17-CV-TTT

MICHAEL E. QUIAT*
JOSEPH A. RUSSO*
JOEL D. ZELKOWITZ**

ETHAN FINNERAN*
PATRICK X. AMORESANO°
OF COUNSEL

*ADMITTED TO NY & NJ BARS
**ADMITTED TO NJ & PA BARS
° CERTIFIED CIVIL TRIAL ATTORNEY

USCHER, QUIAT, USCHER & RUSSO, P.C.

433 HACKENSACK AVENUE
HACKENSACK, NJ 07601

TELEPHONE (201) 342-7100
FAX (201) 342-1810
www.uqur.com

NEW YORK OFFICE

43 West 43rd Street, Suite 166
New York, NY 10036-7424
Telephone (212) 856-1214

ARTHUR USCHER
(RETIRED)

WILLIAM USCHER
(1959-2003)

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(Via Electronic Mail: rules_comments@ao.uscourts.gov)

Rule 30 (b)(6) Subcommittee
Advisory Committee on Federal Civil Rules

Re: Rule 30(b)(6) Amendments

Dear Sir/Madam:

I have been a licensed and practicing attorney for 36 years. I practice in New York and in New Jersey. Most of my practice is in Federal Court.

In the course of my practice I have handled a significant number of Federal Civil litigations involving numerous depositions and other discovery devices.

I am writing to express my dismay about the proposed changes to Rule 30(b)(6).

It seems obvious that these changes would serve the interests of deep pocket corporate/institutional parties, to the great prejudice of the individual. In practice, the overall effect of these proposed changes will provide new opportunities for corporate obfuscation, and seriously undermine the rights of litigants to obtain vital information in discovery.

The idea of discussing "issues" regarding Rule 30(b)(6) depositions at the Rule 26(f) meeting and Rule 16 conference is a recipe for strategic sandbagging by corporate defendants. Clearly such a mechanism will allow these defendants to learn more about plaintiff's strategy in discovery and permit these parties to orchestrate their responses accordingly.

The idea that Rule 30(b)(6) depositions should not be "binding" on the entity for which they are being offered again provides a mechanism for undermining the effectiveness of discovery, by diluting the impact of deposition testimony which is otherwise highly probative. This again works to the advantage of parties with more financial resources who can afford to play this system to avoid its more direct consequences, all to the extreme disadvantage of those for whom financial resources are limited.

The same is true for the thought regarding "supplementation" of Rule 30(b)(6) testimony. I have personally confronted insurance company attempts to "correct" transcripts which were otherwise detrimental to their litigation interests. To provide a formal mechanism which would legitimize doing so would be a disaster. Having completed a successful 30(b)(6) deposition, counsel would then be compelled to wait and see whether their adversaries attempt to "supplement" testimony in a way to effectively negate the impact of the direct testimony extemporaneously provided by the witness.

As for prohibiting contention questions, I frankly think this is silly. Anyone who has done any serious litigation over time recognizes that frequently pleadings, prepared by lawyers, have dubious evidentiary support. To suggest that those areas are beyond the pale of contention questions serves no practical function and can severely prejudice a party legitimately seeking areas of probative evidence.

Nor are pre-deposition objections a sound idea. Once again playing into the hands of the better financed litigants, such a procedure will be utilized to smoke out areas of questioning before the witness is under oath and forced to respond. It will also unnecessarily limit the scope of questions which again only serves to obfuscate not understand. As to the limitation on 30(b)(6) depositions in civil cases, the proposal would again serve the interests of the better financed litigants who could march a series of "know nothing" witnesses into depositions to exhaust the number available, thereby depriving a litigant of the right to question individuals who have personal knowledge of probative evidence. It is already too difficult for litigants, particularly individuals, to effectively litigate in our system against well financed parties. The system needs to be opened up so that litigants have the right and ability to secure evidence against defendants who are engaged in obstruction, delay and avoidance. In short there is nothing wrong with the current Rule 30(b)(6). If anything discovery should be expanded not restricted.

The proposed amendments to Rule 30(b)(6) are not in the interest of smaller, underfinanced litigants, and will be easily and effectively manipulated by corporate institutions and other deep pocket clients who have the resources to wear down opponents with a multiplicity of litigation tactics. Such tactics will be enhanced by the proposed amendments

I strongly believe these changes should not be enacted and would be happy to be heard further if the committee believes it would be helpful.

Very truly yours,

USCHER, QUIAT, USCHER & RUSSO
A Professional Corporation

MICHAEL E. QUIAT

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