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

Re: REFORMING RULE 30(b)(6)

Dear Subcommittee:

The following comment is submitted for the Subcommittee's consideration as part of its ongoing analysis of FRCP 30(b)(6).

Bowman and Brooke LLP is a national firm with 12 offices across the country, primarily known for defending product manufacturers' highest profile litigation and mass torts nationwide. Our lawyers have tried more than 800 product liability lawsuits throughout 48 states, the U.S. Virgin Islands, Puerto Rico and several Canadian provinces. We have engaged in countless numbers of depositions including depositions conducted under Rule 30(b)(6). Through these experiences, we have developed substantial experience with litigation related to this rule and we believe it is time to revise Rule 30(b)(6) to prevent further abuse related to depositions under this rule and to make Rule 30(b)(6) depositions a more meaningful and more effective discovery tool.

We are aware of and generally support the comments and recommendation to revise Rule 30(b)(6) that have been submitted by the Lawyers for Civil Justice (LCJ) earlier this year. Specifically, we agree with the LCJ's recommendation that Rule 30(b)(6) should be included in Rule 26(f) party conferences and addressed in Rule 16 pretrial conferences and scheduling orders. These changes will ensure early case management and facilitate cooperation between the parties that will reduce the number of disputes that arise later.

We also agree with the LCJ's recommendation that Rule 26(e) should be amended to allow supplementation of 30(b)(6) depositions and that Rule 30(b)(6) itself should also be amended to include a 30-day notice requirement.

Of great importance, recipients should be permitted to formally object to the written 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 control the number of topics that may be served in such a notice and the number of the length of time 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.

Finally, Rule 30(b)(6) notices should be expressly subject to the scope of discovery defined by Rule 26(b)(1), including the principles of proportionality. We support a presumptive limit on the number of topics to be covered and an express acknowledgement that depositions may not be necessary where other evidence exists, e.g. through written discovery, prior depositions on the same topic or by the same witness, or where the organization has no knowledge. 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. We also believe a specific time limit must be placed in Rule 30(b)(6).

Our suggestions and support of the recommendations made by the LCJ are motivated for several reasons including the reality that Rule 30(b)(6) is unique in that it is directed only to organizations. Thus, its treatment of defendants and plaintiffs in product liability litigation is not equal. Plaintiffs are required to be prepared to testify in their depositions on issues relevant to the litigation about which they have knowledge and memory. In contrast, 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. Thus, plaintiffs and defendants are being treated differently notwithstanding that this disparate treatment is not needed to ensure discovery of unique, relevant facts.

To correct these problems, we support 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 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.

Besides creating limitations on Rule 30(b)(6) depositions, we also see a need for a procedure that allows effective objections to notices.

We look forward to participating in this process and assisting the Rules Committee as it contemplates the precise language for the amendments. We appreciate the Subcommittee's efforts to maintain the benefits of Rule 30(b)(6) while eliminating its inequities.

Very truly yours,

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