17-CV-J

March 28, 2017

Honorable John D. Bates
Senior United States District Judge
Chair, Advisory Committee on Civil Rules
United States District Court for the District of Columbia
E. Barrett Prettyman Courthouse
333 Constitution Avenue N.W.
Washington DC 20001

Re: Proposed Study of Rule 30(b)(6) Revisions

Dear Judge Bates:

I am writing on behalf of the American College of Trial Lawyers (the "College") as Chair of the College's Federal Civil Procedure Committee with respect to suggested amendments to Rule 30(b)(6) that have been before the Advisory Committee on Civil Rules.

The College is dedicated to maintaining and improving the standards of trial practice, the administration of justice, and the ethics of the legal profession. Founded in 1950, the College is an honorary, invitation-only organization composed of leading trial lawyers. It is widely considered the premier professional trial organization in America. Its membership cannot exceed one percent of the total lawyer population of any state, and in virtually every state is a fraction of that number. The College is neither plaintiff nor defense oriented. Our Committee is charged with monitoring the operation of the Federal Rules of Civil Procedure, evaluating proposed changes, and commenting on those changes where appropriate.

Our Committee has considered the comments contained in a letter dated January 26, 2016, by individual members of the American Bar Association suggesting a number of amendments to Rule 30(b)(6) as well as a letter dated September 1, 2016, from Joseph Garrison, National Employment Lawyers Association liaison to the Advisory Committee, opposing those suggested amendments. I attended the Advisory Committee's meeting in Washington, D.C., on November 3, 2016 and reported to our Committee on the discussion at that meeting regarding Rule 30(b)(6). Our Committee appointed a subcommittee to delve into the issues raised regarding Rule 30(b)(6) in detail; that subcommittee provided an extensive report to the full Committee. I am enclosing an abbreviated copy of that report with this letter.

In summary, our Committee does not believe that any amendments to Rule 30(b)(6) are warranted at this time.

A substantial factor informing our Committee's position is that several suggested amendments seek to codify answers to issues that reasonable counsel, mindful of their duty to cooperate in securing "the just, speedy, and inexpensive determination of every action and proceeding," as set forth in the December 1, 2015, amendment to Rule 1, ought to be able to resolve. How counsel resolve those issues – and how judges resolve them, either at an informal conference under amended Rule 16(b)(3)(B)(v) or even by a formal ruling – is

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not of great significance. It does not seem critical for the orderly conduct of civil business whether, for example, counsel agree that a Rule 30(b)(6) deposition notice containing three areas of inquiry requiring three separate corporate designees counts as one deposition or three, for which seven hours or twenty-one hours will be allowed. The same can be said for whether asking a Rule 30(b)(6) designee a question about which the witness has personal knowledge but is beyond the scope of the specified areas of inquiry in the deposition notice converts one deposition into two. Counsel who anticipate issues in these areas are able to bring them up at a Rule 26(f) conference and ask that they be addressed in a Rule 16 scheduling order. And the fact that Rule 30(b)(6)does not provide for objections to the deposition notice does not deprive the organization of a remedy for an abusive notice; if counsel cannot resolve any disputes, even with input from the court at an informal conference, a motion for a protective order is always available. The December 2015 amendments should be given a fair chance to work before additional amendments that could be seen as micro-managing areas on which counsel ought to be able to agree are layered on top of them.

Other suggested amendments raise questions that the existing Rule adequately addresses. If, for example, an organization lacks knowledge about a designated area of inquiry and cannot reasonably obtain it, it can rely on the provision that the person it designates is only obligated to "testify about information known or reasonably available to the organization."

Our Committee also noted the experience of the judges on the Advisory Committee, as recounted at the November 3, 2016 meeting, that they have not had to deal with substantial motion practice under Rule 30(b)(6).

In summary, and as set forth in more detail in the enclosed report, our Committee respectfully submits that amendments to Rule 30(b)(6) are not warranted at this time. The December 1, 2015 amendments to the Rules – the duty of cooperation, the emphasis on greater judicial involvement in case management, the encouragement of informal, pre-motion resolution of discovery disputes – provide a framework within which issues arising under Rule 30(b)(6) can and should be resolved.

The College appreciates the Advisory Committee's consideration of these views.

