By Carter E. Strang and Arun J. Kottha

Notice, Selection, Preparation, and Privilege Issues for Corporate Representative Depositions

Federal Rule 30 (b)(6) is the vehicle for taking depositions of corporate representatives in civil cases. These depositions have some distinct characteristics and contain traps for the unwary. Unfamiliarity with the rule's provisions can prove disastrous for a noticed corporation and a bonanza for the noticing party.

Notice Provision

Federal Rule of Civil Procedure's 30 (b)(6) notice provision states:

> 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.

Following the truism that "you cannot understand the present if you do not understand the past," we will begin to discuss of the rule's notice provision by reviewing the history that gave rise to it.

Before the rule existed, practice placed the burden on the party taking the deposition to designate a specific corporate representative with knowledge about the areas at issue—an officer, director or managing agent—to offer binding testimony for the corporation. Bradley M. Elbein, *How Rule 30(b)(6) Became a Trojan Horse: A Proposal for a Change*, FICC Quarterly 365, 366–67 (Spring 1996).

Commonly, designated corporate representatives would deny knowledge of the issues, leading to successive depositions simply to find someone connected with these corporations with knowledge who could provide binding, responsive testimony causing one commentator to note, "[t]his dance of the ignorant witnesses became so common it earned a nickname: 'bandying.'" *Id.*

Rule 30 (b)(6), adopted in 1970, shifted the burden to the corporation to produce a representative to provide responsive testimony in answer to a notice, and the corporation would become bound by that testimony, no matter the representative's corporate status. This burden is familiar to litigators, and one that is more fairly placed on the noticed corporation:

> This burden is not essentially different from that of answering interrogatories under Rule 33, and is in any case lighter than that of any examining party ignorant of who in the corporation has knowledge.

Notes of Advisory Committee on Rules (1970) Rule 30 (b)(6).

The Scope of the Notice

The noticing party still retains the initial burden of providing a notice that describes "with reasonable particularity" the matters on which examination is requested. This means that a notice must be specific and not overbroad or unduly burdensome. Thus, courts have denied challenges to notices that were "too specific" because the more precise the request, the easier it should be for a noticed party to produce a witness to testify. *E.E.O.C. v. Goodyear Tire and Rubber Co.*, 1979 WL 86, at *2 (N.D. Ohio 1979); *see also Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 125–26 (M.D.N.C. 1989). Providing a "specific" notice is what, in fact, the rule envisioned. *See E.E.O.C.*, 1979 WL 86, at *2.

A notice has been held to be both overbroad and unduly burdensome if it (1) sought information relating to a vast array of strategic, financial and contractual information from a nonparty corporation, (2) provided little time for a response, (3) included areas of questioning beyond the issues in the underlying litigation, (4) would require a costly review or analysis of thousands of documents and witness preparation to respond, (5) requested information already available from other sources, and (6) sought potentially privileged information. *Recycled Paper Greetings, Inc. v. Davis*, 2008 WL 440458, at *4 (N.D. Ohio 2008); *Scovill Mfg. Co. v. Sunbeam Corp.*, 61 F.R.D. 598, 603 (D. Del. 1973).

A court has also held a request improper on the grounds that it was "too broad and burdensome," given its "almost limitless" scope, which proposed to depose corporate representatives to address some 143 categories of questions, questions within questions and information about every fact, conception, intention, understanding, belief and sense impression regarding the disputed patents covering a 20-year period. *General Foods Corp. v. Computer Election Systems, Inc.*, 211 U.S.P.Q. 49, 50.

In one case in which a notice properly identified the areas of inquiry but ended each with "including but not limited to" language, the notice was rendered improper because the person responding could not properly identify the outer limits of the areas of inquiry noticed, subjecting that person to an impossible task in attempt-

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ing to comply. *Reed v. Gennett*, 193 F.R.D. 689, 692 (D. Kan. 2005); *Tri-State Hospital Supply Corp. v. U.S.*, 226 F.R.D. 118, 125 (D.C. Cir. 2005); *Innomed Labs, LLC v. Alza Corp.*, 211 F.R.D. 237, 240 (S.D.N.Y. 2000).

A court deemed a notice that simply requested information from those "with knowledge of the facts" similarly improper. *Budget Dress Corp. v. Joint Bd. of Dress & Waistmakers' Union of Greater New York*, 24 F.R.D. 506, 507 (S.D.N.Y. 1959) (construing Fed. R. Civ. P. 30). And, in a case in which a notice sought the "evolution" and meaning of certain insurance contract language but did not state a time period, the court found that it was "unbounded" and thus improper. *Falcone v. Provident Life & Accident Ins. Co.*, 2008 WL 2323528, at **6–7 (S.D. Ohio 2008).

