2705 Bee Cave Road
Suite 220
Austin, Texas 78746
512.795.8686
512.795.8787 (fax)

3500 Maple Avenue
Suite 1250
Dallas, Texas 75219
214.528.8686
214.528.6989 (fax)

100 Lexington Street
Suite 70
Fort Worth, Texas 76102
817.288.8988
817.288.8999 (fax)

17-CV-PPPPP

August 8, 2017

Rule 30(b)(6) Subcommittee of the Advisory Committee on Civil Rules
Administrative Office of the United States Courts
One Columbus Circle, NE, Suite 7-240
Washington, D.C. 20544

Dear Members of the Subcommittee of the Civil Rules Advisory Committee:

I am writing to address proposed changes to Fed. R. Civ. P. 30(b)(6). This firm was established in 1993. Our practice areas involve representing plaintiffs in product liability cases against large domestic corporations and multi-national conglomerates. While we primarily represent individual plaintiffs, our firm has also represented large corporations as plaintiffs and as defendants. Of our eight lawyers, four are members of the American Board of Trial Advocates and one is also a fellow in both the American Academy of Trial Lawyers and International Academy of Trial Lawyers.

It has been our collective experience that Fed. R. Civ. P. 30(b)(6) is the most effective discovery tool available to promote efficient discovery and deter discovery abuse. Rule 30(b)(6) is effective because it enforces accountability by its own terms. As a result, we rarely have to seek court intervention with Rule 30(b)(6) depositions. The same cannot be said about the rules related to disclosures, requests for production and interrogatories. Our lawyers have taken 30(b)(6) depositions and we have defended 30(b)(6) depositions. We know both sides of the rule quite well. Our comments below relate to our experiences with Rule 30(b)(6) and its functional equivalents in the states.

There are two features in the rule which, from our experience, are most effective in promoting efficient discovery and curbing discovery abuse:

1) The organization's duty to present a prepared witness; and
2) The binding effect of the witness' answers.

We would implore the subcommittee not to relax the duty to prepare or dilute the binding-effect features of the rule. If anything, the rule should be clarified to explicitly state that answers by the organization's witness are binding on the organization to the same extent as admissions or stipulations.

Rule 30(b)(6) creates a background incentive for accountability and forthrightness during the discovery phase because organizational witnesses can be used to establish the incompleteness of prior discovery responses or the lack of diligence in the organization's search for witnesses or documents. It is not uncommon for our lawyers to receive supplemental disclosures and document production from a corporate defendant immediately after a request for a Rule 30(b)(6) witness has been made. As a result, we frequently request subject areas which allow us to explore the effort made by the organization to search for and produce responsive documents or to identify previously undisclosed persons within the organization who may possess knowledge critical to the case or potentially damaging to the organization's defense.

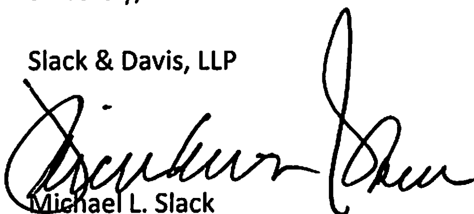
The use of Rule 30(b)(6) has proven to be beneficial in making discovery more focused and efficient in our practice in the following respects:

1) Organizational hierarchy and areas of responsibility-Significant economy can be achieved with a Rule 30(b)(6) deposition which establishes the organizational structure and identifies the relevant units and leadership within the organization that merit discovery. After a deposition of this type, we are able to more efficiently focus and direct our deposition and written discovery with respect to the organization. We feel that this saves both parties considerable time and money during the course of the case, thereby fulfilling both the purpose and promise of Federal Rule of Civil Procedure 1.
2) Post-occurrence investigations by the organization-We have encountered considerable resistance from organizations when attempting to discover internal investigations conducted by the organization after an occurrence. This is true not only with the occurrence at issue but similar prior occurrences. Not only is Rule 30(b)(6) the most effective mechanism for discovering this information, it saves considerable court time that would otherwise be spent in discovery disputes that could otherwise be easily resolved by testimony provided in a deposition. Rule 30(b)(6) depositions drastically reduce the opportunity for the kind of gamesmanship and wordsmithing that so often bog down written discovery.
3) Existence of safer alternative designs-There is no better or more cost-effective means for a plaintiff to establish and prove a safer alternative design in a product failure case than through a Rule 30(b)(6) designated corporate witness on the subject.
4) Eliminating non-viable defenses-Designated corporate witnesses, compelled to investigate a subject matter and answer questions, often give testimony that eviscerates defenses that should have never been asserted in the first place. In short, Rule 30(b)(6) is the plaintiff's counterpart to Rule 12(b)(6) when it comes to attacking non-viable defenses.

We appreciate the opportunity to lend our comments and experiences with regard to Rule 30(b)(6). Leaving the rule alone would be a satisfactory outcome from our perspective. If anything is changed, please clarify that answers given by a Rule 30(b)(6) deponent are as binding on the organization as an admission.

Sincerely,

Slack & Davis, LLP



Michael L. Slack

MLS/rel