.]

"*1.16: 'Yes' or 'no', did Roadstone purchase cement from STATED COMPANY to fulfil this contract?*" [There is no problem with this question].

"*1.17 If no, from whom did Roadstone purchase the cement required to fulfil this contract?*" [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. Request for information/evidence.]

"*1.18: 'Yes' or 'no',* [*did*] *Roadstone receive a discount from its cement supplier in this contract?*" [*Objectionable*. Request for information/evidence. Again, the confidentiality issue presents.]

"1.19: 'Yes' or 'no', [did] Roadstone receive a rebate from its cement supplier in this contract?" [*Objectionable*. Request for information/evidence. Again, the confidentiality issue presents.]

"*1.20: 'Yes' or 'no', [did] Roadstone receive an incentive from its cement supplier in this contract?*" [*Objectionable*. Request for information/evidence. Again, the confidentiality issue presents.]

"*1.21: 'Yes' or 'no', [did] Roadstone receive invoices for all of the cement supplied?*" [There is no problem with this question.]

"*1.22: If the answer to [the] preceding Interrogatory is 'yes', what was the other consideration? In your affidavit in answer exhibit all relevant information and documentation whether in paper, electronic or any other form that goes to prove the existence of other consideration.*" [*Objectionable*. Request for documentation in lieu of discovery. Requests proof. Also interrogating as to subjective matter of opinion.]

"*1.23: Did Roadstone receive any cement for this contract free of charge?*" [*Objectionable*. Request for information/evidence. Again, the confidentiality issue presents.]

"*1.24: 'Yes' or 'no', did Roadstone receive any cement for this contract for consideration other than direct financial payment to the supplier of the cement on foot of an invoice issued directly to it by the supplier of this contract?"* [*Objectionable*. Unclear. (What exactly is meant by "*consideration*"?) Seeks evidence.]

"*1.25: If the answer to the preceding Interrogatory is 'yes', what was the other consideration? In your affidavit in answer, exhibit all relevant information and documentation, whether on paper, electronic or any other form that goes to prove the existence of other consideration.*" [*Objectionable*. Request for documentation in lieu of discovery. Requests proof. Also interrogating as to subjective matter of opinion.]

"*1.26: 'Yes' or 'no', did Roadstone receive one or more delivery notes with the supply of cement for this contract?"* [There is no problem with this question.]

"*1.27: If the answer to the preceding Interrogatory is 'yes', exhibit in your affidavit and answer each and every delivery note.*" [*Objectionable*. Request for documentation in lieu of discovery.]

"*1.28: How much did Roadstone pay its supplier for cement in this contract. Exhibit in your affidavit in answer proof of each and every payment made by Roadstone in respect of each and every invoice or other demand for payment made by the supplier of cement for the cement supplied.*" [*Objectionable*. Request for documentation in lieu of discovery. Requests proof. Again, the confidentiality issue presents.]

"*1.29: 'Yes' or 'no', did Roadstone subcontract any part of this contract?*" [*Objectionable*. Irrelevant.]

"*1.30: If the answer to the preceding Interrogatory is 'yes', to whom did Roadstone subcontract. What part of the contract was sub-contracted. In your affidavit in answer, exhibit all relevant information and documentation whether in paper, electronic or any other form that goes to prove the sub-contracting.*" [*Objectionable*. Request for documentation in lieu of discovery. Again, the confidentiality issue presents.]

"*1.31: What was the AVC average variable cost to Roadstone of this contract?*" [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. It is a request for information and evidence and involves subjective opinion as to elements of AVC. Again, the confidentiality issue presents.]

"*1.32: What elements did the AVC comprise?*" [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. It is a request for information and evidence and involves subjective opinion as to elements of AVC. Again, the confidentiality issue presents.]

"*1.33: What documents and information substantiate this calculation of the AVC to Roadstone in this contract?*" *?*" [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. It is a request for information and evidence and involves subjective opinion as to elements of AVC. Again, the confidentiality issue presents.]

"*1.34: "In your affidavit and answer, exhibit the documents and information whether in paper, electronic or any form listed in your answer to the preceding interrogatory proving the calculation of AVC to Roadstone in this contract.*" [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. It is a request for information and evidence and involves subjective opinion as to elements of AVC. Again, the confidentiality issue presents.]

"*1.35: What was the ATC or average total cost to Roadstone of this contract?*" ." [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. It is a request for information/evidence and involves subjective opinion as to elements of the average total cost. Again, the confidentiality issue presents.]

