

Deposing Rule 30(b)(6) Corporate Witnesses

Preparing the Deposition Notice, Questioning the Corporate Representative, Raising and Defending Objections, and More

TUESDAY, DECEMBER 13, 2016

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Charles H. Allen, Trial Lawyer, **Charles Allen Law Firm**, Atlanta

Ronald D. Coleman, Partner, **Archer & Greiner**, New York

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DEPOSING THE CORPORATE WITNESS UNDER FED. R. CIV. P. 30(b)(6)



The Deposition Notice · Questioning the Corporate Representative ·
Raising and Defending Objections · More

Charles H. Allen | Ronald D. Coleman
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Faculty

Charles H. Allen, Trial Lawyer

Charles Allen Law Firm, Atlanta

Mr. Allen is an expert on depositions, was involved in hundreds of successful cases, and has spoken and consulted nationally on deposition practice. He has deposed thousands of witnesses and has been second chair on more than 20 seven figure malpractice cases. He has first chaired several personal injury cases to verdict, he has personally been involved in successful conclusion of 100 verdicts and settlements in excess of \$1,000,000.00, and he has overseen the review of 600 personal injury cases per year for the last 15 years. Recently received a \$15 million verdict for the wrongful death of a 51 year old mentally handicapped man on a paratransit bus.

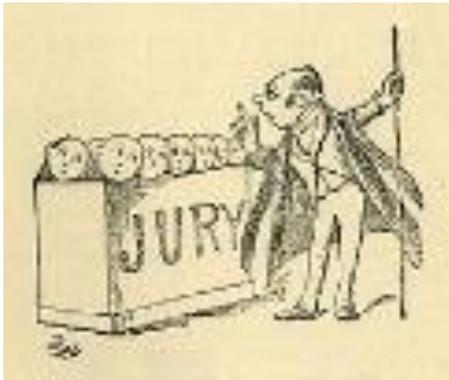
Ronald D. Coleman, Commercial Litigator

Partner, Archer & Greiner, P.C. New York / Hackensack NJ

Mr. Coleman is a commercial litigator focusing on copyright, trademark and unfair competition. He concentrates on commercial and intellectual property litigation and his work has been acknowledged as defining the leading edge in IP, online and new media counseling. His work is developing the law relating to the use and abuse of intellectual property on the Internet. He co-authored the chapter on *Responses to Complaints* in the first edition of *Business and Commercial Litigation in the Federal Courts* published by the American Bar Association and the West Group.

Outline

- When to take a Rule 30(b)(6) deposition
- Notice requirements under Rule 30(b)(6)
- Understanding the party's obligations in designations witnesses
- Preparing for the deposition
- Questioning the corporate representative
- Dealing with evasive or difficult corporate representatives
- Raising and defending objections



30(b)(6): When?



1. When specific witnesses in a corporation able to testify about a factual issue are not known
2. When a corporate party's "official" position is needed on a factual issue
3. To identify
 - i. the provenance, location or disposition of documents or
 - ii. the identity of the custodian of documents

30(b)(6): When?



4. When fact witnesses whose testimony may be imputed to the corporation have testified inconsistently
5. When written interrogatories won't do the job (i.e., **always**)
6. Other situations...

Please Notice This



Notice requirements under Rule 30(b)(6)

- (b) NOTICE OF THE DEPOSITION; OTHER FORMAL REQUIREMENTS. . . .
- (6) *Notice or Subpoena Directed to an Organization*. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and **must describe with reasonable particularity the matters for examination**. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. **This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.**

Notice General testimony

deposition testimony is not concluded on this date and time, the deposition will be continued on the 21st day of January, 2015 at 10:00 a.m. at the law offices of ~~Goldman Sachs~~ located at 100 West ~~Lawrence Street, Lobby Conference Room,~~ ~~Aspen, CO~~ 80511. The deposition(s) will be conducted pursuant to the Federal Rules of Civil Procedure before a Notary Public, or before some other officer authorized by law to administer oaths.