Objecting to a Notice

On receipt and review of a Fed. R. Civ. P. 30 (b)(6) notice, counsel for the noticed corporation should carefully review it for potential objections and object when appropriate. Failing to object prior to a deposition can result in an award of sanctions against the noticed party. *See Arctic Cat, Inc. v. Injection Research Specialist, Inc.*, 210 F.R.D. 680, 681 (D. Minn. 2002).

A motion to compel was granted against a company that provided no written objections to the Fed. R. Civ. P. 30 (b)(6) notice prior to the deposition of its representative; rather, the company waited to assert them during the deposition of its representative, who knew little or nothing about the items contained in the notice. *Prosonic Corp. v. Stafford*, 2008 WL 2323628, at *4 (S.D. Ohio 2008). The court characterized this conduct as an improper "self-help" measure and held that the failing to provide written objections prior to the deposition violated the "spirit" of the federal civil rules. *Id.*

How to properly raise a 30 (b)(6) notice dispute with a court depends on many factors, including the applicable federal civil rules, as well as applicable local rules and standing orders. For example, Local Rule 37.1 for the United States District Court for the Northern District of Ohio places the burden on the "party seeking the disputed discovery" to make a "good faith" effort to resolve the dispute prior to seeking court intervention. Thus, under this local rule, once counsel for a noticed corporation provides written objections to a Fed. R. Civ. P. 30 (b)(6) notice, the party that noticed the deposition—the "party seeing the disputed discovery"—is required to take the initiative to resolve any dispute arising from it, prior to the deposition, and failing that, to bring it to the attention of the court.

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Selection and Preparation

Selecting and preparing a corporate representative in response to a Fed. R. Civ. P. 30 (b)(6) notice is of critical importance to the success or failure of the deposition. This section will review important considerations in selecting and preparing a corporate representative, including the role of in-house counsel and privilege issues.

The Rule's Applicable Language

Federal Rule of Civil Procedure 30 (b)(6) states, in applicable part, that it is the corporate defendant's obligation to

> [D]esignate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify.... The persons designated must testify about matters known or reasonably available to the organization.

Under the rule, the noticed corporation is obliged to provide "one or more" officers, directors, agents, employees or "other persons," which may include former employees or experts, for instance, who "consent to testify" on its behalf in response to "matters known" or "reasonably available" to it. Once selected, a corporation will identify which corporate representatives will respond to each area of inquiry in a written response to the Fed. R. Civ. P. 30 (b)(6) notice. *See Phillips v. Manufacturers Hanover Trust Co.*, 1994 WL 116078, at *5 (S.D.N.Y.); *U.S. v. Taylor*, 166 F.R.D. 356, 360–361 (M.D.N.C. 1996).

Counsel for a noticed corporation should take advantage of the opportunity to select and prepare representatives, who can then offer a compelling case as the "face" of the corporation. William Barnett, general counsel and vice president of Cleveland, Ohio-based State Industrial Products Corp. understands the opportunity in selecting an appropriate corporate representative:

> As in-house counsel, I have often been presented with responding to discovery requests that include 30 (b)(6) deposition notices. This can be an ideal opportunity for a company to present its position both knowledgeably and with a well-qualified witness. By having the leeway to designate the person(s) to provide testimony, it is advisable to use individuals who have experienced the litigation process. Those persons will be easier to prepare as a witness and will present a more confident witness at deposition.

On the other hand, disaster can result for a noticed corporation if selection or preparation is inadequate, leading to inaccurate binding testimony, disclosure of work product or attorney client information or sanctions.

Duty to Provide a Knowledgeable Representative

The party responding to a Fed. R. Civ. P. 30 (b)(6) notice has an obligation to: (1) "designate a deponent who is knowledgeable on the subject matter identified as the area of inquiry," (2) select "more than one deponent if multiple deponents are necessary to respond to all of the relevant areas of inquiry," (3) "prepare the deponent so that he or she can testify on matters not only within his or her personal knowledge, but also on matters reasonably known by [it]," and (4) "if it becomes apparent during the deposition that the designated deponent is unable to respond to the relevant areas of inquiry, [it] has the duty to substitute the designated deponent with a knowledgeable deponent." *U.S. ex rel Fago v. M & T Mort. Corp.*, 235 F.R.D. 11, 22–23 (D. D.C. 2006).