Respectfully,

Frank J. Silvestri, Jr.
Federal Civil Procedure Committee Chair

Enclosure

MEMORANDUM

TO: Frank Silvestri, Esq., Chair, ACTL Federal Rules of Civil Procedure Committee

FROM: Rule 30(b)(6) Subcommittee
David Balser, Stanley G. Barr Jr., Fred Buck, Bill Glahn, and Thomas M. Green

DATE: February 18, 2016

RE: Recommendations Regarding Federal Rule of Civil Procedure 30(b)(6)

On November 15, 2015, the ABA Section of Litigation Federal Practice Task Force produced a Report on Rule 30(b)(6) Depositions of Organizations, in which the Task Force identified a number of issues for possible amendment of the Rule to improve legal practice with respect to the depositions of organizations. This memo briefly reviews the case law and our experience practicing under Rule 30(b)(6), and concludes that, in our judgment, amendment of the Rule is neither necessary nor advisable.

The issues identified by the Task Force Report and analyzed herein are as follows:

1. Knowledge (whether a corporation be required to produce someone with first-hand knowledge of the noticed topics);
2. Objections;
3. Number of topics;
4. Number of witnesses (and how those should count for the 7 hour rule and the 10 person limit);
5. Questioning outside the scope of the deposition;
6. Reasonable particularity of the noticed topics;
7. Contention depositions;
8. Evidentiary value (whether the responses are judicial admissions);
9. How to proceed when no one with knowledge can be identified;
10. Non-parties and the interplay with Rule 45;
11. Multiple 30(b)(6) depositions of the same entity; and
12. Discovery into preparation of the witness(es).

1. Knowledge and 2. Number of Topics

Two issues identified in the Task Force Report are whether a corporation should be required to produce someone with first-hand knowledge of the noticed topics and whether the number of topics should be limited. (Task Force Report at 3 and 6.) A review of typical decisions in federal courts, coupled with conversation with fellow practitioners, leads to the conclusion that the Rule does not require amendment to address either of these issues.

Federal courts have consistently held that Rule 30(b)(6) requires that the corporate party designate persons having knowledge of the matters sought by the discovering party and prepare those persons to provide full, complete and non-evasive answers to the questions posed. Rule

30(b)(6) provides that the person designated to testify on behalf of a corporation "shall testify as to matters known or reasonably available to the organization." The rule "implicitly requires the designated representative to review all matters known or reasonably available to it in preparation for the Rule 30(b)(6) deposition. This interpretation is necessary in order to make the deposition a meaningful one and to prevent the sandbagging of an opponent by conducting a half-hearted inquiry before the deposition but a thorough and vigorous one before the trial." (citations omitted). *Lutz v. St. Paul Fire & Marine Ins. Co.*, 2005 U.S. Dist. LEXIS 12568, *7 (S.D. Ohio May 24, 2005). The pertinent cases are clear that direct personal knowledge is not necessary, but the witness(es) must be educated to respond as to the corporation's collective knowledge on the pertinent topics. We agree with the Task Force that an organization "should retain maximum flexibility as to who it may choose to designate" because it will be bound by the witness's testimony. (*Id.* at 4.)

There is scant case law addressing whether any given number of topics is too many. Generally, cases deal obliquely with the number of topics while shaking out whether there is topical clarity and relevance. *Phillips v. Philip Morris Cos.*, 2013 U.S. Dist. LEXIS 91189 (N.D. Ohio June 28, 2013).

Conversations with fellow practitioners have provided confirmation of our personal experience -- almost always, reasonable counsel can work out issues regarding the person or persons to speak on behalf of the corporation, the scope of the witnesses' knowledge, investigation and education specifically for the deposition, and the number of topics to be addressed.

3. Objections

As the Task Force points out, Rule 30(b)(6) and its accompanying advisory committee notes are silent on parties' right to object. (Task Force Report at 4.) Instead, the right to object under the Rule has developed in case law. However, the only procedure that courts currently recognize is the right to move for a protective order. *See, e.g.*, *Lykins v. Certaineed Corp.*, 555 Fed. App'x 791, 796-98 (10th Cir. 2014); *Sprint Commc'n Co. v. Vonage Holdings Corp.*, No. 05-2433-JWL-DJW, 2007 WL 2333356, at *2 (D. Kan. Aug. 15, 2007) (explaining that protective orders may be available when parties raise challenges under Rule 30(b)(6)). In contrast, no court has explicitly validated parties' rights to object to topics, relevancy, or other reasons. (*See* Task Force Report at 4.)

