

Understanding Corporate Designee Depositions

Anders Sleight: Welcome back to The Litigator's Lounge, devoted to discussing litigation news and updates with Offit Kurman's commercial litigators. I'm Anders Sleight, and joining me today is my partner, Niall McMillan. Niall, welcome back to the lounge. How you doing?

Niall McMillan: Thanks, Anders.

Doing well. Good to be here.

Anders Sleight: Good. Thanks for joining us. So, we hear a lot of, in the news and shows about depositions, right? It's always a high stakes moment in the case of any litigation matter. But what if you're involved in a lawsuit with a company? How does that work if you're deposing, somebody from the company?

Niall McMillan: Yeah. So depositions are an important part of the discovery process here. If you're involved in a lawsuit with a company or if a third party witness that you're deposing is a company as well, that's going to be done... If you want to depose the company in general, that's done through a corporate designee deposition is what it's [00:01:00] called.

And what that means is, first, the corporation or the LLC, any of these entities, you're going to designate certain topics that the deposition's going to be on. So you lay those out and then the corporation or the company has to have the obligation to have someone there. Could be multiple people.

Could be, Jan from HR can speak on this part, and Mike from accounting can speak to the other part. Either way, they have someone there who speaks to the topics that are designated, and they have to do a reasonable investigation beforehand to be able to speak to those topics. And so then the benefit of that, so if you're the person taking the deposition, is that you're going to get a lot of information from a lot of different, subject areas or people.

Then in a s- another deposition, maybe you want to depose the specific people that are identified in there, but what you're doing there is just getting, information from someone who knows a lot of information outside of just their personal knowledge. Which in an individual's deposition, that's what their duty is, just to say what's in their individual [00:02:00] knowledge there.

As well, in a corporate designee designation, what you got to think of is if you're the party responding to it or if you're the party, serving the deposition as well, what you want to think about is the topics that are designated. Once you receive that notice, look over those topics, try to find someone who can speak to them.

If they're over broad, if they're invading your company's privacy, et cetera, you do have a chance to object to those. And under the rules, you actually have to work with the attorney from the other side to try to get a reasonable, result on what those topics are going to be and to review them with them beforehand.

And yeah, so good. Any questions on there?

Anders Sleight: Yeah, so that's a good overview. What should you do if you're preparing to depose one of these designees? right? Or on the other, conversely, if you're about to be deposed and, taking time out of your day in your business, what should you do to prepare and be, you be ready to expect?

Niall McMillan: Exactly. So- on either side, what's gonna be the most important is what are those topics that are designated? So if the party's [00:03:00] serving the deposition notice, what you're gonna wanna do before you serve it, before you choose those topics, you wanna review and think about, if you're looking at a stack of documents that you got from the other side.

You wanna see what in those documents do I wanna explore further, or do I wanna simply say, "I need information on X." And so that's gonna be important there 'cause that's gonna lead to better results in getting actual information. If you're the person receiving it, you wanna look at those notices, those topics carefully, and make sure that you identify who can speak to them, beforehand, see, what the answer would be, and that you have someone there available to speak to those topics.

Because if you don't it's what's called a motion to compel. So if you... If we say, "We want you to talk about this contract," and you come there and you say, "I don't know what this contract is," that's a chance where the court is actually gonna be able to intervene and make sure that you do actually provide a response that's responsive to what's being asked.

Anders Sleight: What if you're at a deposition and you're asked a question you don't remember or [00:04:00] you don't know the answer to the question? I mean, how should you answer that as a witness?

Niall McMillan: Yeah so, if you don't know the answer, I always tell clients just say that you don't know the answer to that.

Here with a corporate designee, you're probably going to have to give your best guess or the information available to you, or state which information you don't have. If you're being deposed in your individual capacity, what you're held to is your personal knowledge. So if it's not within your personal knowledge, it is absolutely fine to say that it's not within that.

Just keep in mind though, before you have your deposition taken, if you think you're going to testify at trial in the future, you don't want a situation where you say, "I have no idea what this is" at a deposition, then you come to trial and you say, "Oh, I know exactly what the answer is there." That's a chance for your credibility to be hit there.

Anders Sleight: Yeah, always important. I mean, particularly in the corporate designee deposition, understanding that corporations aren't necessarily charged in the same way that individuals are because they have institutional knowledge, technically speaking, right? So it's a [00:05:00] harder thing for a corporation not to know or recall certain things, but we're all humans and subject to our own limitations in those ways.

Niall McMillan: Exactly. And again, that's why it's important to take a look at those topics, and if you have questions about them or you think, "I don't actually know this information," or, "It's not available to us," go ahead and speak to the attorney taking the deposition beforehand so you

get those worked out and you're not held to knowing about those if you don't actually have that knowledge.

Anders Sleight: Absolutely. Well, I mean, a lot to think about, a lot to prepare for, and a deposition's a really important part of any trial preparation, and the discovery process. So really need to take it seriously and prepare fully for that corporate designee deposition.

Niall McMillan: Exactly.

Anders Sleight: Just a reminder Offit Kurman is A full service law firm with offices and litigators from coast to coast providing litigation services in the areas of employment, financial services, construction, government contracting, and business dispute matters.

Please reach out to Niall or myself if you have a litigation matter that needs attention. Thanks so much. [00:06:00]

Niall McMillan: Thank you.