"*1.36: What elements did the ATC comprise?*" [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. It is a request for information and evidence and involves subjective opinion as to elements of AVC. Again, the confidentiality issue presents]. [1.37, 1.38 and 1.39 then raise the same issues as the additional questions re. AVC and the same issues present.]

"*1.39: 'Yes' or 'no', did Roadstone make a loss on this contract?*" [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. How is one to define "*loss*"?]. [1.40 makes the same question re. profit.]

"*1.41*: *On what date did Roadstone commence fulfilment of this contract?*" [*Objectionable*. Not a question susceptible to a 'yes'/'no'

answer. Request for information/evidence. Relevance unclear.]

"*1.42: In your affidavit in answer to the preceding Interrogatory, exhibit proof of the date of commencement of this contract.*" [*Objectionable*. Request for documentation/proof.]

"*1.43*: *On what date was this contract completed by Roadstone?*" [*Objectionable*. Not a question susceptible to a 'yes'/'no' answer. Request for information/evidence. Relevance unclear.]

"*1.44: In your affidavit in answer to the preceding Interrogatory, exhibit proof of the contract completion date of this contract*." [*Objectionable*. Request for documentation/proof.]

"*1.45: 'Yes' or 'no', did Roadstone have insurance for the contract. If 'yes', exhibit the insurance policy, together with all information relating to ALL co-insurance and/or cross insurance arrangements in place with the client and/or the suppliers of the cement and/or its holding company if the supplier was Roadstone or any other wholly-owned subsidiary of CRH.*" [*Objectionable*. Irrelevant.]

"*1.46: Did Roadstone avail of financial facilities including but not limited to loans, overdrafts and/or other third party funding and/or financial support to support Roadstone's operating cash-flows and/or other financial obligations while Roadstone had contractual obligations in respect of this contract?*" [*Objectionable*. Irrelevant.]

"*1.47: If the answer to the preceding Interrogatory is 'yes', in your affidavit in answer exhibit documents and information whether in paper, electronic or any other form, that prove financial supports to Roadstone in this contract.*" [*Objectionable*. Request for documentation/proof.]

"*1.48: 'Yes' or 'no', during the course of the contract, did any issue*

arise that had an effect on the price of the contract?" [*Objectionable*. 'Fishing'. Looking for matters of subjective opinion as to whether matters had or might have had an effect on the price of the contract. Unclear: what does "have an effect on the price of the contract" mean? Again, the confidentiality issue presents.]

"*1.49.* If the answer to the preceding Interrogatory is 'yes', in your affidavit in answer state the issue or issues, the effect it had on pricing and exhibit supporting documentation" [*Objectionable*. Request for documentation/proof.]

"*1.50: 'Yes' or 'no', did Roadstone agree to offset any part of the cost of this contract off-set by Roadstone against any other financial matter on the part of the supplier of the cement?*. [*Objectionable*. Irrelevant.]

"*1.51: 'Yes' or 'no', did Roadstone benefit from setting-off on the part of the supplier of any cement any part of the cost of this contract?*" [*Objectionable*. Irrelevant.]

"*1.52: If the answer to the preceding Interrogatory is 'yes', in your affidavit and answer state the issue or issues and the effect it had on the pricing and exhibit supporting documentation.*" [*Objectionable*. Seeks subjective opinion and seeks to interrogate Roadstone as to its evidence on these matters.]

"*1.53: It is a fact that the reason Roadstone was in a position to win this contract was because it didn't have to pay the market price for its cement. 'Yes' or 'no', is this statement correct? If your answer is no, then exhibit proof in your affidavit and answer.*" [*Objectionable*. Unclear. What is "*market price*"? Also, looking for documentation and interrogating as to opinion.]

"*1.54: It is a fact that a reason Roadstone was in a position to win this*

contract was because it didn't have to pay anything for its cement. 'Yes' or 'no', is this statement correct? If your answer is no, then exhibit proof in your affidavit in answer." [*Objectionable*. Seeks subjective matters of opinion as to causation. Request for documentation/proof.]

"*1.55: It is a fact that a reason Roadstone was in a position to win this contract was because it received a discount from its cement supplier. 'Yes' or 'no', is this statement correct? If your answer is no, then exhibit proof in your affidavit in answer.*" [*Objectionable*. Seeks subjective matters of opinion as to causation. Request for documentation/proof.]