In order to enhance the scope of objections under Rule 30(b)(6), the ABA suggests a revision of the Rule that includes procedures on how parties may object to deposition requests. (Task Force Report at 6.) Further, it advises that a revision may create both a specified period for objection as well as a requirement that responding parties indicate who will be testifying as an organizational representative. (*Id.*)

These suggestions, which would clarify grounds to object under Rule 30(b)(6), would likely lead to heightened pre-deposition wrangling. We believe that as to objections to noticed

topics, the current protective order paradigm operates sufficiently well and that amendment is not warranted.

4. Number of Witnesses

A perceived ambiguity in Rule 30(b)(6) identified by the Task Force Report is how many witnesses should be called in response to a Rule 30(b)(6) notice, and whether these witnesses can count for more than one deposition or whether they can be deposed for longer than 7 hours. (*See* Task Force Report at 8.) However, attempting to definitively answer these questions by amending the Rule would essentially put the cart before the horse. "The number of witnesses that must be produced is the number of witnesses it takes to provide the information sought by the interrogating party, no more and no less." Michael R. Gordon & Claudia DePalma, *Practice Tips and Development in Handling 30(b)(6) Depositions* at 8, ABA Section of Litigation Section Annual Conference, April 2014.

The best practice is "preparing one, comprehensive Rule 30(b)(6) deposition notice with all potential topics." David B. Markowitz & Joseph Franco, *Preparing and Responding to the Rule 30(b)(6) Notice* (retrieved February 15, 2017)[1]. Practicing attorneys generally understand that the "one bite at the apple" rule applies to Rule 30(b)(6) depositions. *See id.*; *see, e.g., State Farm Mut. Auto Ins. Co. v. New Horizon, Inc.*, 254 F.R.D. 227, 233235 (E.D. Penn. 2008), *In re Sulfuric Acid Antitrust Litigation*, 2005 WL 1994105, *2 (N.D. Ill. 2005), *and Groupion, LLC v.Groupon, Inc.*, 2012 WL 359699, *56 (N.D. Cal. 2012) (suggesting that the best practice is to prepare one comprehensive deposition notice with all potential topics for the corporation). One well-drafted 30(b)(6) deposition notice therefore counts as one single, separate, seven-hour deposition, no matter how many witnesses the corporation involves. *Sabre v. First Dominion Capital*, LLC, No. 01-CIV-2145, 2001 WL 1590544, at *1 (S.D.N.Y. Dec. 12, 2001) (citing the Advisory Committee Notes to the 1993 amendments to the F.R.C.P.).

We believe that the current framework is already sufficient to encourage a logical resolution to the problem of counting 30(b)(6) witnesses and that no amendment to the Rule is necessary to clarify the ambiguity in the Rule.

5. Questioning Outside the Scope of the Notice of Deposition

A witness who is a designee under Rule 30(b)(6) may also have personal knowledge of relevant matters falling outside the areas of inquiry described in the deposition notice. When that happens, the question arises as to whether the designee may be questioned in those areas and what the legal effect of the testimony should be. (*See* Task Force Report at 9.) Rule 30(b)(6) is silent on those issues. The inquiry of whether the rule should be amended to address that circumstance implicates several questions – (1) Should a corporate designee be permitted to testify to matters outside the scope of the notice of deposition? (2) If so, is the testimony binding on the corporation under 30(b)(6) or should the witness be treated as a fact witness under Fed. R. Civ. P. 30(b)(1)? (3) How and when should the parties address that issue? (4) When a designee is questioned about matters both in and outside the scope of the 30(b)(6) notice does the

[1] http://www.markowitzherbold.com/pressroom/Articles/PreparingandRespondingtotheRule30b6Notice

deposition count as one or two depositions against the party's ten deposition limit under Fed. R. Civ. P. 30(a)(2)(A)(1) and how is the deposition treated against the seven-hour time limitation under Fed. R. Civ. P. 30(d)(1)?