Defendant ~~K-C~~ is requested, pursuant to F.R.C.P. Rule 30(b)(6), to designate one or more of its officers, directors, or managing agents or other persons who consent to testify about matters known or reasonably available to Defendant K-C. The matters on which each person so designated will be examined will include the following:

A. General Testimony

1. The factual basis for Defendant ~~K-C~~ Answer to the allegations in Plaintiffs' First Amended Complaint for Damages.
2. The factual basis for Defendant ~~K-C~~ Affirmative Defenses to Plaintiffs' First Amended Complaint for Damages.
3. Insurance agreements (including self-insurance fund or risk pool fund) that exist under the terms of which the person or company issuing the same may be

Notice General testimony

called upon to satisfy all or part of any judgment against you which may be entered in favor of Plaintiffs in this action.

4. The name, address and phone numbers for all custodians of the documents produced by Defendant [REDACTED] in response to discovery requests in this case.

5. The electronic creation, duplication and storage of the documents produced by Defendant [REDACTED] in response to discovery requests in this case and documents and records created by Defendant [REDACTED] in the ordinary course of business.

6. Defendant [REDACTED]'s responses to Plaintiffs' Interrogatories in this case.

7. Defendant [REDACTED]'s responses to Plaintiffs' First Requests for Production of Documents.

8. The nature of all responsive documents, communications, or things that have been withheld, in response to all discovery requests in this case, on the grounds of privilege or protection, including:

- (a) a description of any documents;
- (b) the author of any documents and his or her address(es) and phone number(s);

Notice Organizational testimony

- (c) the identity of the custodian of any documents and things and his or her address(es) and phone number(s);
- (d) the date the document was created and the person(s) to whom the document or copies were transmitted; and,
- (e) a summary of the contents of each document, communication or thing.

B. Organizational Testimony

9. Defendant ██████'s corporate administration structure, organizational structure and management structures between January 1, 2012 and the present.

10. Defendant ██████'s bookkeeping and accounting policies and practices between January 1, 2012 and the present, including but not limited to authority to sign contracts and make payments to subcontractors for work performed on Defendant ██████'s premises and authorized users of financial and accounting information.

11. Defendant ██████'s organizational and operational relationship with Defendant ████████████████████ Corporation, insofar as ownership and management duties are concerned at the business located at 340 Westridge Parkway, McDonough, Georgia 30253.

Notice Specific testimony

C. Specific Testimony

12. Identification of Defendant [REDACTED] employees that were on duty on February 20-24, 2013.

13. Identification of any employees and/or subcontractors that were hired by Defendant [REDACTED] to maintain and/or inspect trailers loaded at Defendant [REDACTED] premises between January 1, 2013 and February 28, 2013.

14. Identification of all investigation reports, photographs (moving or still), videotapes, or other documents of any kind which reflect or relate to the occurrence which gives rise to Plaintiffs' claims or Defendant [REDACTED]'s contentions in this action or any of the facts or circumstances upon which Plaintiffs' claims or Defendant's contentions are based.

15. Identification of all written or otherwise recorded statements in connection with the subject matter of this litigation.

16. Identification of all state, municipal and company incident reports or other incident records concerning falling object incidents on Defendant [REDACTED]'s premises located at 340 [REDACTED] Parkway, [REDACTED] Georgia 30253 between January 1, 2012 and the present.

17. All written or otherwise recorded statements in connection with the subject matter of this litigation.

Notice Specific testimony

18. Identification of any and all maintenance, repair, or service records reflecting repairs, service, or changes to the subject trailer.

19. Identification of any and all log books, maintenance or inspection reports, or any and all other documents of any kind or by any other name which relate in any way to the inspection or maintenance of the subject trailer for the 72 hours before and after the Plaintiff Brett Brown's injury occurred on February 24, 2013.

20. Identification of any and all documents, including employee handbooks, policy or procedure manuals, or video tapes, regarding Defendant K-C's policies regarding safety, training, testing, inspecting, repairing, or maintaining Defendant's premises.

21. Identification of any and all contracts or agreements entered into between the Defendant [REDACTED] and any other individual or company and regarding cleaning, maintaining, or inspecting the subject trailer prior to, or following cargo loading.

22. Identification of any and all contracts or agreements entered into between the Defendant [REDACTED] and any other individual or company and regarding the loading of trailers at the facility located at 340 Woodridge Parkway, McDonough, Georgia 30253.

