

7 Reasons Insurance Defense Lawyers Hate 30(b)(6) Depositions in Trucking Cases

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One of the most powerful tools available to plaintiffs' lawyers in truck crash cases in the 30(b)(6) deposition of the trucking company. Used in conjunction with the records deposition of the corporation, it has been called the "Death Star deposition." If all the stars align, a records deposition may strip away the filters that result from laziness, lack of motivation, dissembling and evasiveness, and the following corporate representative deposition may consist of creation of a series of sound bites of admissions and transparent evasions to play at trial.

In keeping with the goal of securing "the just, speed and expensive" resolution of disputes, FRCP 30(b)(6) / O.C.G.A. § 9-11-30(b)(6) authorizes depositions of organizations on topics designated by the party taking the deposition through representatives designated and prepared by the organization. A key purpose of Rule 30(b)(6), is "[to] curb the 'bandying' by which officers or managing agents of a corporation are deposed in turn but each disclaims knowledge of facts that are clearly known to persons in the organization and thereby to [the organization]." ²

This deposition may be combined or coordinated with a records custodian deposition under FRCP 30(b)(2) / O.C.G.A. § 9-11-30(b)(5) in conjunction with a request for production under FRCP 34 / O.C.G.A. § 9-11-34. The nearly identical sources of authority are as follows:

FRCP 30(b)(6) <i>Notice or Subpoena Directed to an Organization.</i> In its notice or subpoena, a party may name as the deponent a public or private corporation, a	O.C.G.A. § 9-33-30(b)(6) <i>Deposition of organization.</i> A party may, in his or her notice, name as the deponent a public or private corporation or a
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² Fed. R. Civ. P. 30(b)(6) advisory committee's note to 1970 amendments (quoted favorably by In re Analytical Systems, Inc., 71 B.R. 408, 412 (Bankr. N.D. Ga. 1987)).

<p>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.</p>	<p>partnership or association or a governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this chapter.</p>
<p>FRCP 30(b)(2)</p> <p><i>Producing Documents.</i> 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.</p>	<p>O.C.G.A § 9-11-30(b)(5)</p> <p><i>Production of documents and things.</i> The notice to a party deponent may be accompanied by a request made in compliance with Code Section 9-11-34 for the production of documents and tangible things at the taking of the deposition. The procedure of Code Section 9-11-34 shall apply to the request.</p>

A. Materials for Study.

Lawyers preparing to take corporate depositions would do well to study materials on point, including:

- *QBE Insurance Corporation v. Jorda Enterprises, Inc.*, 277 F.R.D. 676 (S.D.Fla., 2012)(Appendix A - summarizes 39 rules for 30(b)(6) depositions)
- *Otero v. Vito*, 2006 WL 3535149 (M.D.Ga., 2006)(Judge Royal)
- Phillip H. Miller & Paul J. Soptur, *ADVANCED DEPOSITIONS STRATEGY & PRACTICE* (Trial Guides, 2013)
- David Malone, *30(B)(6) RULES: TALKING TO AN ORGANIZATION* (NITA, 2013)

- Adam Blank, “Five Strategies for Rule 30(b)(6) Depositions,” Trial 40 (Aug. 2007), http://www.wrkk.com/wp-content/uploads/trial_001.pdf

- Michael R. Gordon and Claudia de Palma, “Practice Tips and Developments in Handling 30(B)(6) Depositions,” ABA Litigation Section, April 2014, http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2014_sac/2014_sac/practice_tips_and_developments.authcheckdam.pdf

Nathaniel S. Boyer, “Going Rogue in a 30(b)(6) Deposition: Whether It’s Permissible, and How Defending Counsel Should Respond,” ABA Litigation Section, April 2012, http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac_2012/43-1_going_beyond_the_30b6_deposition.authcheckdam.pdf

- ABA CIVIL DISCOVERY STANDARDS (2004), <http://www.americanbar.org/content/dam/aba/administrative/litigation/litigation-aba-2004-civil-discovery-standards.authcheckdam.pdf>

B. Why Insurance Defense Lawyers Hate 30(B)(6) Depositions.

Insurance defense lawyer in unguarded moments may tell how much they hate 30(b)(6) depositions and wish the rule would be repealed. Here are seven reasons why:

1. They have limited time to develop trust and cooperation necessary to prepare witnesses on the topics of the deposition.

Except when involved in a “rapid response team” dispatched to the scene right after crash, insurance defense lawyers may have their first contact with a trucking company, particularly a smaller one, sometime between service of process and filing of the answer. When it becomes necessary to respond to a 30(b)(6) notice, particularly early in the litigation, the insurance defense attorney is at a disadvantage due to the need

to quickly build rapport, educate the client about the seriousness of the procedure, and adequately prepare one or more corporate representatives to testify.

The corporate designee's testimony must encompass “facts within the corporation's knowledge ... its subjective beliefs and opinions ... [and] its interpretation of documents and events.” . . . Upon notification of a 30(b)(6) deposition, a corporation “cannot take a laissez faire approach to the inquiry. That is, producing a designee and seeing what he has to say or what he can cover. A party does not meet his obligations under Rule 26 or 30(b)(6) by figuratively throwing up its hands in a gesture of helplessness.” *Poole ex rel. Elliott v. Textron, Inc.*, 192 F.R.D. 494, 504 (D.Md.2000).