The case law addressing these issues, the parties' obligation to assist in the "just, speedy and inexpensive determination of the action," and the existing provisions of Rule 30 suggest that the current framework is adequate to address these types of issues on a case by case basis without an amendment to the Rule. Most courts have concluded that there is no bar to deposing a designee as a fact witness in those non-designated areas in which that witness has personal knowledge. See, e.g., *King v. Pratt & Whitney,* 161 F.R.D. 475 (D. Fla. 1995). Those same courts have usually concluded, implicitly or explicitly, that when a corporate designee testifies outside the scope of the 30(b)(6) notice he or she testifies a fact witness under Rule 30(b)(1) and the testimony is not binding on the corporation. *Philbrick v. eNom, Inc.,* 593 F.Supp. 2d 352, 363 (D.N.H. 2009) ("[I]f the deponent does not know the answer to questions outside the scope of the matters described in the notice then that is the examining party's problem"). This represents a practical and workable approach consistent with a "just, speedy and inexpensive determination of the action" under Rule 1.

There remains the issue of whether the deposition counts as one or two depositions toward the ten deposition limit in Rule 30(a)(2)(A)(i) and whether it may exceed the seven-hour limitation on depositions in Fed. R. Civ. P. 30(d)(1). (*See* Task Force Report at 9.) There is no reason to amend the Rule to provide that a single deposition in which the deponent is questioned both as a designee and as a fact witness should count as two depositions toward the limit or that the time limit be extended to 14 hours for that witness. In those circumstances where the witness' testimony as a designee and/or as a fact witness is so extensive that more than seven hours is required to complete the deposition the party may obtain a stipulation or seek the court's leave under Rule 30(a)(2)(A)(i) to take more than ten depositions or under 30(d)(1) to extend the time limit for a single deposition.

6. Reasonable Particularity

Rule 30(b)(6) imposes reciprocal obligations on the party seeking the deposition and the party designating the witness(es). The party seeking discovery though a Rule 30(b)(6) deposition is required to describe "with reasonable particularity" the matters on which examination is requested. Once served with the 30(b)(6) deposition notice which identifies the subject areas "with reasonable particularity" the responding party is required to produce one or more witnesses knowledgeable about the subject matter. *Great American Insurance Company v Vegas Construction Company, Inc.,* 251 F.R.D. 534, 539 (D. Nev. 2008); *Marker v. Union Fidelity Life Insurance Company,* 125 F.R.D. 121, 126 (M.D.N.C. 1989). The responding party's obligation to identify and prepare witnesses to testify knowledgeably is contingent on the subject areas being identified with "reasonable particularity" in the deposition notice.

Rule 30(b)(6) contains no definition of "reasonable particularity." What constitutes "reasonable particularity" within the meaning of the rule has been the subject of many reported decisions. In *Prokosch v. Catalina Lighting Inc.,* 193 F.R.D. 633 (D. Minn. 2000) the court posited "subject areas which [are] both temporally and factually relevant" to the claims in the

case as one touchstone. 193 F.R.D. at 637. In general, the courts have refrained from abstract definitional pronouncements on the meaning of the term choosing to focus instead on the language of the deposition notice and an "I know it when I see it" approach to whether the subject areas are described with sufficient particularity. A few general principles have emerged which provide guidance as to what does and does not constitute "reasonable particularity" in the context of a Rule 30(b)(6) deposition notice. "Where...the defendant cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible." *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000). Topic designations which do not provide an "outer limit" of the areas of inquiry have largely fallen into two general categories. First the inclusion of broadening qualifiers such as "including but not limited to" aptly described as "that favorite phrase of insecure litigators who worry that, no matter how carefully drafted, their discovery lists are somehow missing something." Michael R. Gordon and Claudia DePalma, *Practice Tips and Development in Handling 30(b)(6) Depositions* at 8, ABA Section of Litigation Section Annual Conference, April 2014. Second, the use of all-encompassing "catch all" descriptions such as "any other matters relevant to this case, or which may lead to the discovery of relevant evidence." *Alexander v. Federal Bureau of Investigation,* 188 F.R.D. 111, 121 (D.D.C. 1998) (language non-compliant on its face).

We agree with the Task Force that that no further refinement or elaboration of the term "reasonable particularity" in the rule is needed. (*See* Task Force Report at 12.)

7. Contention Depositions

Rule 30(b)(6) does not address the issue of whether the Rule may be used to require the designation of a witness to address the underlying facts supporting a specific allegation in a complaint, counterclaim or affirmative defense. The Report put the question as follows: "Can Rule 30(b)(6) depositions be used to obtain opinions and subjective beliefs of an organization or as contention depositions?" Report, p. 12.

