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## The Unreasonable Interpretation of Reasonable Particularity in Federal Rule of Civil Procedure 30(b)(6)

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# THE UNREASONABLE INTERPRETATION OF “REASONABLE PARTICULARITY” IN FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)

## I. INTRODUCTION

Federal Rule of Civil Procedure 30(b)(6) provides that a party may name a corporation as a deponent in a subpoena as long as the party taking the deposition describes with “reasonable particularity” the matters on which the examination is requested.<sup>1</sup> The corporation then has the responsibility to designate a person or persons to testify on its behalf and, potentially, the obligation to designate the particular issues on which each deponent will testify.<sup>2</sup> The deponent must testify as to matters known or reasonably available to the corporation.<sup>3</sup>

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<sup>1</sup> FED. R. CIV. P. 30(b)(6). The Rule states:

A party may in the party’s notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, 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 the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

*Id.*

<sup>2</sup> *Id.* The corporation can name any of its officers, directors, managing agents, or any other persons as deponents on its behalf. *Id.* See *Stone v. Morton Int’l, Inc.*, 170 F.R.D. 498, 500 (D. Utah 1997) (explaining Rule 30(b)(6) allows any agent to testify on corporation’s behalf); *King v. Pratt & Whitney*, 161 F.R.D. 475, 475-76 (S.D. Fla. 1995) (citing Rule 30(b)(6)); *Paparelli v. Prudential Ins. Co. of Am.*, 108 F.R.D. 727, 730 (D. Mass. 1985) (determining purpose of Rule 30(b)(6) as allowing corporation to designate any person to testify); see also FED. R. CIV. P. 30(b)(6) advisory committee’s note (stating

When depositions of corporate representatives extend outside the scope defined in the deposition subpoena the purpose behind the “reasonable particularity” requirement becomes an issue. The original interpretation of Rule 30(b)(6) in *Paparelli v. Prudential Ins. Co. of Am.*,<sup>4</sup> a First Circuit case, stated that the “reasonable particularity” requirement limited the scope of the deposition to that which was defined in the deposition subpoena.<sup>5</sup> More recently, *King v. Pratt & Whitney*,<sup>6</sup> a Third Circuit case, stated that the “reasonable particularity” requirement did not limit the scope of the deposition but only obligated the corporation to produce a witness that could respond to the issues defined in the deposition subpoena.<sup>7</sup>

Part II of this article will outline the historical problems of deposing corporate parties that led to the enactment of Rule 30(b)(6).<sup>8</sup> Parts III and IV will examine the *Paparelli* and *King* interpretations of Rule 30(b)(6), focusing on the rationale employed by each of the courts as they analyze the language of Rule 30(b)(6) and the accompanying Advisory Committee Notes.<sup>9</sup> Part V will discuss the personal jurisdiction doctrine and the resulting exposure of corporate parties to both interpretations of Rule 30(b)(6).<sup>10</sup> Part VI will explain that *King* better interprets Rule 30(b)(6) since placing no limitation on the scope of the deposition conforms with the purpose of Rule 30(b)(6) and the liberal discovery principles of Federal Rule of Civil Procedure 26(b)(1).<sup>11</sup>

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agents other than officers, directors, and managing agents may testify but must consent).

<sup>3</sup> FED. R. CIV. P. 30(b)(6).

<sup>4</sup> 108 F.R.D. 727.

<sup>5</sup> *Id.* at 730.

<sup>6</sup> 161 F.R.D. 475.

<sup>7</sup> *Id.* at 476.

<sup>8</sup> *See infra* notes 12-28 and accompanying text.

<sup>9</sup> *See infra* notes 29-62 and accompanying text.

<sup>10</sup> *See infra* notes 63-67 and accompanying text.

<sup>11</sup> *See infra* notes 68-87 and accompanying text.

## II. HISTORY OF CORPORATE DEPOSITIONS

Rule 30(b)(6) was enacted in 1970 to address the unique problems of deposing a corporation.<sup>12</sup> Prior to Rule 30(b)(6) the only way to obtain testimony in a suit involving a corporation was to individually depose numerous corporate officers and agents who might all testify that they have no knowledge of the relevant facts.<sup>13</sup> Difficulty often arose in determining which officers or employees could provide the answers the deposing counsel sought.<sup>14</sup> The courts often exacerbated the problem by applying the old Rule 30(a) when the deposing counsel could not provide the name or a description of the party sought, and holding the notice of deposition invalid.<sup>15</sup>

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<sup>12</sup> See Steven P. Means, *The Corporation As a Witness*, 69 JUL. WIS. LAW. 14, 15 (outlining difficulty of deposing corporations).