Counsel for the noticed party, not counsel for the noticing party, selects the repre-

sentative or representatives who will testify about the items in the notice. Thus, if counsel for the noticing party names in its notice a specific corporate representative, requests a representative with "personal knowledge," or requests the persons "most knowledgeable," the notice is improper, because the rule simply does not require a company to provide such representatives. *Cruz v. Coach Stores, Inc.*, 1998 WL 812045, at *6 (S.D.N.Y. 1998), *vacated on other grounds by* 202 F.3d 560 (2d Cir. 2000); *Reed v. Gennett*, 193 F.R.D. at 692; S.I. Schenkier, *Deposing Corporations and Other Fictive Persons: Some Thoughts on Rule 30 (b)(6)*, 29 Litigation 23 (Winter 2003).

Because the noticing party has a right under the rule to know the noticed corporation's position on the items in the notice, the noticed corporation has "a duty to gather *reasonably available* information" to educate a representative and thereby "create a spokesperson," if necessary, who will be able to testify on behalf of the corporation. Elbein, *supra*, at 368. The duty to educate means that the noticed corporation must engage in "due inquiry," including searching its files and conducting interviews of its employees and officers, so that the representative is prepared to and can answer the questions fully, completely and without evasiveness. *Mitsui v. Puerto Rico*, 93 F.R.D. 62, 67 (D.P.R. 1981); Candance A. Blydenbough, *Picking and Preparing Your Corporate Witness for Rule 30 (B)(6) Depositions*, 13 Practical Litigator (July 2002).

Corporate representative deposition responses of "I don't know" or "I don't remember or recall" can equate to a failure to appear, creating a duty to substitute someone who does know or can result in sanctions. *U.S. v. Taylor*, 166 F.R.D. at 360–61; *Barron v. Caterpillar*, 168 F.R.D. 175, 177 (E.D. Pa. 1996); Mark A. Cymrot, *The Forgotten Rule*, 18 Litigation (Spring 1992).

William Barnett, mentioned above, appreciates the obligations of in-house counsel in adequately preparing the corporate representative: "The burden then falls to counsel who is preparing the witness for deposition to make sure that the necessary bases are covered both as to facts and documents. It is very important for the witness to avoid stating 'I don't know' to a category of inquiry unless the corporation is without knowledge."

Courts frown on corporations that try to play "hide the ball" with their representative by designating someone with no knowledge when it is clear that others with knowledge could have been provided but were not. *Resolution Trust v. Southern*, 985 F. 2d 196, 196–198 (5th Cir. 1993); *FDIC v. Butcher*, 116 F.R.D. 196, 199 (E.D. Tenn. 1986), *aff'd by* 116 F.R.D. 203 (E.D. Tenn. 1987). As noted by others, "to warrant the imposition of sanctions "'the inadequacies in a deponent's testimony must be egregious and not merely lacking in desired specificity in discrete areas.'" Kent Sinclair and Roger P. Fendrich, *Discovering Corporate Knowledge and Contentions: Rethinking Rule 30 (b)(6) and Alternative Mechanisms*, 50 Ala. L. Rev. 651, 674 at n.117 (1999) (quoting *Bank of N.Y. v. Meridien*, 171 F.R.D. 135, 151 (quoting *Zappia Middle East Constr. Co. v. The Emirate of Abu Dhabi*, No. 941942, 1995 WL 686715, at *8 (S.D.N.Y. 1995)).

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In one case, where the noticed party's representative knew "little or nothing" about many of the subjects described in the notice, resulting in a motion to compel, the court held the noticed corporation failed to meet its obligation to provide "an informed spokesperson" in response to the items in the notice so that the goal of "effective discovery" would be thwarted. *Prosonic Corp. v. Stafford*, 2008 WL 2323628, at *1–2. The court barred later testimony by the corporation about those responses that constituted a complete failure to respond, and ordered a replacement witness for those that were insufficiently answered. *Id.*

In the best of circumstances, finding and preparing a corporate representative for deposition presents a challenge, but for certain types of cases with a long latency period, such as mass tort or environmental, it may not be possible to find representatives with actual knowledge of some or all of the items in the notice.

Commenting on this problem, one author noted that after Fed. R. Civ. P. 30 (b)(6) had been adopted "[o]rganizations began to discover that they simply did not employ persons with knowledge of the facts, as contemplated by the [r]ule," which was made worse by "the economic upheavals which began in the 1970s and resulted in lay-offs, downsizing, mergers and bankruptcies" and caused many corporations to "come up empty" when faced with needing to respond to a rule 30 (b)(6) notice. Elbein, *supra*, at 367–368.