We have reviewed all of the cases cited in the Report and would not favor making a change to Rule 30(b)(6) on this issue. As demonstrated by the Report, there are very few reported decisions on this issue. Furthermore, the cited cases that are said to reject the framing of contention topics in the deposition notice do not establish a blanket exclusion. In fact, many of those cases deal with efforts to depose counsel, or to invade the work product protection to the extent that only counsel could answer the questions in the notice. *See e.g.*, *SEC v. Morelli*, 143 FRD 42 (S.D.N.Y. 1992) and *Shelton v. American Motors*, 805 F.2d 1323, 1329 (8th Cir. 1986). In our view, the cases that exclude the use of "contention topics" in the 30(b)(6) notice are primarily the result of the party seeking the deposition to attempt, in the first instance, to ask contention interrogatories or frankly, by failing to appropriately frame the topic in the deposition notice (see below). In several of the cited cases, the Court used its discretion over the timing of discovery methods to require the party seeking the deposition to propound interrogatories and requests for production before seeking the 30(b)(6) deposition.

In summary, while we agree with the conclusion in the Report that "depositions should be confined to factual matters and not permitted to extend to contentions, defenses, opinions or legal interpretations," we do not think the Rule needs to have a blanket exemption that might

stymie efforts to obtain the ***factual underpinning*** of the complaint, answer or counterclaim. If the topics are properly framed to seek facts, this problem can be avoided.

8. Evidentiary Value

In terms of a Rule 30(b)(6) deposition's evidentiary value, courts are split. Most say that organizational testimony, although binding, will not constitute a judicial admission.[2] For example, in *Industrial Hard Chrome, Ltd. v. Hetran, Inc.*, the court denied the plaintiff's *motion in limine* to exclude contradictory statements because "a Rule 30(b)(6) deposition is evidence which, like any other deposition testimony, can be contradicted and used for impeachment purposes." 92 F. Supp. 2d 786, 791 (N.D. Ill. 2000); *see also A.I. Credit Corp. v. Legion Ins. Co.*, 265 F.3d 630, 637 (holding that a corporate entity is not absolutely bound by its representative's deposition statements). These courts have operated under the view that Rule 30(b)(6) depositions are similar to other Rule 30 depositions, which may be contradicted in trial.

Still, a faction of jurisdictions have issued holdings directly contradicting the above notion. For example, one court has held that "a corporation cannot later proffer new or different allegation that could have been made at the time of the 30(b)(6) deposition." *Rainey v. American Forest & Paper Assn.*, 26 F. Supp. 2d 82, 94 (D.D.C. 1998) (citing *Ierardi v. Lorillard, Inc.*, 1991 WL 158911, at *3 (E.D. Pa. Aug. 13, 1991). Courts adopting this minority viewpoint argue that the purpose of disallowing contradiction is that organizations should be prevented from "thwarting inquiries during discovery, then staging an ambush during the later phase of the case." *Rainey*, 26 F. Supp. 2d at 95.

Like the courts, the ABA is split on how to deal with the issue of Rule 30(b)(6) as judicial admissions. Some argue that courts are correct in denying that Rule 30(b)(6) depositions create judicial admissions. (Task Force Report at 15.) In contrast, others believe that a higher standard is warranted for organizational depositions. *Id.* Proponents of the higher standard argue that the court should force deponents to ask permission to withdraw prior statements made under Rule 30. Thus, despite this divergence, none of the ABA Task Force adopts the minority standpoint. This refusal to adopt the minority approach is likely warranted. The text of Rule 30 does not create a higher evidentiary standard for organizational depositions. *See generally* Fed. R. Civ. P. 30. Therefore, it likely follows that Rule 30(b)(6) depositions should be treated like other depositions, which would allow parties to later contradict their own statements. However, those statements would be subject to impeachment. As this is the majority view, we do not believe additional changes to the Rule are necessary.

9. Organizations Without Knowledge

The Advisory Committee proposal (at present) suggests an amendment to the Rule, stating: "If the organization is unable, after good faith efforts, to locate [information][facts] on a matter for examination, or a person with knowledge of that matter, it must so notify the party that served the notice or subpoena..... That party may then move the court under Rule 37(a) for an

[2] Judicial admissions are binding statements that cannot be contradicted at trial or on appeal. (See Task Force Report at 14.)

order compelling testimony on this matter but such testimony may only be required as directed by the court."