While perfection is not required, it takes significantly more time and effort to adequately prepare for a well-defined 30(b)(6) deposition than for the typical deposition of an individual witness. It is a significant challenge for an insurance defense lawyer representing a trucking company, particularly one that is small, unsophisticated and accident-prone, to handle this adequately in a short time.

Once the deposing party carries its initial burden by serving the Rule 30(b)(6) notice stating with “reasonable particularity” the subject matter of the deposition, four duties are triggered that must be met by the organization.³ First, the organization must designate an individual to speak for the organization in the deposition.⁴ Second, if more than one individual is required to provide the necessary information to respond to the deposing party's stated subject matter, the organization has a duty to designate as many people as is reasonably necessary.⁵ The organization can designate an “officer, director, or managing agent” employed by the organization without first obtaining that person's consent.⁶ The organization can also designate any

³ *Alexander v. F.B.I.*, 186 F.R.D. 148, 151 (D.D.C. 1999) (discussing four duties).

⁴ *Alexander v. F.B.I.*, 186 F.R.D. 148, 151 (D.D.C. 1999); *U.S. v. Taylor*, 166 F.R.D. 356, 361 (M.D. N.C. 1996) (“[t]he designated witness is ‘speaking for the corporation’”); *S.E.C. v. Morelli*, 143 F.R.D. 42, 44-45 (S.D. N.Y. 1992).

⁵ See O.C.G.A. §9-11-30(b)(6) (the organization “shall designate one or more officers”) (emphasis added); *Alexander v. F.B.I.*, 186 F.R.D. 148, 151 (D.D.C. 1999) (“the designating party is under the duty to designate more than one deponent if it would be necessary ... to respond to the relevant areas of inquiry”); *Buycks-Roberson v. Citibank Federal Sav. Bank*, 162 F.R.D. 338, 343 (N.D. Ill. 1995).

⁶ For the three-pronged test to determine who is a “managing agent,” see 8 Charles Alan Wright et al., *Federal Practice and Procedure* §2103 (2d ed. 1994).

other person, but only after obtaining that person's consent. For each individual that the organization designates as a representative, it may specify the subject matter on which that person will testify. Further, the organization has a duty to provide a substitute deponent to respond to relevant areas of inquiry to which the previous deponent was unable to respond.⁷ The “purpose of a Rule 30(b)(6) deposition is to get answers ..., not to simply get answers limited to what the deponent happens to know.”⁸

The 30(b)(6) notice places an affirmative duty on organizations to make a conscientious, good-faith effort to sufficiently prepare the designated representatives so that “they can answer fully, completely, [and] unevasively the questions posed.”⁹ Even where the information is not personally known by any present employees, the organization must prepare and educate its designee “to the extent matters are reasonably available, whether from documents, past employees, or other sources.”¹⁰ Failure to designate witnesses who have been made sufficiently knowledgeable on the topics indicated by the deposition notice has been held by a Georgia court to be the same as the organization failing to appear at all, thereby warranting sanctions.¹¹

The automatic response is to delay and divert, asking for extensions of time, telling the plaintiff’s

⁷ See *Beloit Liquidating Trust v. Century Indem. Co.*, 2003 WL 355743 (N.D. Ill. 2003) (“if the deponent is unable to answer ... then the business entity must designate additional parties”); *Alexander v. F.B.I.*, 186 F.R.D. 148, 152 (D.D.C. 1999); *U.S. v. Taylor*, 166 F.R.D. 356, 361 (M.D. N.C. 1996); *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D. N.C. 1989).

⁸ *Alexander v. F.B.I.*, 186 F.R.D. 148, 152 (D.D.C. 1999).

⁹ *In re Analytical Systems, Inc.*, 71 B.R. 408, 412 (Bankr. N.D. Ga. 1987) (quoting *Mitsui & Co. (U.S.A.), Inc. v. Puerto Rico Water Resources Authority*, 93 F.R.D. 62, 66-67 (D.P.R. 1981)). See *Alexander v. F.B.I.*, 186 F.R.D. 148, 152 (D.D.C. 1999); *In re Air Crash Disaster at Detroit Metropolitan Airport on Aug. 16, 1987*, 130 F.R.D. 627, 631-32 (E.D. Mich. 1989).

¹⁰ *U.S. v. Taylor*, 166 F.R.D. 356, 361 (M.D. N.C. 1996) (“[t]his interpretation is necessary ... to prevent the “sandbagging” of an opponent by conducting a half-hearted inquiry before the deposition but a thorough and vigorous one before the trial”). See *Wilson v. Lakner*, 228 F.R.D. 524, 528 (D. Md. 2005) (“[the] organization is expected to create a witness or witnesses with responsive knowledge”); *In re Vitamins Antitrust Litigation*, 216 F.R.D. 168, 173 (D.D.C. 2003) (finding that educating an otherwise unknowledgeable witness for “no more than a morning” is insufficient).