In these situations, counsel for a noticed corporation may need to find sources of information outside the corporation, such as former employees and officers, to help educate corporate representatives, or consider using these persons as "corporate" representatives. *See Kiryas Joel Local Dev. Corp. v. Insurance Co. of North America*, 1991 WL 41667, at *2 (S.D.N.Y. 1991).

Courts have generally held that a company cannot be "required to designate a retired employee to serve as a 30(b)(6) designee, because 'it cannot be supposed that… former employees would identify their interests with those of their former employers to such an extent that admissions by them should be held to bind the employer.'" Sinclair and Fendrich, *supra*, at 665; *see Lapenna v. Upjohn Co.*, 110 F.R.D. 15, 23 (E.D. Pa. 1986). Therefore, a noticed corporation is not obliged "to produce a non-party, such as a former employee, as a witness at a 30(b)(6) deposition," however, it may at its discretion. Sinclair, *supra*. As a last resort, when information is simply unavailable, a noticed corporation may assert that it lacks corporate "memory." In these cases, if a corporation intends to rely on third-party testimony or documentation, a corporate deponent "must present an opinion as to why the corporation believes the facts so construed." *Taylor*, 166 F.R.D. at 361.

Sometimes the person best able to provide information to a corporate representative is counsel for the noticed corporation. This counsel's involvement, while central to proper preparation, needs to be

considered in light of work-product and attorney-client issues that are attendant to preparation, which is covered below.

Approaching a Fed. R. Civ. P. 30 (b)(6) deposition like any other is a mistake. It will require more preparation time than a "typical" deposition because of its special nature, some of which has been addressed above. For example, a representative needs to address every issue in the notice, even if personal knowledge is nowhere to be found. Information, including company records, prior depositions, and interviews with current and, perhaps, former employees or officers, will have to be located, reviewed, and analyzed so that the "corporate knowledge" regarding the noticed items is sufficiently clear to enable a representative to adequately prepare. *Dravo Corp. v. Liberty Mut. Ins. Co.*, 164 F.R.D. 70, 75 (D. Neb. 1995); *see also Buycks-Roberson v. Citibank Federal Sav. Bank*, 162 F.R.D. 338, 343 (N.D. Ill. 1995). A potential representative will then need to be screened, selected, and prepared.

The preparation process is likely to be very time-consuming, so preparing for a Fed. R. Civ. P. 30 (b)(6) deposition should begin when the litigation is first filed, not on receipt of the notice. Waiting until you receive the notice will place counsel in a "catch-up" mode that makes successful preparation less likely. A company is advised to identify the issues a notice will likely cover, and engage in preparatory steps with counsel before receiving the actual notice. Testimony for which you should prepare a corporate representative witness includes the corporation's "subjective beliefs and opinions" concerning the corporation's "interpretation of documents" and its opinion on why facts should be construed a certain way. Joseph W. Hovermill and Matthew T. Wagman, *When Nobody Knows What the Company "Knows": A Look at the Options Available to a Company in Meeting Its Rule 30 (b)(6) Obligations While Protecting Its Best Interests*, For The Defense, at 52–56 (Nov. 2008).

Selecting the best representative is, clearly, of critical importance. As noted, it is the corporation's right, as discussed above—within limits—to select as its representative the person who is "best suited," in its opinion, to serve as its spokesperson. American Bar Association Civil Discovery Standards, §V(19). Factors to consider in selecting your corporate representative include not only familiarity with the noticed items, but also the person's demeanor and appearance, familiarity with the litigation process, and ability to fully devote the time and energy necessary to become fully prepared to testify and to work cooperatively with all involved with that process.

> As a last resort, when information is simply unavailable, a noticed corporation may assert that it lacks corporate "memory."

In considering the number of representatives to use, time limits for such depositions should be contemplated. Each corporate representative deposition is limited to one day of seven hours of questioning without stipulation or leave of court. Fed. R. Civ. P. 30 (d). However, if a single person is deposed in both a personal *and* corporate representative capacity, two separate seven hour periods presumptively apply. Siegrun D. Kane, Trademark Law: A Practitioner's Guide §14.17.3 (4th ed. 2002) (citing Fed. R. Civ. P. 30(d) Advisory Committee note.) Further, for the purposes of the 10-deposition limit noted in the civil rules, a 30(b)(6) deposition counts as one, irrespective of how many people testify to fulfill a notice. *Id.*

It is important for counsel for the noticed corporation to control the selection and preparation process, including who talks to whom, about what, when, and in whose presence. Failing to control the process can exacerbate already problematic attorney-client and work-product deposition issues.