As we understand the proposal, the amendment would essentially shift the presumption that there is always someone who has some knowledge or who could be prepared, and thus that a witness must be designated, to one in which the party seeking the deposition would be required to show why the claim that there is no such witness is inadequate. As the Rule stands now, the burden is on the party subject to the deposition notice to produce a knowledgeable witness. We come down on the side of leaving it there. In the rare instance in which an organization has no knowledge of the topics, the corporation can either reach agreement with the opposing party to not produce a witness or, failing that, seek a protective order.

10. Non-Parties and Rule 45

Rule 45 governs subpoenas to non-party corporations, who may be called upon to give a 30(b)(6) deposition. Amended in 2013, the Rule continues to recognize that non-parties should be protected from "undue burden and expense." Rule 45(d)(1). The Task Force notes that Rule 45 "does not similarly protect Rule 30(b)(6) depositions of the organization sought through subpoena." (Task Force Report at 19.) However, courts already apply a "special 'nonparty' blanket of 'undue burden protection' that insulates nonparty 30(b)(6) organizations from the full extent of the 30(b)(6) preparation rule." Gordon & De Palma, *Practice Tips*, *supra*, at 13. The Task Force cites one such case, *Wultz*, where the court found that a non-party organization does not have the same burden of preparation for a 30(b)(6) deposition. *Wultz v. Bank of China*, 293 F.R.D. 677, 680 (S.D.N.Y. 2013). The current framework is sufficient to protect non-parties from undue burden, and we do not believe that further amendments are necessary.

11. Multiple 30(b)(6) Depositions of the Same Entity

What happens if the examiner seeks to serve a second Rule 30(b)(6) notice on an organization on different topics? In that case, leave of court is generally required. *See* 8A Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, FEDERAL PRACTICE AND PROCEDURE §2104 (3d ed. 2010).The Task Force believes that court permission should not be required for a second deposition on different topics "if they are truly different topics and not efforts to redepose the witness on some areas previously covered." (Task Force Report at 21.)

Ideally, the noticing party will take only one 30(b)(6) deposition, to which the corporation will completely and efficiently respond. But as in the case of multiple witnesses per 30(b)(6) deposition, the parties are best situated to evaluate whether multiple 30(b)(6) depositions are likely to be efficient. The current rules encourage the noticing party to serve a complete deposition notice on a corporation, so the corporation can respond most effectively. Similarly, the corporation has an incentive to adequately prepare for a 30(b)(6) deposition, because the current assumption is that there will only be one. Changing the Rule so that leave of court is not required when noticing a second 30(b)(6) deposition could be problematic, because the noticing party could then deliberately fail to provide a complete list of topics for the first 30(b)(6) deposition. Such gamesmanship may provide some strategic advantage to the noticing party, but it would be expensive and inefficient for the deponent. In contrast, the current practice

of requiring court permission for a second 30(b)(6) deposition encourages minimally intrusive discovery.

In our view, amending the Rule is unnecessary, and may even be counterproductive, to the extent that an amendment would discourage negotiation and efficient discovery.

12. Discovery into Preparation of the Witness(es)

The Task Force notes that courts are split over whether the documents that were reviewed to prepare for a deposition qualify as protected work product. (Task Force Report at 22.) However, an experienced litigator will not assume that such compilations are definitively privileged when preparing a 30(b)(6) witness in any case.

Overall, the Task Force's recommendation that "counsel should have some latitude to explore the extent to which a witness was properly prepared" but "[w]ork product and privilege objections should still have a place" is already borne out in the case law. (*See* Task Force Report at 22.) We do not recommend resolving the court split in either direction, and therefore we conclude that amendment to the Rule is inadvisable.

Conclusion

Having carefully considered the Task Force's recommendations for reform of Rule 30(b)(6), we conclude that the current framework strikes an adequate balance between the competing interests in Rule 30(b)(6). While the Task Force has identified genuine conflicts inherent in the application of the Rule, our experience is that any ambiguity is currently best resolved through the negotiation of the parties, who are best suited to apply the framework of Rule 30(b)(6) to the complexities of their specific case.