¹¹ See *Mableton Parkway CVS, Inc. v. Salter*, 254 Ga. App. 162, 163, 561 S.E.2d 478 (2002) (affirming sanctions against corporation which designated a representative who was insufficiently knowledgeable on noticed areas of inquiry). See also *Black Horse Lane Assoc., L.P. v. Dow Chemical Corp.*, 228 F.3d 275, 303, 47 Fed. R. Serv. 3d 842 (3d Cir. 2000) (upholding sanction of fees and costs for designation of unknowledgeable representative); *Resolution Trust Corp. v. Southern Union Co., Inc.*, 985 F.2d 196, 197, 25 Fed. R. Serv. 3d 253 (5th Cir. 1993) (“[i]f [the designated] agent is not knowledgeable about relevant facts ... then the appearance is ... no appearance at all”); *Turner v. Hudson Transit Lines, Inc.*, 142 F.R.D. 68, 78-79 (S.D. N.Y. 1991) (“[a] party that fails to provide witnesses knowledgeable in the areas requested in a Rule 30(b)(6) notice is ... subject to sanctions.”); *Thomas v. Hoffmann-LaRoche, Inc.*, 126 F.R.D. 522, 525 (N.D. Miss. 1989) (“[s]anctions are appropriate when a party fails to comply with a request under Rule 30(b)(6) to provide a knowledgeable deponent”).

lawyer that the 30(b)(6) deposition is not really necessary, that everything can be produced by other means, etc. But if the plaintiff's attorney is undeterred, the insurance defense lawyer has a problem. Courts have expressed strong disapproval of efforts by organizations to stall litigation by delaying the designation of a representative or appointing representatives who know little about the relevant subject matter or simply disclaim knowledge.¹² In *West v. Equifax Credit Information Services, Inc.*, 230 Ga. App. 41, 44, 495 S.E.2d 300 (1997), the Georgia Court of Appeals admonished in dicta a defendant who "successfully stalled depositions of two out of three [Rule 30(b)(6)] witnesses for almost five months." The court characterized the defendant's behavior as "a calculated appearance of cooperation without actual timeliness," and stated that "[s]uch tactics, wrongly considered zealous advocacy, are unprofessional at best and are subject to court action upon proper notice."¹⁷

2. Insurance company billing guidelines may not compensate defense counsel for the time required to adequately prepare corporate designees for their testimony.

Insurers' cost containment strategies, litigation management guidelines and use of staff counsel firms may have the effect of constraining the amount of time and effort defense counsel can devote to preparing a corporate insured for response to a 30(b)(6) deposition notice.

This may strain the ethical obligations of defense counsel in the tripartite relationship between insurer, insured and insurance defense lawyers.¹³ Standard practice for defense counsel preparing to respond to a 30(b)(6) notice includes: (a) review of the notice and limitation of scope of testimony, (b) selection of corporate representative, (c) preparation of each corporate representative including review of all topics to be covered, a review of key exhibits and prior literature relevant to the case, the chronology of key events, and practicing anticipated questions with the witness.

¹² See *Mableton Parkway CVS, Inc. v. Salter*, 254 Ga. App. 162, 163, 561 S.E.2d 478 (2002) (affirming sanction against corporation who took six months after a court order to designate a representative who then was insufficiently knowledgeable); *In re Analytical Systems, Inc.*, 71 B.R. 408, 412 (Bankr. N.D. Ga. 1987) (finding that organization failed to make a good faith effort to designate a knowledgeable representative or educate its representative where the one designated knew little about the requested subject matter).

¹³ Shigley & Hadden, *Georgia Law of Torts: Trial Preparation & Practice* § 4:16 (2014 ed).

Thorough preparation can take days of hard work, some on site at the defendant's place of business. While policies may vary among insurers, it is reasonable to assume that defense counsel may anticipate company bean counters to limit what will be paid on billings for adequate preparation for 30(b)(6) depositions. Thus, defense counsel is under pressure to delay and divert plaintiff's counsel, and if not then to risk going forward with inadequate preparation.

3. There may be no one at the defendant corporation who has actual knowledge of the subject matter of the deposition.

If the truck driver, dispatcher and safety manager have moved on, the company may be required to reconstruct knowledge from records and questioning former employees. The mere fact that an organization no longer employs a person with knowledge on the specified topics does not relieve the organization of the duty to prepare and produce an appropriate designee. Faced with such a scenario, a corporation with no current knowledgeable employees must prepare its designees by having them review available materials, such as fact witness deposition testimony, exhibits to depositions, documents produced in discovery, materials in former employees' files and, if necessary, interviews of former employees or others with knowledge. This may require preparation required from myriad sources, including documents, present or past employees, or other sources. As a corollary to the corporation's duty to designate and prepare a witness, it must perform a reasonable inquiry for information that is reasonably available to it. A corporate designee must provide responsive answers even if the information was transmitted through the corporation's lawyers.

4. Even a defunct corporation has a duty to designate a 30(b)(6) witness and may be subject to sanctions for failure to do so.

The fact that a corporation is defunct may not alone justify failure to produce a Rule 30(b)(6) witness. *In re Mutual Funds Inv. Litigation*, 590 F.Supp.2d 741 (D.Md.,2008), et cit. Trucking companies with the worst safety supervision programs are often the ones most likely to go out of business, with records disappearing despite a records preservation letter and purported litigation hold, and employees scattering. Moreover, an answer of "I don't know" may lead to either an order to compel the corporation to designate

and prepare a witness who can respond, or the corporation being stuck with the professional of ignorance and barred from presenting evidence to the contrary. Defense counsel attempting to find and secure cooperation of individuals to serve as 30(b)(6) witnesses in such situations face stern challenges.

5. Unlike interrogatories, there is no defined limit on the number of topics for inquiry that can be designated, although reasonable particularity is required.