<sup>13</sup> *Id.* See *United States v. Gahagan Dredging Corp.*, 24 F.R.D. 328, 329 (S.D. N.Y. 1958) (ruling notice must name or identify each person in corporation to be examined); *Park and Tilford Distillers Corp. v. Distillers Co.*, 19 F.R.D. 169, 171-72 (S.D.N.Y. 1956) (ruling notice defective where neither name nor description of deposed party are given).

<sup>14</sup> Means, *supra* note 12, at 15. The problem of not knowing who in the corporation should be deposed often led to the deposition of a series of individual corporate representatives who would each disclaim knowledge of the relevant facts. *Id.* See *Haney v. Woodward & Lothrop, Inc.* 330 F.2d 940, 944 (4th Cir. 1964) (addressing problem of corporation being uncooperative when deposing counsel does not know whom to subpoena).

<sup>15</sup> See *Gahagan Dredging Corp.*, 24 F.R.D. at 329 (stating that requiring corporations to identify representatives for deposition violates Rule 30(a)); see also, *Park and Tilford Distillers Corp.*, 19 F.R.D. at 171-72 (stating subpoenas not naming specific persons are ineffective); *Spaeth v. Warner Bros. Pictures, Inc.*, 1 F.R.D. 729, 731 (S.D.N.Y. 1941) (holding subpoena of corporation must comply with old Rule 30(a)).

The old FED. R. CIV. P. 30(a) stated:

A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to

Rule 30(b)(6) directly addressed these problems by allowing the corporate entity to be named as the deponent and shifting the onus of naming the individual to represent the corporate entity to the corporation.<sup>16</sup> The Advisory Committee that worked on the adoption of Rule 30(b)(6) cited three primary reasons for the Rule's adoption.<sup>17</sup> The committee concluded that Rule 30(b)(6): (1) eliminates the problem of identifying which corporate employees are managing agents; (2) eliminates the "bandying" by officers who are deposed but disclaim knowledge of the facts that are clearly known to someone within the corporation; and (3) eliminates unnecessary, redundant, and time consuming depositions.<sup>18</sup>

By placing the responsibility of identifying the deponent on the corporation, Rule 30(b)(6) requires the corporation to either produce a deponent or deponents who can supply the information sought in the deposition subpoena or face sanctions.<sup>19</sup> The deposition sub-

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the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

*Gahagan Dredging Corp.*, 24 F.R.D. at 329.

<sup>16</sup> FED. R. CIV. P. 30(b)(6) provides in pertinent part that "the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf . . ." FED. R. CIV. P. 30(b)(6). The Advisory Committee did not intend Rule 30(b)(6) to place all of the burden on the corporation but to facilitate discovery for both sides. FED. R. CIV. P. 30(b)(6) advisory committee's note. It stated that Rule 30(b)(6) "should also assist organizations which find that an unnecessarily large number of their officers and agents are being deposed by a party uncertain of who in the organization has knowledge." *Id.*

<sup>17</sup> See FED. R. CIV. P. 30(b)(6) advisory committee's note (outlining reasons for adoption of 30(b)(6)).

<sup>18</sup> *Id.*; see also *Protective Nat'l Ins. Co. of Omaha v. Commonwealth Ins. Co.*, 137 F.R.D. 267, 278 (D. Neb. 1989) (citing reasons for adoption of Rule 30(b)(6)).

<sup>19</sup> See *Lapenna v. Upjohn Co.*, 110 F.R.D. 15, 20 (E.D. Pa. 1986) (stating corporation must produce person who can speak on its behalf). The court further

poena must state the topics of the deposition with “reasonable particularity” so the corporation can easily produce the correct deponent(s).<sup>20</sup> The corporation is not obligated to produce the most knowledgeable person to address each issue outlined in the deposition subpoena and can even prepare one witness to testify on all of the issues.<sup>21</sup> The corporation, however, must make a good faith effort to reasonably comply with the deposition subpoena and to produce a person having knowledge on the matters sought.<sup>22</sup> Such person does not have to be an officer, director, or managing agent to testify on the corporation’s behalf.<sup>23</sup> Any employee or agent may be chosen to testify.<sup>24</sup>

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stated that the requirement that the employee or representative produced be able to address the issues outlined within the deposition subpoena includes not only facts sought but also subjective beliefs and opinions. *Id.*; see also *Protective Nat’l Ins. Co. of Omaha*, 137 F.R.D. at 285 (ordering expenses to be paid by deponent who refuses to answer relevant questions).