The Role of In-House Counsel and Privilege Issues

The manner in which a corporate representative is prepared has bearing on the potential for discovery of attorney-client confidences and or attorney work product. The two policies in tension in this realm are the need to protect an attorney's thoughts and analysis while affording the opposing party the opportunity to conduct discovery of materials that a "witness uses… to refresh his memory for the purpose of testifying." *Compare* Fed. R. Civ. P. 30(b)(6) *with* Fed. R. Evid. 612.

This tension is resolved by courts "on a case-by-case basis." N. Karen Deming & C. LeeAnn McCurry, *Mass Tort Discovery and the Precarious Position of the FRCP 30(B)(6) Witness*, DRI Drug and Medical Device Young Lawyers Primer, 122–24 (2007) (citing *Redvanly v. Nynex Corp.*, 152 F.R.D. 460 (S.D.N.Y. 1993). To consider materials used in preparation discoverable, courts will require the party seeking discovery to show that the documents "had an impact on the testimony" of the corporate representative. *Id.* (citing *Bank Hapoalim B.M. v. American Home Assurance Co.*, 1994 WL 119575 (S.D.N.Y. 1994). If the documents had such an "impact," a court should balance (1) any attempt to improperly use the work-product doctrine to conceal or exceed the limits of preparation, (2) "the degree to which the documents in question are composed of factual material rather than an attorney's legal analysis," and (3) whether the discovery demand amounts to a "fishing expedition." *Id.*

In-house counsel must walk the important, fine line between protecting work product from discovery, while fulfilling the corporation's duties to fully investigate the corporation's "knowledge" and to prepare its representative. If documents protected by privilege are used in preparing a corporate representative witness for deposition, a court may deem the privilege waived, thus making the documents discoverable. *Id.* (citing *James Julian, Inc. v. Raytheon Co.*, 93 F.R.D. 138 (D. Del. 1982)). Thus, in-house counsel should exercise great caution when determining which documents a corporate representative should review.

A common practice among in-house counsel, however, is to make compilations of non-privileged documents. While not all non-privileged documents are protected from production in the discovery process, the "selection and compilation of

documents by counsel… falls within the highly-protected category of opinion work product." *Id.* (citing *Sporck v. Peil*, 759 F.2d 312 (3d. Cir. 1985)).

Scope of Testimony

In preparing a corporate representative, it is important to be aware of the permissible scope of a Fed. R. Civ. P. 30 (b)(6) deposition. Generally, the deposition's scope is as broad as the scope of discovery outlined in Fed. R. Civ. P. 26 (b)(1) for the areas referenced in the notice. Thus, opposing counsel can ask a corporate representative about any personal knowledge that person may have about the items referenced in the notice. It is, therefore, imperative that in preparing this witness counsel for the noticed party inform the witness of this fact, then discuss what personal knowledge the witness may have.

Authority is split regarding whether a corporate representative must answer questions about which the deponent has personal knowledge but which fall outside the scope of the relevant notice. *See Paporelli v. Prudential Ins.*, 308 F.R.D. 727 (D. Mass. 1985) (holding this questioning is not permitted); and *King v. Pratt & Whitney*, 161 F.R.D. 475 (S.D. Fla. 1995), *aff'd without opinion*, 213 F. 3d 247 (11th Cir. 2000) (permitting this questioning). Cases restricting questioning to the items identified in a notice state that to permit broader questioning would render the notice's "reasonable particularity" language meaningless. *See Paporelli*, 308 F.R.D. 727. Those courts permitting broader questioning have noted that Fed. R. Civ. P. 30 (b)(6) was drafted to augment Fed. R. Civ. P. 26, not to replace it, and it does not bar such inquiry. *See King*, 161 F.R.D. 475. In jurisdictions permitting broad questioning, the noticing party cannot allege "inadequate preparation" and request that the other party provide a different corporate representative to address areas of inquiry not listed in the notice. *Id.* at 476. In preparing a representative, counsel for a noticed corporation should also discuss with that representative how they will handle such questions during the deposition.

However, if a corporate representative is an officer or managing agent and does answer questions based on personal knowledge that fall outside the issues listed in the notice, the corporation becomes bound by the responses. *GTE Products v. Gee*, 115 F.R.D. 67, 69 (D. Mass 1987).