Notice Specific testimony

23. Identification of any and all notes, memoranda, minutes, and all other written evidence of safety meetings held by you from January 1, 2012, to the present.

24. Identification of any and all schedules pertaining or related to the inspection of the subject trailer on or about February 20-24, 2013.

25. Identification of all documents which contain or purport to contain cargo loading industry standards regarding the inspection of trailers that are located on the premises of a distribution facility, such as Defendant's facility 340 Westridge Parkway, McDonough, Georgia 30253.

26. Identification of any and all documents which contain or purport to contain state industry standards regarding the inspection of trailers that are located on the premises of a distribution facility, such as Defendant's facility 340 Westridge Parkway, McDonough, Georgia 30253.

27. Identification of any indemnity agreement between any party to this case and non-party which is relevant to the incident and injuries at issue in this lawsuit.

PLEASE HAVE SAID DESIGNEE OR DESIGNEES PRESENT AT SAID TIME AND PLACE. Additionally, the designee must produce all documents identified in the attached Exhibit "A" to this Notice.

This 30th day of December, 2014.

CHARLES ALLEN LAW FIRM

/s/ Charles Allen

Charles Allen

GA Bar No. 009883

Attorney for Plaintiffs

191 Peachtree Street, NE
Suite 3300
Atlanta, Georgia 30303
(404) 419-6674
(866) 639-0287 Fax

Anticipate privilege objections

EXHIBIT A

NOTE A: In the event that any documents or things requested herein are withheld under a claim of privilege, you should provide sufficient information for this office to determine whether your claim is valid and made in good faith. In this regard, you should provide all information that the Court would need to rule upon your claim, which includes the following information with respect to all such information, documents or things:

- (a) The type of document or thing, its general subject matter and the place and approximate date it was prepared or created;
- (b) The name and title of each person who prepared or created the document or thing and the name and title of each other person who has received or examined the document or thing or a copy thereof;
- (c) A statement of the circumstances which bear on whether or not the claim of privilege is appropriate and whether the privilege that is claimed should extend to all or just to part of the document or thing;
- (d) The Request numbers of each specification to which the document or thing otherwise would be responsive; and,
- (e) The number of pages of the document, if applicable.

Definitions and instructions

NOTE B: To the extent any document called for by these requests is unknown to you, so state, and set forth such remaining information as is known. If any estimate can reasonably be made in place of unknown information, also set forth your best estimate, clearly designated as such, in place of unknown information, and describe the basis upon which the estimate is made.

DEFINITIONS AND INSTRUCTIONS

As used herein, the terms listed below are defined as follows:

1. The incident that occurred on or about February 25, 2013 that injured Plaintiff that is at issue in this litigation, is hereinafter referred to as “the subject incident.”
2. The “subject shipping and receiving facility” refers to the shipping and receiving facility located at 340 ~~Westfield~~ Parkway, McDonough, GA 30253.
3. The “subject trailer” that is at issue in this litigation refers to the trailer that Plaintiff ~~Brett Brown~~ picked up from the subject shipping and receiving facility on or about February 25, 2013.
4. The “subject load” refers to the cargo that Defendant loaded into the subject trailer on or about February 25, 2013 that injured Plaintiff ~~Brett Brown~~.
5. “Document” means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have

Definitions and instructions

knowledge, including but not limited to correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in whatever form, including copies, drafts, and reproductions. "Document" also refers to any other data compilations from which information can be obtained, and translated, if necessary, by you through computers or detection devices into reasonably usable form.

6. "Person" means any natural person, corporation, partnership, proprietorship, association, governmental entity, agency, group, organization, or group of persons.

7. "Defendant," "you," or "your" refers to, without limitation, Defendant ~~KCCG~~ and where applicable any predecessor, successor, attorney, agent, or representative of the answering Defendant.

8. "Plaintiffs" refers to, without limitation, the named Plaintiffs, and where applicable any predecessor, successor, attorney, agent, or representative of Plaintiff.

9. Terms in the singular shall be deemed to include the plural and terms in the plural shall be deemed to include the singular.

Document Requests

10. Use of feminine pronouns shall be deemed to include the masculine and neuter and use of masculine pronouns shall be deemed to include the feminine and neuter.

