

February 5, 2019

Advisory Committee on Civil Rules
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
One Columbus Circle, NE
Washington, D.C. 20544

Re: Letter from Companies Opposing the Proposed Amendment to Rule 30(b)(6)

Dear Judge Bates and Members of the Federal Civil Rules Advisory Committee:

We write in opposition to the proposed amendment to Federal Rule of Civil Procedure 30(b)(6) involving both party and non-party organizational representative depositions, which would mandate conferral over topics including “the identity of each person the organization will designate to testify.” Imposing such a requirement would provoke time-consuming and costly new discovery disputes as counsel and courts struggle to square the change with the well-settled and well-grounded law that the responding organization has complete discretion to select the 30(b)(6) witnesses that will speak for the organization. Unfortunately, the Committee’s statement in its proposed advisory note that, under the proposed amendment, the organization would “ultimately” have the right to select its designee will not ameliorate the disruption and imbalance that will result from the imposition of this rule, particularly with respect to non-parties. The clear implication of the proposed amendment is that the party noticing the deposition has the right to influence the choice of the witness(es). Moreover, the addition of a conferral requirement regarding “the number and description of the matters for examination” does not provide meaningful guidance or direction as to what precisely is to be discussed. Additionally, the “continuing as necessary” requirement is vague and undefined and will spawn further controversy—in particular, the length of time in which the parties shall continue to confer and who will decide how long the conferral shall last and what constitutes “as necessary.”

Equally important, the proposed amendment offers no solutions to the pressing major failings of the current Rule 30(b)(6) deposition process. The Committee could do a great service to the bench and bar by drafting a different amendment that addresses the well-known and long-standing issues with the rule. A positive amendment would resolve major gaps in the current rule: (i) an objection procedure; (ii) presumptive limits on the number of topics; (iii) clear instructions on how to count the number of hours allowed for a deposition with multiple topics or individuals designated; (iv) a uniform prohibition on contention questions; and (v) a safe harbor for circumstances in which an organization no longer has relevant knowledge due to the passage of time or for other reasons.

In summary, although we strongly urge the Committee to reject the proposed amendment as written, we would enthusiastically support a decision to draft a new amendment addressing the important issues that plague practitioners and parties under Rule 30(b)(6).

Thank you for your consideration.

Adtalem Global Education
Advance Publications, Inc.
Aisin Holdings of America, Inc.
Altec, Inc.
Altria
American Airlines, Inc.
American Axle & Manufacturing, Inc.
AmeriFirst Financial, Inc.
AmeriTrust Group, Inc.
Argo Group
Armstrong Transport Group, LLC
Ascena Retail Group
Bank of America
BASF Corporation
Bayer U.S.
Becton, Dickinson and Company
Black Canyon Midstream, LLC
Boston Scientific Corporation
BRP Inc.
BWX Technologies, Inc.
California Institute of Technology
Campbell Soup Company
Cardinal Health
CarMax, Inc.
CBIZ, Inc.
Celgene Corporation
Clare Holdings
Colorado Dental Service, Inc. d/b/a Delta Dental of Colorado
Comcast Corporation
Continental Corporation
Cooper Tire & Rubber Company
Cornelius Advisors
Cracker Barrel Old Country Store, Inc.
Cree, Inc.
CTS Cement Manufacturing Corporation
Cummins Inc.
DCS Corporation
DEKRA North America
Delage Landen Financial Services, Inc.
Eatwell Enterprises LP
Eli Lilly and Company
EMR (USA Holdings) Inc.
Exclusive Trading Company
Extrusion North America at Hydro
Exxon Mobil Corporation
Farmers Insurance

FCA US LLC
FedEx Express
First Financial Equity Corp.
Ford Motor Company
Ford Motor Credit Company, LLC
General Electric Company
General Motors Company
GlaxoSmithKline LLC
Gleason Corporation
Global Investment Alliance Inc.
Gobo Ventures
Good2Go Auto Insurance
Goosehead Insurance, Inc.
Gordon Food Service
Greenlane
Harvey Gulf International Marine, LLC
Hecla Mining Company
Honda North America, Inc.
Horizon Bank
Hyundai Motor America
Idaho Power Company
Infor
JLT Specialty Insurance Services Inc
Johnson & Johnson
Karta Legal
Kubota Tractor Corporation
Kudelski Group
Legrand North & Central America
Lifeway Foods, Inc.
Louisiana-Pacific Corporation
Lowe Enterprises
Macy's, Inc.
Marriott International, Inc.
Marriott Vacations Worldwide Corporation
Mazda Motor of America, Inc.
Medtronic
Meijer
Microsoft Corporation
Molson Coors Brewing Company
MRC Global Inc.
MSA Safety
Mueller Water Products, Inc.
National Collegiate Athletic Association
Nelnet, Inc.
NetScout Systems, Inc.
Newell Brands Inc.

NFIB Small Business Legal Center
Novartis Pharmaceuticals Corporation
NuScale Power
Other World Computing, Inc.
Pfizer, Inc.
Phibro Animal Health Corporation
Phillips Service Industries, Inc.
PROS Holdings, Inc.
PubMatic, Inc.
Pyro Spectaculars, Inc.
Quanex Building Products Corporation
Red Lobster Seafood Co
Red Wing Shoe Company, Inc.
Rexel USA, Inc.
Rick Engineering Company
Roush Enterprises, Inc.
Rug Doctor, LLC
Scientific Drilling International, Inc.
Seneca Promotions, Inc.
Simon Property Group
State Farm Mutual Automobile Insurance Company
Stryker Corporation
Takeda Pharmaceuticals U.S.A., Inc.
Textron Inc.
The Dow Chemical Company
The Powell Group
The Sherwin-Williams Company
The Walt Disney Company
Toyota Motor North America, Inc.
Uber Technologies Inc.
USAA
Vaya Health
Verizon Communications Inc.
Victory Wholesale Group
Volkswagen Group of America, Inc.
WABCO
Walgreen Company
Walmart
Westat, Inc.
Whirlpool Corporation
Wiland, Inc.
Worley Claims Services, LLC
Yard Mule Specialists, Inc.
ZF Friedrichshafen AG
Zimmer Biomet
Zydus Pharmaceuticals (USA) Inc.