<sup>20</sup> See Means, *supra* note 12, at 15 (examining “reasonable particularity” requirement).

<sup>21</sup> See *Hoechst Celanese Corp. v. National Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 623 A.2d 1099, 1113 (Del. Super. Ct. 1991) (stating that providing most knowledgeable person is unnecessary and corporation may prepare one witness).

<sup>22</sup> See *Mitsui & Co. (U.S.A.), Inc. v. Puerto Rico Water Resources Authority*, 93 F.R.D. 62, 67 (D.P.R. 1981) (holding anyone can appear as deponent at deposition if they answer questions completely).

<sup>23</sup> See *St. Hilaire and Assocs., Inc. v. Federal Deposit Ins. Corp.*, CIV. No. 92-511-SD, 1994 WL 575773, at \*1 (D.N.H. October 13, 1994) (noting agents can be compelled to testify on behalf of corporations); Means, *supra* note 12, at 16 (indicating any “other person” can be designated by corporations); see also *GTE Products Corp. v. Gee*, 115 F.R.D. 67,68-69 (D. Mass. 1987) (explaining subpoenas cannot name persons who are not officers, directors, or managing agents).

<sup>24</sup> See Means, *supra* note 12, at 16 (declaring any person may testify for corporations).

All testimony at the deposition is considered that of the corporation and is binding on the corporation and on other deponents.<sup>25</sup> The deponent is obligated to provide "complete, knowledgeable and binding answers on behalf of the corporation."<sup>26</sup> If a deponent cannot adequately respond to the issues identified in the deposition subpoena, the corporation must provide a capable substitute deponent.<sup>27</sup> Courts normally find compliance by the corporation when the majority of the questions pertaining to the issues in the subpoena are answered.<sup>28</sup>

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<sup>25</sup> See *Nevada Power Co. v. Monsanto Co.*, 891 F. Supp. 1406, 1418 (D. Nev. 1995) (quoting *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989) and restating corporations must be prepared to give "complete, knowledgeable, and binding answers"); *Amp, Inc. v. Fujitsu Microelectronics, Inc.*, 853 F. Supp. 808, 831 (M.D. Pa. 1994) (stating that deponent must be able to testify on all issues in subpoena); *Hoechst Celanese Corp.*, 623 A.2d at 1112 (cautioning that deponent must be prepared to provide binding testimony); *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D. N.C. 1989) (stating answers are binding on corporations); *Means*, *supra* note 12, at 16 (observing testimony is corporation's even if deponent cannot otherwise speak for corporation); see also *In re Asbestos School Litig.*, No. 83-0268, 1988 WL 125184, at \*2 (E.D. Pa. Nov. 22, 1988) (stating employee must have authority to speak for corporation at deposition). But see Roger L. Wilson and Steven C. Posner, *Questions Beyond the Scope: Defending Against The Fed. R. Civ. P. 30(b)(6) Attack*, 26 JUL COLO. LAW. 87, 90 (arguing that answers to questions beyond scope should not be binding on corporation).

<sup>26</sup> *Marker*, 125 F.R.D. at 126; see also *Dravo Corp. v. Liberty Mutual Ins. Co.*, 164 F.R.D. 70, 75 (D. Neb. 1995) (obligating corporation to prepare a witness if no one has sufficient knowledge to testify).

<sup>27</sup> See *Marker*, 125 F.R.D. at 126 (noting corporation must provide substitute for inadequate deponent even when acting in good faith).

<sup>28</sup> See *In re Folding Carton Antitrust Litig.*, 83 F.R.D. 132, 134 (N.D. Ill. 1979) (ruling deponent complies when attorney asks vague questions and deponent answers as completely as possible); *Kamens v. Horizon Corp.*, 81 F.R.D. 444, 445 (S.D.N.Y. 1979) (holding that answering 306 questions at deposition adequate compliance by deponent). But see *Compagnie Francaise D'Assurance Pour Le Commerce Exterieur v. Phillips Petroleum Co.*, 105 F.R.D. 16, 42 (S.D.N.Y. 1984) (holding that number of questions not a valid objection).