DOCUMENT REQUESTS

1.

All correspondence, materials, and other document(s) that evidence, reflect, or relate to any communication between Plaintiffs and Defendant, including but not limited to any communication between Plaintiffs and Defendant's insurance carrier and any representative thereof. Please note this includes, but is not limited to, the actual tape and transcription of any recorded statement(s).

2.

A copy of all records received in response to discovery or subpoenas served on any third party by Defendant in this case.

3.

All documents that Defendant contends contain support of any defense asserted by Defendant in this lawsuit.

4.

If Defendant disputes venue, a copy of all documents and materials that support Defendant's contention that venue is improper.



Notice requirements under Rule 30(b)(6) - Documents

- (b) NOTICE OF THE DEPOSITION; OTHER FORMAL REQUIREMENTS.
- (1) *Notice in General*. A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.
- (2) *Producing Documents*. If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

Document Requests

43.

Any downloadable computer data from the subject truck's computer system or ~~Swift Transportation~~, LLC's satellite system, or other similar system for the day of the incident and the 30-day period preceding the accident and the 5-day period subsequent to this incident.

44.

Any messages or other data sent via on-board computer system, satellite tracking system, telephone, Qualcomm or other similar system or other device to or from Plaintiff ~~David~~ Brown or the subject tractor-trailer involved in this incident for the day of the incident and the 30 day period preceding the incident and the 5-day period subsequent to this incident.

The Producing Party's Obligations

What are the responsibilities of the party served with a 30(b)(6) subpoena to prepare its witnesses?



Please Notice This



Notice requirements under Rule 30(b)(6)

- (b) NOTICE OF THE DEPOSITION; OTHER FORMAL REQUIREMENTS. . . .
- (6) *Notice or Subpoena Directed to an Organization*. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with **reasonable particularity** the matters for examination. **The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf**; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. **The persons designated must testify about information known or reasonably available to the organization**. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

The Producing Party's Obligations

- “Designate”:
 - “One or more”:
 - Officer
 - Director
 - Managing agent
 - Other person who consents to testify on its behalf
 - And “set out the matters on which each person designated will testify”



The Producing Party's Obligations

The person designated “must testify about information

**KNOWN OR REASONABLY
AVAILABLE TO THE
ORGANIZATION”**





Preparing to take the 30(b)(6) deposition

- “Hit lists”
- Questions to ensure you have the correct witness (examples)
- Obtaining rules and general principles
- Developing key questions

Sample “Hit list”

1. This can happen to anyone
2. Safety comes first
3. Defendant does not care
4. Defendant did not give plaintiff a choice
5. Defendant did not learn from mistakes
6. Defendant is dumb
7. Defendant is a liar
8. Defendant did not do their job
9. Defendant did not follow safety rules
10. Plaintiff did her job
11. Defendant should not have put plaintiff in danger



More “Hit list”

1. Regulations are safety rules
 1. Sources: government, trade organization or own policy and procedures
2. Must be followed
3. Must not violate
4. Must be enforced
5. Rules are clear
6. Following rules means make safest choice



More on Questioning the Corporate Representative

- Is witness also being produced in his personal capacity as a witness under 30(b)(1)
 - Whether noticed for deposition in personal capacity
 - Attribution as corporate spokesperson
 - Officer? Director?
 - First-hand knowledge?
 - Party's position?
 - Stipulation?
 - Advance ruling?
 - Overlap of “hours”



More on Questioning the Corporate Representative



- The “talking head”:
 - How prepared?
 - What documents?
 - Who prepared him?
- The “I don’t know” answer
 - Preserving objections
 - Reference to the deposition notice on the record



Questioning the corporate representative

Specific questions – Charles Allen

- Do you know?
- Do you know who knows?
- Do you know if anyone does know?
- Who?
- How can you find out?
- Is it easy to find out?
When did you know
- How did you know
- Does GM have a policy for someone
 - to test it
 - to discover it
 - to teach about it
 - to train about it
 - to educate about it
- Would you expect...?

