



# Rule 30(b)(6) Depositions

**Daniel R. Sonneborn**  
**Preti Flaherty Beliveau & Pachios, LLP**  
**60 State Street, Suite 1100**  
**Boston, Massachusetts 02109**  
**(617) 226-3800**

**[dsonneborn@preti.com](mailto:dsonneborn@preti.com)**

**PretiFlaherty**

# What is it?

- Federal and State Rules of Civil Procedure 30(b)(6) apply to the depositions of party and non-party corporations.
- Not a deposition of an individual.
- The designee speaks for the company.
- Valuable and dangerous.

# Federal Rule 30(b)(6)

- *Notice or Subpoena Directed to an Organization.* **In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate** one or more officers, directors, or managing agents, or designate other persons who consent **to testify on its behalf**; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. **The persons designated must testify about information known or reasonably available to the organization.** This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

# Massachusetts Rule 30(b)(6)

- *Notice or Subpoena Directed to an Organization.* In a notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it shall set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

# The Rule

- Rule 30(b)(6) allows a party to depose a corporation, government agency, or other organization.
- Entity needs to designate one or more individuals to testify on its behalf.
- Notice must describe the matters for examination with “reasonable particularity.”
- Burden on the organization to designate individuals reasonably educated to testify on those matters.
- **Designee(s) will speak for the entity.**

# Who to Designate?

- “The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify.”
- Can name anyone! The rule does not require “most knowledgeable”
- Consider the best, most personable and trainable witness.
- Consult with company executives to explain the rule and scope of who can be selected
- Want someone who is well-spoken, teachable and likeable (not necessarily the most knowledgeable).

# Responding to the Notice

- Treat like a discovery document.
- Regardless of the venue, likely a “meet and confer” requirement.
- Consider offering a reasonable accommodation.
- If can’t agree, need to consider a motion for a protective order.

# Preparing the Witness

- By its very nature, a Rule 30(b)(6) deposition notice requires the responding party to prepare a designated representative so that he or she can testify on matters not only within his or her personal knowledge, but also on matters reasonably known by the responding entity.” *Alliance for Global Justice v. District of Columbia*, 437 F. Supp. 2d 32, 37 (D.D.C. 2006).



# Preparing the Witness

- What are the topics?
- Witness needs to be provided information and documents before preparation meeting.
  - Pleadings, discovery responses, key documents, deposition transcripts
- If any investigation is needed, need to assign and have it done before first preparation session.
- More than one session?
  - Explaining process
  - Mock questioning
  - Explain role

# Role of the Witness

- Speaks for the company.
- You ≠ You
- Company's involvement in lawsuit?

# Defending the 30(b)(6) Deposition

- Protect the company and the record.
- Separate out the individual deposition from the Rule 30(b)(6) deposition.
- Make sure the notice is an exhibit and any agreements limiting scope of testimony.
- Object to any questions attempting to characterize the witness as the “most knowledgeable witness” in addition to the usual form of the objection questions normally asserted.
- Questions beyond the range of the topics should be noted and the fact that the witness is not designated for a subject matter, topic or question that strays beyond enumerated the scope of the notice should be made on the record.

# Defending the 30(b)(6) Deposition

- Not clear if rules allow for a witness to be instructed not to respond to question beyond the topic, but object for later argument outside scope and answer does not the company.
- Despite best preparation, sometimes a question or topic is overlooked. Try to get information timely (formally/informally).

# What can go wrong?

- Aside from damaging the case . . .
- *Sciarretta v. Lincoln National Life Insurance Co.*, 778 F.3d 1205 (11<sup>th</sup> Cir 2015) (\$850,000 sanction against a nonparty for failing to produce a witness with knowledge in response to a 30(b)(6) subpoena).

# Takeaways

- **A Rule 30(b)(6) deposition is extremely important.**
- **Will impact case on way or the other.**
- **Need to take it seriously.**
- **Put insurer on notice?**
- **Know the rules.**

# Questions?

- **Thank you!**

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