"*1.56: It is a fact that a reason Roadstone was in a position to win this contract was because it received a rebate from its cement supplier. 'Yes' or 'no', is this statement correct? If your answer is no, then exhibit proof in your affidavit in answer.*" [*Objectionable*. Seeks subjective matters of opinion as to causation. Request for documentation/proof.]

"*1.57: It is a fact that a reason Roadstone was in a position to win this contract was because it received an incentive from its cement supplier. 'Yes' or 'no', is this statement correct? If your answer is no, then exhibit proof in your affidavit in answer.*" [*Objectionable*. Seeks subjective matters of opinion as to causation. Request for documentation/proof.]

"*1.58: What is the name of your contract manager for this contract?*" [*Objectionable*. Irrelevant.]

"*1.59: What is the name of the person or persons who signed for in-bound supplies of concrete for this contract?*" [*Objectionable*. Irrelevant.]

"*1.60 What is the name of the client's contract manager for this contract?*" [*Objectionable*. Irrelevant.]

"*1.61 'Yes' or 'no', was any element of this contract out-sourced?*" [*Objectionable*. Irrelevant.]

"*1.62 If 'yes', what element was out-sourced?*" [*Objectionable*. Irrelevant.]

"*1.63 If 'yes', to whom was the contract out-sourced?*" [*Objectionable*. Irrelevant.]

"*1.64 'Yes' or 'no', was GGBS or any other composite or substitute used in the cement in this contract?*" [*Objectionable*. Not clearly relevant. Seeks narrative. Uses undefined terms.]

"*1.65. If 'yes', provide full details including exhibiting all relevant information in your affidavit in answer.*" [*Objectionable*. Irrelevant.]

"*1.66. 'Yes' or 'no', did quality inspections or any other inspections take place during and/or in respect of this contract?*" [*Objectionable*. Irrelevant.]

"*1.67. If 'yes', state the dates of each inspection?*" [*Objectionable*. Irrelevant.]

"*1.68 If 'yes', exhibit in your affidavit in answer all information, whether in paper (electronic, or any other format) in connection with each inspection, including but not limited to records of appointments, meetings of intended and actual attendees, agendas, checklists and notes of exceptions.*" [*Objectionable*. Request for documentation in lieu of discovery.]

"*1.69 'Yes' or 'no', at any time did the client's Internal Audit engage*

with your company in respect of the contract?" [*Objectionable*. Irrelevant.]

"*1.70 'Yes' or 'no', at any time did Ireland's national Competition Authority (now known as the CCPC) engage with your company in respect of this tender or this contract?*" [*Objectionable*. Irrelevant.]

"*1.71 If 'yes', provide full details in your affidavit in answer.*" [*Objectionable*. Seeks narrative/explanation on basis of previous irrelevant question.]

37. Turning to Section B of the interrogatories (relating to the purchase of assets from a receiver by the defendants).

"*160.0. 'Yes' or 'no', did CRH purchase any of the assets of the Plaintiff from the Receiver?*" [*Objectionable*. Irrelevant.]

"*160.1. If 'yes', which assets?"* [*Objectionable*. Irrelevant.]

"*160.2. If 'yes', what price did CRH pay for each asset purchased?*" [*Objectionable*. Irrelevant.]

"*160.3. If 'yes', was each asset purchased through a private sale or a public auction?"* [*Objectionable*. Irrelevant.]

113. Next is Section C, which is concerned with a putative trust arrangement.

"*163.0. 'Yes' or 'no', does any trust exist of which CRH or any of its wholly owned subsidiaries is a beneficiary?*" [*Objectionable*. Irrelevant.]

"*163.1. If 'yes', what is the name of each such trust?*" [*Objectionable*. Irrelevant.]

"*163.2. If 'yes', where is the domicile of each such trust?*" [*Objectionable*. Irrelevant.]

"*163.3. 'Yes' or 'no', did any trust of which CRH or any of its wholly owned subsidiaries is a beneficiary purchase any of the assets of the Plaintiff from the Receiver?"* [*Objectionable*. Irrelevant.]

"*163.4. If 'yes', what is the name of the trust?*" [*Objectionable*. Irrelevant.]

"*163.5. If 'yes', where is the trust domiciled?*" [*Objectionable*. Irrelevant.]

"*163.6. If 'yes', who are the trustees of the trust?*" [*Objectionable*. Irrelevant.]

