



PRODUCT LIABILITY ADVISORY COUNCIL

COMMENT

to the

RULE 30(B)(6) SUBCOMMITTEE

of the

ADVISORY COMMITTEE ON CIVIL RULES

JULY 31, 2017

I. INTRODUCTION

The Product Liability Advisory Council, Inc. (PLAC) submits this Comment pursuant to the invitation of the Rule 30(b)(6) Subcommittee (“Subcommittee”) of the Advisory Committee on Civil Rules. PLAC supports amending Federal Rule of Civil Procedure 30(b)(6).

PLAC is a non-profit association with roughly ninety corporate members representing a broad cross-section of American and international product manufacturers. These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products. PLAC’s perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. A list of PLAC’s corporate members is attached as Appendix A. In addition, several hundred of the leading product liability defense attorneys in the country are sustaining (non-voting) members of PLAC. Since 1983, PLAC has filed more than 1,075 briefs as amicus curiae in both state and federal courts, presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product liability, regulation, and safety.

II. COMMENT

Federal Rule of Civil Procedure 30(b)(6) is unique in that it is directed only to organizations. As a result, its treatment of defendants and plaintiffs in product liability litigation is not equal. A corporate defendant must prepare to respond to all questions a plaintiffs’ attorney may ask, even if numerous broadly described topics venture well into irrelevant or previously discovered subject matter. If the corporate representative is unable to answer, even when the answer is not known to the corporation, the corporation and their counsel are subject to sanctions. Plaintiffs do

not face that risk because they will only be asked to respond to information within their own personal knowledge.

This disparate treatment fails to provide equal protection under the law, and it is not needed to ensure discovery of unique, relevant facts. In our experience, the notices are either too general to provide necessary guidance as to who to offer and areas of preparation, or they are so narrow and detailed that it is virtually impossible to comply with the notice.

To ameliorate these concerns, PLAC supports the use of limits to guide courts and counsel in planning for, or executing, depositions of organizations. For example, there should be a limit on the number of topics in order to allow the corporation to focus on the real issues in dispute rather than being burdened with researching topics that are not relevant. Likewise, the scope of the topics should be reasonable in scope and proportional to the needs of the case. A third potential limitation would be a limit on deposition hours. Although Rule 30(d) sets forth a seven hour limit absent leave of court, often courts have allowed multiple 30(b)(6) depositions, each for the presumptive limit of seven hours.

Hand in hand with creating limitations on Rule 30(b)(6) depositions, is the need for a procedure allowing effective objections to notices. Unlike Rules 33, 34 or 45, the current Rule 30(b)(6) is silent on objections. Recipients should be permitted to formally object to the written notices. Objections should be made with specificity. The requesting party should be required to meet and confer with the respondent on their objections before presenting the issue to the judge or before an answer covered by specific objections must be given.

An effective procedure for objections would help ensure control over the number of topics that may be served in such a notice and the number of hours corporate representatives must sit to provide testimony. An effective objection would enable a corporation to comply with a Rule 30(b)(6) notice without the need to obtain a protective order forbidding objectionable questions and topics and without the threat of sanctions.

PLAC appreciates the Committee's efforts to maintain the benefits of Rule 30(b)(6) while eliminating its inequities. Should additional information be necessary, PLAC would be happy to further assist as the Rules Committee contemplates the precise language for the amendments.