Questioning the corporate representative
Example case – Charles Allen



Identify the people that know the most regarding:

1. OSIs
2. Seat heater manufacturing
3. Testing
4. Seat heaters risks with mobility restricted people

Questioning the corporate representative

Example case – Charles Allen



- Knew seat heaters get too hot
 - GM cars
 - Other cars
 - This platform
- Can burn people with normal sensation
 - GM cars
 - Other cars
 - This platform
- People just like Mr. Smith with disabilities with lack of sensation
 - GM cars
 - Other cars
 - This platform

Questioning the corporate representative

Example case – Charles Allen



- Who did they tell and when did they tell
 - Notify engineers
 - Notify the mobility program
 - Notify the dealers
 - Notify NHTSA
 - Notify Suppliers
- What action did GM take to fix,
 - and when did they take action
 - Did nothing
- Did GM changed design without fixing the problem

Questioning the corporate representative

Example case – Charles Allen



Do you believe company must ensure _____
happens to prevent harm?

The Difficult Witness

- Evasive or difficult corporate representatives
 - Remind counsel that the witness is HIS OR HER CLIENT’S designee.
 - Unlike a 30(b)(1) fact witness, this witness was “created” and designated to testify “**about information known or reasonably available to the organization**”
 - Courts may award sanctions!



The OTHER Lawyer in the 30(b)(6) Deposition

What strategies are effective in raising and defending objections during the 30(b)(6) deposition?

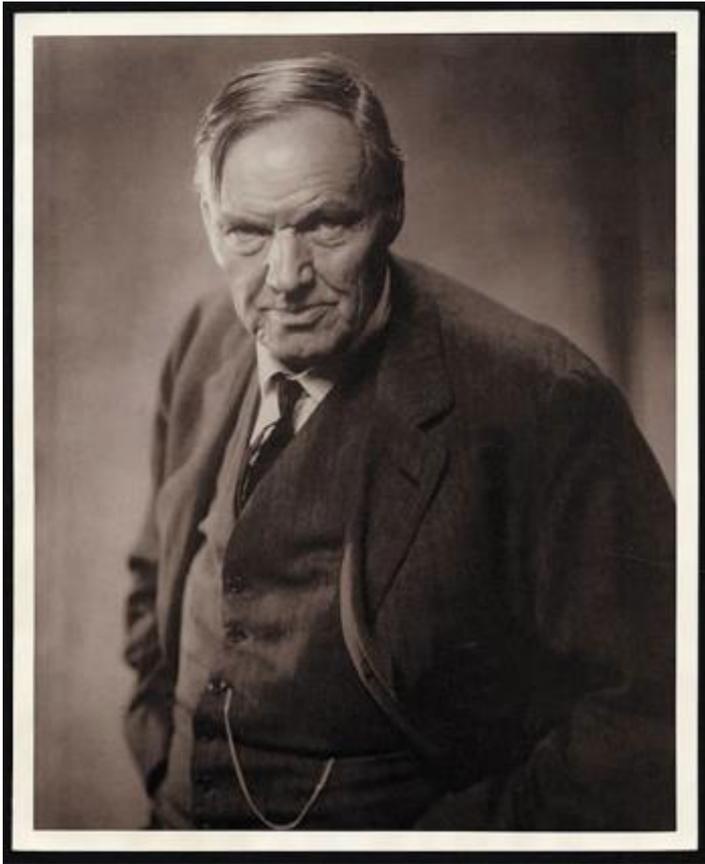


Strategies for Managing the OTHER Lawyer in the 30(b)(6) Deposition

- Place the 30(b)(6) notice on the record at the outset and confirm the witness's ability to testify on the designated topics immediately to forestall future scope objections
- As in **any** deposition, cut off speaking objections
- **Try** to prevent counsel from using specious “form” objections as cues to signal the witness regarding “bomb” questions



Strategies for Managing the OTHER Lawyer in the 30(b)(6) Deposition



- “Test” form objections, but not too often.
- If they turn out to be consistently phony, tune them out; they’re just meant to break your rhythm. This is YOUR deposition.
- There’s no such thing as a “moving to strike” in a deposition – THERE’S NO JUDGE THERE!
 - *Whenever an adversary pulls that in a deposition I’m in, I “deny” the motion – Ron C.*

Questions?

