17-CV-RRRR

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Submitted via e-mail:

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I appreciate the opportunity to submit some brief comments about the proposed amendments to Rule 30(b)(6), Federal Rules of Civil Procedure. I operate a small law practice that focuses on labor and employment law claims on behalf of employees. I use 30(b)(6) depositions from time to time as the cases warrant. There are two (2) aspects of the proposed amendments that concern me.

First, I believe that requiring and/or permitting supplementation of 30(b)(6) testimony is unnecessary and inequitable. Since the 30(b)(6) notice demands that the topics for the deposition be adequately identified, the deponent and his/her counsel have the opportunity to prepare for the deposition. Corporate defendants have the advantage of choosing the witness (or witnesses) who are most knowledgeable to appear for the deposition, and the opportunity to prepare the witness to address the subjects identified in the deposition notice. To require or allow supplementation creates the potential to undermine the purpose of the deposition. First, there is the potential for the deponent's counsel to half-heartedly prepare the witnesses for the deposition, knowing that supplementation is available as a backstop. Second, there is the potential for witnesses to avoid directly answering difficult questions by claiming the need to review other information to answer the question. Third, the opportunity to supplement turns the 30(b)(6) deposition into somewhat more of a risk-free exercise for corporate counsel, knowing that problematical testimony may be "cleaned up" with supplementation. It is not clear to me why corporations and their counsel should have this procedural right, while the plaintiff, or third-party witnesses, have no similar means to make the deposition process a less risky process. The goal of discovery is to get at the unvarnished facts of the case. This proposal for supplementation gives corporate counsel an unwarranted opportunity to keep the plaintiff's counsel from getting those unvarnished, "un-cleaned-up" facts from the 30(b)(6) witness.

Second, I also believe that forbidding contention questions in 30(b)(6) deposition would leave the playing field between individual litigants and corporate defendants even more unbalanced than it already is. Defense attorneys frequently ask individual plaintiffs contention questions, most often questions asking them to state why they believe they experienced unlawful discrimination, and every fact that supports that belief. These questions are challenging for plaintiffs with limited education and no experience in dealing with the deposition process. Given that reality, it is unclear to me why a 30(b)(6) deponent, who has been identified as the most suitable witness, and presumably prepared by corporate counsel, should be given a free pass on answering such questions. The use of contention interrogatories is a poor substitute for

contention questions at 30(b)(6) depositions for the obvious reason that the answers to contention interrogatories are prepared by corporate counsel with time to work, and re-work, the responses.

I appreciate the opportunity to submit these comments to the proposed amendments to Rule 30(b)(6).

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