3 Corporate Deposition Prep Tips To Counter 'Reptile' Tactics

By **Jack Vales and Stephen Turner** (June 16, 2025)

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Rule 32(a)(3) of the Federal Rules of Evidence permits broad use of corporate witness testimony at trial by adverse parties. For this reason, sophisticated plaintiffs lawyers in high-stakes litigation matters often seek to use the Rule 30(b)(6) deposition as a tool to lock in testimony that they may leverage to produce outsized verdicts at trial.

This observation, by itself, is unsurprising. The rising use of so-called reptile tactics by plaintiffs lawyers, however, has elevated the risk accompanying company witness depositions.

Reptile theory generally refers to a strategy that seeks to establish (1) the existence of safety rules or standards, which often have no legal significance to the case; and (2) conduct by the defendant that violated the purported rules or standards. Where effectively employed, reptile theory may activate jurors' survival instincts and trigger them to issue large damages awards to protect the larger community and themselves.

Against this backdrop, corporate defendants should understand that the most damaging lines of attack in corporate witness depositions may not even directly involve a disputed issue of fact. Indeed, in our experience, plaintiffs lawyers now often seek to use the Rule 30(b)(6) deposition as a means to shift the case inquiry to one focused on corporate conduct and safety.

For the unsuspecting or unprepared corporate deponent, it is easy to fall victim to this strategy. The questions raised by plaintiffs counsel may seem at first impression to be innocuous and noncontroversial. For example, counsel may ask, "You would agree that there is nothing more important than safety, right?" or "You would agree that it is wrong for a company to put profits over safety, right?"

If, as the plaintiff's counsel hopes, the corporate witness answers an unadorned "yes" to either or both of these questions, counsel will have succeeded in creating a new and dangerous paradigm to model their presentation at trial. Instead of focusing on whether the corporate defendant's actions give rise to liability under the court's jury instructions, counsel may use affirmative responses to the above deposition questions to shift the focus at trial to whether the corporate defendant violated the agreed-upon safety rules.

So, how should corporate defendants best prepare to respond to counsel's efforts to reframe the issues at the Rule 30(b)(6) deposition?

Most importantly, the corporate deponent and defense counsel should anticipate this line of inquiry in advance of the deposition and assess potential responses. For example, while safety is surely important, it does not represent the sole guiding principle for companies seeking to innovate new or improved products. Many other important considerations enter into the product development process. The reality is that companies and innovators must often engage in reasonable risk-taking to progress innovation, develop products that consumers will buy, and generate a profit that will encourage further innovation and risk-

taking.

Prudent trial preparation in the age of so-called nuclear verdicts requires corporate deponents to assess these considerations, and to then develop a deposition plan that incorporates mock questioning on these topics. Counsel leading the defense of the Rule 30(b)(6) depositions should also consider the following.

Consider who is best positioned to tell the company story.

While the corporate deponent will ideally have personal knowledge concerning the topics noticed for the deposition, the rule does not require the deponent to testify on the basis of personal knowledge. Instead, Rule 30(b)(6) simply requires that the deponent testify as to matters "known or reasonably available to the organization."

With this in mind, the corporate defendant should consider designating a corporate witness who has superior communication skills and at least some personal knowledge of the facts.

Decide whether defense counsel should conduct a cross-examination of their own Rule 30(b)(6) witness.

While Rule 32(a)(3) authorizes the introduction of Rule 30(b)(6) deposition testimony of an adverse party, the rule only permits parties to introduce portions of their own Rule 30(b)(6) testimony at trial "that in fairness should be considered with the part introduced" by the adverse party. Thus, there can be no assurances that testimony elicited in a deposition cross-examination would necessarily be admissible at trial.

Nevertheless, a prudent corporate defendant and counsel will prepare for the possibility of a deposition cross-examination, including to elicit testimony of key facts and, perhaps more importantly, to clean up or contextualize testimony provided on direct examination. The choice as to whether to elicit any such testimony will ordinarily involve a game-time decision dependent upon the scope and nature of the testimony elicited on direct.

Determine when the deposition should occur.

To some degree, a party may not control when in the discovery process an adverse party will seek to conduct a Rule 30(b)(6) deposition. Through the meet and confer process, however, counsel may seek to reach alignment with plaintiffs counsel as to the timing of the Rule 30(b)(6) deposition.

In most cases, defense counsel should avoid scheduling a Rule 30(b)(6) deposition early in the discovery process, as waiting to do so helps reduce surprise and provides more time for a corporate defendant to refine defenses to advance in the deposition consistent with the anticipated trial strategy. Nevertheless, in some cases, an early Rule 30(b)(6) deposition may present distinct advantages for the defense, particularly where the corporate deponent is well prepared at an early stage of the case.

Conclusion

It has been said that a corporate defendant may not win a case in a deposition, but may certainly lose a case if the deposition takes a wrong turn. Now, more than ever — with the rising use of reptile tactics — this maxim should be heeded in high-stakes litigation. Without proper preparation, a corporate deponent may be lulled into providing deposition testimony that undercuts a key defense or sets up the plaintiff's case strategy at trial.

To avoid such outcomes, defense counsel and the corporate deponent should attack preparation for the Rule 30(b)(6) deposition in a comprehensive manner, keeping in mind, among other matters, each of the considerations discussed above.

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