With no prescribed limit on the number of topics that may be designated in a 30(b)(6) notice, the insurance defense lawyer may be required to prepare corporate representatives to testify and be cross-examined on a long list of topics, each of which covers some breadth of facts. However, in drafting a notice counsel should exercise reasonable self-restraint may avoid contending with a motion for protective order. Courts have approved topics lists that included 55 topics (*Heartland Surgical Specialty Hosp. v. Midwest Division, Inc.*, No. 05-2164-MLB-DWD, 2007 WL 1054279, at *1 (D. Kan. Apr. 9, 2007)), 47 topics (*QBE Ins. Corp. v. Jorda Enter., Inc.*, 277 F.R.D. 676, 681 (S.D. Fla. 2012)) and 35 topics (*Banks v. Office of the Senate Sergeant-At-Arms*, 222 F.R.D. 7, 18 (D.D.C. 2004)).

Defense lawyers do have the option of filing – or stalling by threatening to file – a motion for protective order if a 30(b)(6) deposition notice is defective. Thus, in drafting the topics for inquiry, use the Goldilocks approach: not too vague (unfair to the deponent) and not too restrictive (unfair to the interrogator), but just right. There are cases that have held that the notice should have “painstaking specificity,” reflecting “conscientious effort to focus on discrete subject areas that are substantively and temporally relevant to the claims at issue.” *Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. at 639. See *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 584 (D. Kan. 2008); *EEOC v. Thorman & Wright Corp.*, 243 F.R.D. 421, 426 (D. Kan. 2007); *Sprint Communications v. TheGlobe.Com, Inc.*, 236 F.R.D. 524, 528 (D. Kan. 2006). But see *Espy v. Mformation Technologies*, No. 08-2211-EFM-DWB, 2010 WL 1488555, at *2 (D. Kan. 2010) (questioning whether such an articulation was required by the “reasonable” particularity specified in the Rule itself).

One potential defect is a 30(b)(6) notice is the lawyerly CYA habit of *inclusio unius est exclusio alterius*. Lawyers are addicted to use in contracts and discovery requests of the stuffy phrase, “including but not limited to.” But deposition topic list must have discernible parameters. If the notice uses the phrase “including but not limited to,” the corporation’s lawyer resisting discovery may argue that the defendant cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible. A motion for protective order seeking to strike the “including but not limited to” verbiage on the ground that “[l]isting several categories and stating that the inquiry may extend beyond the enumerated topics defeats the purpose of having any topics at all. The time spent responding to a motion for protective order to strike the “including but not limited to” verbiage is a distraction and waste of time. *Tri-State Hosp. Supply Corp. v. United States*, 226 F.R.D. 118, 125 (D. D.C. 2005); *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000); but see *Cotton v. Costco Wholesale Corp.*, No. 12-2731-JWL, 2013 WL 3819975, at *2 (D. Kan. July 24, 2013) (holding that the use of “including” in the notice did not render it overbroad where the term was used to provide examples of subtopics, rather than to suggest that the areas of inquiry would not be limited to the topics listed).

Similarly, the phrase “all matters relevant” is subject to attack for violation of the particularity requirement. *Alexander v. FBI*, 188 F.R.D. 111, 114 (D. D.C. 1998).

6. Video clips from the 30(b)(6) deposition may be played in the plaintiff’s case in chief.

A 30(b)(6) deposition on video may be edited for playing clips of testimony admitting to rules, standards, violations, damaging facts, etc., and played at the beginning of the case in chief. In fact, counsel may plan a 30(b)(6) deposition to extract the 20 most damaging things the corporate representative could admit in concise soundbites. However, many trial judges whose caseloads are filled with criminal, domestic and small civil cases may be unfamiliar with this use of depositions so it is essential to provide them a trial brief on point, perhaps included in the pretrial order.

O.C.G.A. § 9-11-32(a)(2) provides:

The deposition of a party or of anyone who, at the time of taking the deposition, was an officer, director, or managing agent or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a public or private corporation, a partnership or association, or a governmental agency which is a party **may be used by an adverse party for any purpose;** (emphasis supplied)

O.C.G.A. § 9-11-32(a) closely tracks Federal Rule of Civil Procedure 32(a), and must be considered together with O.C.G.A. § 24-8-801(d) which similarly tracks Federal Rule of Evidence 801(d) . The Advisory Committee Note for FRCP 32 states that the phrase “ ‘for any purpose permitted by the Federal Rules of Evidence’ specifically makes statements falling under Rules 801(d) and 801(d)(2) and contained in a deposition admissible despite availability of the witness.” Id. (quoting 8 C. Wright & A. Miller, Federal Practice and Procedure §§ 2144 & 2146 (Supp.1988)). (emphasis supplied)

The rule has been interpreted by the Federal courts to permit the deposition of a party to be used by an adverse party for any legal purpose. See 4 Moore's Federal Practice, 2d Ed., 1190, § 26.29. Federal courts have held the availability of the witness to testify is immaterial, and it is error to deny the admission of a deposition into evidence on this ground.” See, e.g, *Aetna Cas. & Sur. Co. v. Guynes*, 713 F.2d 1187, 1194 (5th Cir.1983); *Jackson v. Chevron Chem. Co.*, 679 F.2d 463, 466 (5th Cir.1982); *King & King Enters. v. Champlin Petroleum Co.*, 657 F.2d 1147, 1164–66 (10th Cir.1981); *In re Club Dev. & Management Corp.*, 12 B.R. 854, 858 (Bankr.S.D.Cal.1981); *Coughlin v. Capitol Cement Co.*, 571 F.2d 290, 308 (5th Cir.1978); *Pingatore v. Montgomery Ward & Co.*, 419 F.2d 1138, 1142 (6th Cir.1969); *Pursche v. Atlas Scrapper & Eng'g Co.*, 300 F.2d 467, 488 (9th Cir.1961).

