



Deposition of Corporate Witness Denied in Light of Contention Interrogatories

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Earlier in the litigation, the defendant filed a motion for an informal hearing before the magistrate judge regarding the appropriateness of the plaintiff's 30(b)(6) deposition topics. Those topics included the defendant's invalidity contentions, noninfringement contentions, damages limitations contentions and affirmative defenses. The magistrate judge issued a protective order preventing the plaintiff from asking the 30(b)(6) witness about those topics. The magistrate judge explained that in the case at hand, interrogatories were a better discovery vehicle for the topics and that a 30(b)(6) deposition on those topics would be overly burdensome. The plaintiff raised several objections to the protective order.

The district court reviewed the magistrate judge's order for clear error under Federal Rule of Civil Procedure 72(a). First, the court found that the magistrate judge had not based the ruling on the premise that 30(b)(6) depositions are per se inappropriate vehicles for discovery on contentions and affirmative defenses. Instead, the order had explained that appropriateness is considered on a case-by-case basis, and this was what was done here.

Next, the court overruled the plaintiff's objection that the magistrate judge had required the plaintiff to provide a compelling reason for the deposition. The court explained that, properly construed, the order stated that the deposition on those topics would be burdensome and not cost-effective, and that because the plaintiff had not provided a reason why that was not the case, the plaintiff had not provided a compelling reason for allowing the deposition on the topics.

Finally, the court overruled the objection that the magistrate judge had erred by requiring interrogatories as the only way to ask questions on the topics. The court explained that the

plaintiff had failed to show clear error with its argument that the witnesses were in the best position to answer the questions. The court reasoned that even if the plaintiff would be in a better position with a deposition than an interrogatory, that did not show clear error by the magistrate judge, especially in light of the dearth of support showing that the deposition topics would not be overly burdensome and costly.

Practice Tip: Parties wishing to take 30(b)(6) deposition testimony should be aware of the local practices and rulings on whether and under what circumstances the 30(b)(6) topics can include contentions and defenses. Parties should also bear in mind that discovery should be proportional to the needs of the case, and that less burdensome and less costly methods of obtaining the same discovery may be favored by courts.

Lifted Limited, LLC v. Novelty Inc., Civil Action No. 16-cv-03135-PAB-GPG (D. Colo. Sept. 30, 2021)

Categories

District Court

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