114. Next is Section D, which concerns the intended evidence of a named individual. As is clear from case-law, one cannot pose questions in relation to intended evidence. That caveat aside, the court proceeds to consider the Section D interrogatories.

"*167.0. 'Yes' or 'no', do you accept that NAMED PERSON formerly was an employee and specifically sales manager at NAMED ENTITY?*" [*Objectionable*. Irrelevant.]

"*167.1. 'Yes' or 'no', did CRH, its employees, servants or agents put pressure on NAMED PERSON, having sworn the attached affidavit to withdraw [their] affidavit?*" [*Objectionable*. Irrelevant.]

"*167.2 'Yes' or 'no', did CRH its employees, servants or agents take any step to cause NAMED PERSON to be worried about being pursued by NAMED ENTITY?*" [*Objectionable*. Irrelevant.]

"*167.3 'Yes' or 'no', does CRH have any knowledge of the reason why NAMED PERSON would be concerned about being pursued by*

NAMED ENTITY?" [*Objectionable*. Irrelevant.]

"*167.4 In respect of the statements made by NAMED PERSON…contained in the document already discovered to each of the defendants and attached herein, entitled 'Affidavit of NAMED PERSON'….*

167.5 'Yes' or 'no', do you accept the facts stated by NAMED PERSON *at paragraph 3 of…*[their] *statement are true, accurate and correct? If your answer is no, state why and exhibit any relevant proof in support of your answer*." [*Objectionable*. Irrelevant.]

115. Next come a number of identical questions in relation to different paragraphs of the NAMED PERSON's statement. Then there are questions concerning a named newspaper article:

"167.10. *'Yes' or 'no', following publication of the article…and at any time to the date of delivery of this Interrogatory, did CRH, its employees, servants or agents take any step to inform or assure NAMED PERSON that it wouldn't pursue…*[them] *in retaliation for having made the attached statement, entitled 'Affidavit of NAMED PERSON'?*" [*Objectionable*. Irrelevant.]

"*167.11*: *If 'yes', exhibit proof in your affidavit of answer*." [*Objectionable*. Based on irrelevant question.]

116. Moving on to Interrogatory No. 169, this concerns the acquisition of an entity by CRH and market share in the aggregates market:

"*169.0. 'Yes' or 'no', did CRH acquire NAMED ENTITY?*" [*Objectionable*. Irrelevant.]

"*169.1. As at the date of delivery of this interrogatory, the market share of CRH in the Dublin market for aggregate is not less than 80%.*

a. 'Yes' or 'no' is this statement correct? b. If no, what is CRH's market share for aggregate in the Dublin market?" [*Objectionable*. The market share at the date of delivery of the interrogatory is irrelevant.]

117. Going next to section F, this contains interrogatories concerning an alleged meeting of the defendants in relation to the recusal of Cooke J. at an earlier stage of these proceedings.

"*170.0. Following the recusal of High Court Judge Cooke J. from hearing anything further in the within action in the afternoon of 13th November 2012, a meeting took place at the headquarters of Kilsaran. 'Yes' or 'no', is this statement correct?*" [*Objectionable*. Irrelevant.]

"*170.1. The meeting was attended by NAMED PERSON and directors of CRH and Roadstone. 'Yes' or 'no', is this statement correct?*" [*Objectionable*. Irrelevant.]

"*170.2. The purpose of the meeting was to discuss the problems which might follow in consequence of the recusal of Cooke J. 'Yes' or 'no', is this statement correct?*" [*Objectionable*. Irrelevant.]

"*170.3. The potential consequences of the recusal of Cooke J were discussed at the meeting?*" [*Objectionable*. Irrelevant.]

"170.4-5. *Minutes of the meeting were taken by a secretary. 'Yes' or 'no', is this statement correct?*" [*Objectionable*. Irrelevant.]

"*170.6. Attach a copy of your minutes and/or notes of the meeting.*" [*Objectionable*. Irrelevant.]

"*170.7. What is the name of the secretary who took the minutes?*" [*Objectionable*. Irrelevant.]

"*170.8. What are the names of each person who attended the*

meeting?" [*Objectionable*. Irrelevant.]

118. The next section, Section G, relates to an alleged meeting between the defendants following the Supreme Court judgment in 2013:

> "*Following the judgment of the Supreme Court in 2013 (extension of time to appeal), a meeting took place at the headquarters of Kilsaran. 'Yes' or 'no', is this statement correct*" [*Objectionable*. Irrelevant.]