In Georgia, a trial court has the discretion to allow the plaintiffs to present part of the adverse party's deposition it deemed relevant during its case-in-chief, subject to the opponent then designating the portions its wants presented. *Rental Equipment Group, LLC v. MACI, LLC*, 263 Ga.App. 155, 587 S.E.2d 364 (2003). This enables a party to condense the “voluminous, unwieldy and disjointed depositions” and present the evidence in an orderly, logical, clear, concise and understandable manner. *Manning v. Allgood*,

412 N.E.2d 811 (Ind.App., 1980). A party may use such deposition testimony of an adverse party “without being exposed to the witness's evasiveness and other self-serving devices.” *Canales v. Compania de Vapores Realma, S.A.*, 564 So.2d 1212 (Fla. 3d DCA 1990).

See also, *Nelson v. Stubblefield*, 2009 Ark. 256, 308 S.W.3d 586 (Ark.,2009)(presentation of opponent’s deposition testimony during party’s case-in-chief is a “perfectly permissible practice”); *Matalon v. Lee*, 847 So.2d 1077 (Fla.App. 4 Dist.,2003)(party could use opponent’s deposition for any purpose, including as part of his case-in-chief); *Arthur v. Zearley*, 337 Ark. 125, 139, 992 S.W.2d 67, 75 (1999) (party entitled to present the deposition testimony of opponent irrespective of his availability to testify at trial); *Ouachita Mining & Exploration, Inc. v. Wigley*, 318 Ark. 750, 887 S.W.2d 526 (1994) (party entitled to present the deposition of opponent irrespective of the hearsay rule and irrespective of his availability at trial); *McMillan v. King*, 557 So.2d 519 (Miss.1990)(trial judge erred in denying a plaintiff's request to admit portions of a defendant’s deposition testimony); *LaTorre v. First Baptist Church of Ojus, Inc.*, 498 So.2d 455, 457-58 (Fla. 3d DCA 1986)(trial court erred in refusing to allow plaintiff to introduce defendant's deposition in his case-in-chief); *Southern Pacific Co. v. Cavallo*, 84 Ariz. 24, 323 P.2d 1 (1958)(a plaintiff could read into evidence the deposition of a party defendant even though the defendant was present in court.)

Under O.C.G.A. § 9-11-32(a)(5), Defendants may require introduction of “all of it which is relevant to the part introduced” by Plaintiff. It is proper to allow this presentation of the portions Defendants choose at the conclusion of Plaintiff’s selections. See, e.g., *Rental Equipment Group, LLC v. MACI, LLC*, 263 Ga.App. 155, 587 S.E.2d 364 (2003); *Manning v. Allgood*, 412 N.E.2d 811 (Ind.App., 1980); *Westinghouse Electric Corp. v. Wray Equipment Corp.*, 286 F.2d 491, at 494 (1st Cir. 1961) .

7. The 30(b)(6) deposition is a powerful tool for skillful use of plaintiffs' strategy.

Insurance defense lawyers are at least generally aware of the powerful techniques available to plaintiffs' lawyers.¹⁴ They know that under persistent cross examination utilizing the techniques of exhaustion, looping, boxing, restating and summarizing, designated corporate representatives may grudgingly disgorge video soundbites admitting to rules governing the industry and situation, the importance of adherence to such rules for reasons of public safety, and violation of those rules in the case at hand. They know that the corporate representatives can be made to appear stupid and callous if they deny much of that. Thus, they may attempt to delay, deter and narrow the scope of 30(b)(6) depositions.

C. Tips For Effective Use Of 30(B)(6) Depositions In Trucking Cases.

1. Carefully draft notices prior to filing suit, broad enough to cover necessary topics, but not so overly broad or long as to draw valid objections in a motion for protective order.
2. In drafting the notice and preparing deposition questions, think of the 20 most damaging things that a corporate designee could admit on deposition, and develop a strategy to ferret out those admissions. That may include safety rules, their applicability and importance, defendant's policies and practices, acts and omissions, admission that plaintiff / decedent did nothing wrong to contribute to cause of the crash, no evidence of exaggerating or malingering by plaintiff, etc.
3. Avoid use of expansive phrases such as "including but not limited to" and "all matters relevant."

¹⁴ See, e.g., Rick Friedman & Patrick Malone, *RULES OF THE ROAD* (2d ed., 2010); Phillip H. Miller & Paul J. Scoptur, *ADVANCED DEPOSITIONS STRATEGY AND Practice* (2013); David Ball, *DAVID BALL ON DAMAGES 3* (3rd Ed., 2013).

