



ACC Litigation Committee Legal Quick Hit

Tips for Preparing and Presenting Your Corporate Representative for Testimony

Alistair B. Dawson
Beck, Redden & Secret, LLP
Houston, Texas





Corporate Representative Depositions

- Both federal and state rules:
 - Authorize a party to demand the deposition of a corporation or public entity rather than a specific person
 - The deposition notice must specify the subject matter for the description with “reasonable particularity.”
 - Your lawyer should give you guidance on what you are expected to cover within a given notice



Corporate Representative Depositions

- In response, the corporation must designate:
 - One of more persons to testify on its behalf...
 - Regarding “matters known or reasonably available to the organization” which pertain to the specified topics.
 - The resulting testimony binds the company and may be used by the discovering party for any purpose.



Corporate Representative Depositions

- You are speaking on behalf of and binding the corporation
- You do not have to be the “most knowledgeable” person within the corporation
- But you do have to do your homework
- Corporation can be sanctioned if you don't do proper homework
- Alternatively, corporation can look bad in testimony that can be played to the jury or the court



Corporate Representative Depositions

- Must make good faith effort to obtain information responsive to the topics
- Witness must answer fully, completely and unequivocally to the questions related to the topics listed
- Not limited to the witness' personal knowledge
- Anyone can be the corporate representative witness – but he/she must make a good appearance and be well spoken
- Do not recommend attorneys or experts as corporate representatives unless you have no other choice
- Multiple witnesses often required



Homework

- Review relevant documents
- Interview persons with knowledge of relevant facts – perhaps former employees
- “I don’t know” should be an answer of last resort
- Keep a “cheat sheet” of what work was done, who consulted, documents reviewed and the information generated on each topic – it is not a memory test
- Better practice to obtain information from sources other than the lawyer – privilege may not exist



Other Issues

- Keep to the Topics – “not authorized to address that topic”
- Combining Individual and Corporate Representative Depositions – practical challenges





Selecting a Corporate Representative

- Since you know you are selecting someone for the stand, keep that in mind. This person will be speaking officially for your corporation.
 - Presentable
 - Knowledgeable
 - Credentials
 - Personable



Trial Corporate Representative

- The “face” of the company to the jury
- Good friendly appearance
- Appropriate behavior – smiles, interaction with others, use of blackberry, interaction with jury
- Knowledge of case – may be called as an adverse witness
- Tell the corporation’s story – personalize the company
- Doesn’t have to be the most knowledgeable