Binding Testimony

As noted, a corporation is bound by the testimony of its corporate representative. However, this testimony does not constitute a judicial admission. *Ruth v. A.O. Smith Corp.*, 2006 WL 53388, at *10 (N.D. Ohio 2006). Generally, a Fed. R. Civ. P. 30 (b)(6) deposition is "evidence that, like any other deposition testimony, can be contradicted and used for impeachment." *Industrial Hard Chrome, LTD v. Hetran*, 92 F. Supp. 2d 786, 790; *see also Hyde v. Stanley Tools*, 107 F. Supp. 2d 992, 992–93 (E.D. La. 2000). However, a defendant corporation could not admit evidence showing that it did not manufacture a product at issue to contradict a corporate representative's testimony that it had manufactured it, "absent showing that the company did not have access to relevant facts before the 30 (b)(6) deposition, or that the representative was confused or made an honest mistake." *Hyde v. Stanley*, 107 F. Supp. 2d at 992.

> If documents protected by privilege are used in preparing a corporate representative witness for deposition, a court may deem the privilege waived, thus making the documents discoverable.

In contrast, a court did permit a corporate representative's testimony at trial that contradicted the 30 (b)(6) testimony of the corporate representative, because "[g]enerally testimony from a 30 (b)(6) witness can be contradicted or used for impeachment at trial, just like any other deposition testimony." *Ruth*, 2006 WL 53388, at *10. However, courts make distinctions between "more-responsive" and "non-responsive" corporate representative testimony, sometimes excluding the former:

> [I]t is only when a party first provides a *non-responsive* 30 (b)(6) deponent and later tries to call a more-responsive witness at trial that courts have excluded the witness.

Id. (emphasis in original).

Thus, providing a "responsive" Fed. R. Civ. P. 30 (b)(6) witness takes on great importance because responsive but mistaken testimony can be addressed by a later corporate witness, whereas failing to provide a "responsive" witness can negate such an attempt.

Duplicative Testimony or Documents

In responding to a Fed. R. Civ. P. 30 (b)(6) notice, a noticed corporation should consider designating prior deposition testimony and discovery response as responsive and binding, possibly obviating the need for a live witness to testify on the same subjects. *E.E.O.C. v. Boeing Co.*, 2007 WL 1146446, at *2 (D. Ariz. 2007). The party responding to the notice should do so through an objection in response to the notice, asserting that the items in the notice are duplicative, citing the prior testimony or documents. *Prosonic Corp. v. Stafforn*, 2008 WL 2323628, at *4. If a corporation does not do this prior to the deposition, however, it risks losing the potential to object. *Id.*

If a noticing party receives an objection, it should thoroughly analyze the proffered testimony or documents and determine whether it does, in fact, provide "verbatim" responses to the noticed items.

Courts are, however, generally reluctant to restrict the right of a party to conduct Fed. R. Civ. P. 30 (b)(6) depositions, even if prior relevant depositions and document may be available, though these decisions appear case-specific. *Fresenius Medical Care Holdings, Inc. v. Roxane Laboratories, Inc.*, 2007 WL 1026439, at *1 (S.D. Ohio 2007).

Conclusion

Federal Rule of Civil Procedure 30 (b)(6) provides the mechanism for taking depositions of corporate representatives. The party seeking a deposition is obligated to

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provide a 30 (b)(6) notice that describes "with reasonable particularity" the matters on which it seeks examination. On receipt of a notice, the noticed corporation must properly assert its objections *prior to* the representative's deposition: a corporation cannot simply assert objections for the first time during the deposition. A corporation is bound by FED. R. CIV. P. 30 (b)(6) testimony. It is critical that the noticed party provide a knowledgeable corporate representative(s) in response to the notice. To adequately prepare one or more corporate representatives will likely require considerable time and effort for corporate counsel as this witness may know little or nothing about the noticed items before he or she is prepared. Corporate counsel should always keep in mind privilege issues when preparing a corporate representative. Further, adequate preparation includes inquiry about personal knowledge the representative may have about issues related to but not listed in a notice, and advance discussion about how counsel will direct the representative to respond to these types of inquiry. Counsel should also determine whether a deposition notice duplicates prior discovery and whether offering discovery in place of the noticed deposition, in whole or part, would better serve the corporation. Considering the preceding information when involved in current or threatened litigation will help avoid the Corporate Representative Deposition trap.