4. Consider serving records custodian deposition notices (O.C.G.A. § 30(b)(5) / FRCP 30(b)(2)) with a well-drafted request for production and the Complaint rather than waiting until later. You will almost always get a lot more material in records deposition at or near the defendant's office than in production sifted through both an unmotivated clerk at the defendant's office and a defense counsel raising obfuscating objections.
5. If the case will be in federal court, draft the request for production, interrogatories and 30(b)(2) / 30(b)(6) deposition notices to be ready to serve as soon as allowed under the local rules, e.g., upon entry of a scheduling order.
6. Ask defense counsel to identify in advance who will testify to which topics in your notice.
7. Do not be deterred from taking these depositions, even though pleasant defense lawyers may try to lull you into settling for dribbled out document productions, depositions of individual rather than corporate witnesses, etc.
8. While cooperating about mutually convenient scheduling, never agree to cancellation of a 30(b)(6) deposition. Reschedule to a specific later date, but do not cancel or waive it. Do not allow the expiration of the mandatory discovery period slip up on you.
9. While interacting in a pleasant, professional manner with opposing counsel, proceed on the assumption that you may have to file a motion to compel discovery and for sanctions, as a defense strategy of foot dragging and obfuscation may be dictated from above and may transcend collegial relationships.
10. If a defendant's deposition is worth taking, it is worth recording on video. Direct the court reporter and videographer to synchronize transcript and video in a format you may edit on your computer. Long before trial, prepare a DVD of edited video clips.

Appendix A

39 Rules for 30(b)(6) Depositions

Occasionally, a federal district judge writes an opinion that becomes the persuasive “bible” for lawyers dealing with a procedural issue. That was done for 30(b)(6) by Jonathan Goodman, a United States Magistrate Judge in the Southern District of Florida in QBE Insurance Corporation V. Jorda Enterprises, Inc., 277 F.R.D. 676, 687 (2012). Going beyond ruling on the specifics of the case, the judge distilled the following 39 rules for corporate depositions:

1. The rule's purpose is to streamline the discovery process. In particular, the rule serves a unique function in allowing a specialized form of deposition. *Great Am. Ins. Co. v. Vegas Constr. Co., Inc.*, 251 F.R.D. 534, 539 (D.Nev.2008)
2. The rule gives the corporation being deposed more control by allowing it to designate and prepare a witness to testify on the corporation's behalf. *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C.1996).
3. It is a discovery device designed to avoid the bandying by corporations where individual officers or employees disclaim knowledge of facts clearly known to the corporation. *Great Am.*, 251 F.R.D. at 539; *Taylor*, 166 F.R.D. at 361.
4. Therefore, one purpose is to curb any temptation by the corporation to shunt a discovering party from “pillar to post” by presenting deponents who each disclaim knowledge of facts known to someone in the corporation. *Great Am.*, 251 F.R.D. at 539. Cf. *Ierardi v. Lorillard, Inc.*, No. 90–7049, 1991 WL 66799, *2 (E.D.Pa. Apr. 15, 1991), at *2 (without the rule, a corporation could “hide behind the alleged ‘failed’ memories of its employees”).
5. Rule 30(b)(6) imposes burdens on both the discovering party and the designating party. The party seeking discovery must describe the matters with reasonable particularity and the responding corporation or entity must produce one or more witnesses who can testify about the corporation's knowledge of the noticed topics. *Great Am.*, 251 F.R.D. at 539.
6. The testimony of a Rule 30(b)(6) witness represents the collective knowledge of the corporation, not of the specific individual deponents. A Rule 30(b)(6) designee presents the corporation's position on the listed topics. The corporation appears vicariously through its designees. *Taylor*, 166 F.R.D. at 361.
7. A corporation has an affirmative duty to provide a witness who is able to provide binding answers on behalf of the corporation. *Ecclesiastes 9:10–11–12, Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1147 (10th Cir.2007).
8. Thus, a Rule 30(b)(6) witness need not have personal knowledge of the designated subject matter. *Ecclesiastes*, 497 F.3d at 1147; see generally Federal Civil Rules Handbook, 2012 Ed., at p. 838 (“the individual will often testify to matters outside the individual's personal knowledge”).
9. The designating party has a duty to designate more than one deponent if necessary to respond to questions on all relevant areas of inquiry listed in the notice or subpoena. *Ecclesiastes*, 497 F.3d at 1147; *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 127 (M.D.N.C.1989) (duty to substitute another witness as a designee once the initial designee's deficiencies become apparent during the deposition); *Alexander v. F.B.I.*, 186 F.R.D. 137, 142 (D.D.C.1998).

10. The rule does not expressly or implicitly require the corporation or entity to produce the “person most knowledgeable” for the corporate deposition. Nevertheless, many lawyers issue notices and subpoenas which purport to re-quire the producing party to provide “the most knowledgeable” witness. Not only does the rule not provide for this type of discovery demand, but the request is also fundamentally inconsistent with the purpose and dynamics of the rule. As noted, the witness/designee need not have any personal knowledge, so the “most knowledgeable” designation is illogical. *PPM Fin., Inc. v. Norandal USA, Inc.*, 392 F.3d 889, 894–95 (7th Cir.2004) (rejecting argument that trial court should not have credited the testimony of a witness who lacked personal knowledge because the witness was a 30(b)(6) witness and “was free to testify to matters outside his personal knowledge as long as they were within the corporate rubric”). Moreover, a corporation may have good grounds not to produce the “most knowledgeable” witness for a 30(b)(6) deposition. For example, that witness might be comparatively inarticulate, he might have a criminal conviction, she might be out of town for an extended trip, he might not be photogenic (for a videotaped deposition), she might prefer to avoid the entire process or the corporation might want to save the witness for trial. From a practical perspective, it might be difficult to determine which witness is the “most” knowledgeable on any given topic. And permitting a requesting party to insist on the production of the most knowledgeable witness could lead to time-wasting disputes over the comparative level of the witness' knowledge. For example, if the rule authorized a demand for the most knowledgeable witness, then the requesting party could presumably obtain sanctions if the witness produced had the second most amount of knowledge. This result is impractical, inefficient and problematic, but it would be required by a procedure authorizing a demand for the “most” knowledgeable witness. But the rule says no such thing.

11. Although the rule is not designed to be a memory contest, the corporation has a duty to make a good faith, conscientious effort to designate appropriate persons and to prepare them to testify fully and non-evasively about the subjects. *Great Am.*, 251 F.R.D. at 540.

12. The duty to prepare a Rule 30(b)(6) witness goes beyond matters personally known to the designee or to matters in which the designated witness was personally involved. *Wilson v. Lakner*, 228 F.R.D. 524 (D.Md.2005).

13. The duty extends to matters reasonably known to the responding party. *Fowler v. State Farm Mut. Auto. Ins. Co.*, No. 07–00071 SPK–KSC, 2008 WL 4907865, at *4 (D.Haw.2008).

14. The mere fact that an organization no longer employs a person with knowledge on the specified topics does not relieve the organization of the duty to prepare and produce an appropriate designee. *Id.*; *Great Am.*, 251 F.R.D. at 540; *Taylor*, 166 F.R.D. at 362; cf. *Ecclesiastes*, 497 F.3d at 1148 (in “one common scenario,” the corporation designates individuals who lack personal knowledge “but who have been educated about it”) (emphasis added).

15. Faced with such a scenario, a corporation with no current knowledgeable employees must prepare its designees by having them review available materials, such as fact witness deposition testimony, exhibits to depositions, documents produced in discovery, materials in former employees' files and, if necessary, interviews of former employees or others with knowledge. *Great Am.*, 251 F.R.D. at 540; *Federal Civil Rules Hand-book*, p. 838; see generally *Wilson*, 228 F.R.D. at 529 (preparation required from myriad sources, including “documents, present or past employees, or other sources”).

16. In other words, a corporation is expected to create an appropriate witness or witnesses from information reasonably available to it if necessary. *Wilson*, 228 F.R.D. at 529.

17. As a corollary to the corporation's duty to designate and prepare a witness, it must perform a reasonable inquiry for information that is reasonably available to it. *Fowler*, 2008 WL 4907865 at *5; *Marker*, 125 F.R.D. at 127.

18. A corporate designee must provide responsive answers even if the information was transmitted through the corporation's lawyers. *Great Am.*, 251 F.R.D. at 542.

19. In responding to a Rule 30(b)(6) notice or subpoena, a corporation may not take the position that its documents state the company's position and that a corporate deposition is therefore unnecessary. *Great Am.*, 251 F.R.D. at 540.

20. Similarly, a corporation cannot point to interrogatory answers in lieu of producing a live, in-person corporate representative designee. *Marker*, 125 F.R.D. at 127.

21. Preparing a Rule 30(b)(6) designee may be an onerous and burdensome task, but this consequence is merely an obligation that flows from the privilege of using the corporate form to do business. *Great Am.*, 251 F.R.D. at 541; see also *Calzaturificio S.C.A.R.P.A. s.p.a. v. Fabiano Shoe Co., Inc.*, 201 F.R.D. 33, 38 (D.Mass.2001) (review required even if “documents are voluminous and the review of those documents would be burdensome”).

22. Not only must the designee testify about facts within the corporation's collective knowledge, including the results of an investigation initiated for the purpose of complying with the 30(b)(6) notice, but the designee must also testify about the corporation's position, beliefs and opinions. *Great Am.*, 251 F.R.D. at 539; *Taylor*, 166 F.R.D. at 362 (designee presents corporation's “position,” its “subjective beliefs and opinions” and its “interpretation of documents and events”).

23. The rule implicitly requires the corporation to review all matters known or reasonable available to it in preparation for a Rule 30(b)(6) deposition. *Wilson*, 228 F.R.D. at 529 (“good faith effort” to “find out the relevant facts” and to “collect information, review documents and interview employees with personal knowledge”).

24. If a corporation genuinely cannot provide an appropriate designee because it does not have the information, cannot reasonably obtain it from other sources and still lacks sufficient knowledge after reviewing all available information, then its obligations under the Rule cease. *Calzaturificio*, 201 F.R.D. at 39; see also *Dravo Corp. v. Liberty Mut. Ins. Co.*, 164 F.R.D. 70, 76 (D.Neb.1995).

25. If it becomes apparent during the deposition that the designee is unable to adequately respond to relevant questions on listed subjects, then the responding corporation has a duty to timely designate additional, supplemental witnesses as substitute deponents. *Alexander*, 186 F.R.D. at 142; *Marker*, 125 F.R.D. at 127.

26. The rule provides for a variety of sanctions for a party's failure to comply with its Rule 30(b)(6) obligations, ranging from the imposition of costs to preclusion of testimony and even entry of default. *Reilly v. Natwest Mkts. Grp. Inc.*, 181 F.3d 253, 269 (2d Cir.1999) (affirming order precluding witness five witnesses from testifying at trial); see also *Taylor*, 166 F.R.D. at 363 (“panoply of sanctions”); *Great Am.*, 251 F.R.D. at 543 (“variety of sanctions”).

27. The failure to properly designate a Rule 30(b)(6) witness can be deemed a nonappearance justifying the imposition of sanctions. (*Resolution Trust Corp. v. Southern Union Co., Inc.*, 985 F.2d 196, 198 (5th Cir.1993)). See also *Black Horse Lane Assoc., L.P. v. Dow Chem. Corp.*, 228 F.3d 275, 305 (3d Cir.2000)

(a 30(b)(6) witness who is unable to give useful information is “no more present for the deposition than would be a deponent who physically appears for the deposition but sleeps through it”).

28. When a corporation's designee legitimately lacks the ability to answer relevant questions on listed topics and the corporation cannot better prepare that witness or obtain an adequate substitute, then the “we-don't-know” response can be binding on the corporation and prohibit it from offering evidence at trial on those points. Phrased differently, the lack of knowledge answer is itself an answer which will bind the corporation at trial. *Fraser Yachts Fla., Inc. v. Milne*, No. 05–21168–CIV–JORDAN, 2007 WL 1113251, at *3 (S.D.Fla. Apr. 13, 2007); *Chick-fil-A v. ExxonMobil Corp.*, No. 08–61422–CIV, 2009 WL 3763032, at *13 (S.D.Fla. Nov. 10, 2009); see also *Ierardi*, 1991 WL 66799 at *3 (if party's 30(b)(6) witness, because of lack of knowledge or failing memory, provides a “don't know” answer, then “that is itself an answer” and the corporation “will be bound by that answer”).

29. Similarly, a corporation which provides a 30(b)(6) designee who testifies that the corporation does not know the answers to the questions “will not be allowed effectively to change its answer by introducing evidence at trial.” *Ierardi v. Lorillard*, No. 90–7049, 1991 WL 158911 (Aug. 13, 1991) (E.D.Pa. 1991, at *4).

30. The conclusion that the corporation is bound at trial by a legitimate lack of knowledge response at the 30(b)(6) deposition is, for all practical purposes a variation on the rule and philosophy against trial by ambush. *Calzaturificio*, 201 F.R.D. at 38; *Wilson*, 228 F.R.D. at 531; *Taylor*, 166 F.R.D. at 363 (rule prevents “sandbagging” and prevents corporation from making a “half-hearted inquiry before the deposition but a thorough and vigorous one before the trial”).

31. If the corporation pleads lack of memory after diligently conducting a good faith effort to obtain information reasonably available to it, then it still must present an opinion as to why the corporation believes the facts should be construed a certain way if it wishes to assert a position on that topic at trial. *Taylor*, 166 F.R.D. at 362.

32. There is nothing in the rule which prohibits a corporation from adopting the testimony or position of another witness in the case, though that would still require a corporate designee to formally provide testimony that the corporation's position is that of another witness. *Fraser Yachts*, 2007 WL 1113251, at *3.

33. The rule does not expressly require the designee to personally review all information available to the corporation. So long as the designee is prepared to provide binding answers under oath, then the corporation may prepare the designee in whatever way it deems appropriate—as long as someone acting for the corporation reviews the available documents and information. *Reichhold, Inc. v. U.S. Metals Ref. Co.*, No. 03–453(DRD), 2007 WL 1428559, at *9 (D.N.J. May 10, 2007) (the rule “does not require that the corporate designee personally conduct interviews,” but, instead, requires him to testify to matters known or reasonably available to the corporation).

34. Rule 30(b)(6) means what it says. Corporations must act responsibly. They are not permitted to simply declare themselves to be mere document-gatherers. They must produce live witnesses who have been prepared to provide testimony to bind the entity and to explain the corporation's position. *Wilson*, 228 F.R.D. at 531; *Great Am.*, 251 F.R.D. at 542 (entitled to “corporation's position”).

35. Despite the potentially difficult burdens which sometimes are generated by Rule 30(b)(6) depositions, the corporation is not without some protection, as it may timely seek a protective order or other relief. *C.F.T.C. v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 772 (9th Cir.1995).

36. Absolute perfection is not required of a 30(b)(6) witness. The mere fact that a designee could not answer every question on a certain topic does not necessarily mean that the corporation failed to comply with its obligation. *Costa v. County of Burlington*, 254 F.R.D. 187, 191 (D.N.J.2008); *Chick-fil-A*, 2009 WL 3763032, at *13 (explaining that the corporation need not produce witnesses who know every single fact—only those relevant and material to the incidents underlying the lawsuit).

37. A corporation cannot be faulted for not interviewing individuals who refuse to speak with it. *Costa*, 254 F.R.D. at 191.

38. There are certain cases, such as subrogation cases or those involving dated facts, where a corporation will not be able to locate an appropriate 30(b)(6) witness. In those types of scenarios, the parties “should anticipate the unavailability of certain information” and “should expect that the inescapable and unstoppable forces of time have erased items from ... memory which neither party can retrieve.” *Barron v. Caterpillar, Inc.*, 168 F.R.D. 175, 178 (E.D.Pa.1996) (concluding that corporation did not act in bad faith when its designee did not remember events from almost thirty years earlier).

39. A corporation which expects its designee to be unprepared to testify on any relevant, listed topic at the corporate representative deposition should advise the requesting party of the designee's limitations before the deposition begins. *Calzaturificio*, 201 F.R.D. at 39.