### III. THE FIRST CIRCUIT'S INTERPRETATION OF RULE 30(b)(6)

The reasonable particularity requirement of Rule 30(b)(6) becomes an issue when the questions posed during the deposition veer beyond the scope outlined within the subpoena.<sup>29</sup> *Paparelli v. Prudential Ins. Co. of Am.*, a First Circuit case, was the first case to specifically rule on the allowable scope of the deposition of a corporation pursuant to Rule 30(b)(6).<sup>30</sup> In *Paparelli*, Judith Paparelli (the "Plaintiff"), filed suit against the Prudential Insurance Company of America ("Prudential") and Westinghouse Elevator Company ("Westinghouse") claiming she was injured as a result of a unique characteristic of the elevators in the Prudential Tower in Boston, Massachusetts.<sup>31</sup> The elevator doors had a pre-opening feature that began opening the doors before the elevator stopped, and Plaintiff claimed she was injured as a result of this feature.<sup>32</sup> In the course of litigation, Plaintiff served a notice of deposition on Westinghouse pursuant to Rule 30(b)(6) stating that Plaintiff's counsel would take an oral deposition of the custodian of records maintained by Westinghouse.<sup>33</sup> The notice of deposition stated the deposition

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<sup>29</sup> See *Overseas Private Inv. Corp. v. Mandelbaum*, No. CIV.A.97-1138, 1999 WL 137334, at \*3 (D.D.C. Mar. 15, 1999) (holding deposition of partners in partnership not limited by scope of subpoena); *Stone v. Morton Int'l, Inc.*, 170 F.R.D. at 500 (stating no limit exists on what can be asked during deposition); *King v. Pratt & Whitney*, 161 F.R.D. at 476 (stating deponent must answer questions beyond scope defined in subpoena); *Edison Corp. v. Town of Secaucus*, 17 N.J. Tax 178, 182 (N.J. Tax Ct. 1998) (allowing questions beyond scope defined in subpoena). *But see Paparelli v. Prudential Ins. Co. of Am.*, 108 F.R.D. 727, 730 (D. Mass. 1985) (ruling questions cannot go beyond scope defined in deposition).

<sup>30</sup> *Paparelli*, 108 F.R.D. at 730.

<sup>31</sup> *Id.* at 728. Plaintiff's alleged injury and how it occurred is not discussed in the case. *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 728. The impetus for the deposition of the custodian of records was Westinghouse's response to a court order issued on April 15, 1985. *Paparelli v. Prudential Ins. Co. of Am.*, 108 F.R.D. 727, 730 (D. Mass. 1985). The United



would cover (1) the system of record keeping maintained by Westinghouse and (2) the details of any search conducted by Westinghouse in an effort to comply with an earlier court order to produce documents constituting previous claims against Westinghouse with regard to the elevator pre-opening feature.<sup>34</sup> At the deposition, Plaintiff's counsel attempted to ask Westinghouse's records custodian about a letter regarding the elimination of the pre-opening feature sent by Prudential to Westinghouse.<sup>35</sup> Counsel for Westinghouse objected to the question as beyond the scope of the

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States District Court for the District of Massachusetts ordered Westinghouse to produce "all documents constituting claims (whether by formal lawsuit or otherwise) filed during the period January 1, 1978 to December 31, 1984 with or against Westinghouse for any injuries allegedly caused by the 'pre-opening' of elevator doors in the geographical area served by Westinghouse's regional offices in New Jersey." *Id.* Westinghouse produced documents with respect to only one claim, leading the plaintiff to question the accuracy and integrity of Westinghouse's record keeping and records search. *Id.*

<sup>34</sup> *Id.* at 728. The notice of deposition stated in pertinent part:

Notice is hereby given that the undersigned attorney will take the deposition upon oral examination pursuant to Rule 30(b)(6) F.R.C.P. of the employee of the defendant Westinghouse Elevator Company holding the position of custodian of the records maintained by Westinghouse at its facility in Short Hills, New Jersey, and, more specifically the records including the documents ordered to be produced by the order of Magistrate Collings entered on April 15, 1985 (copy attached). The scope of the deposition will relate to, and the person designated to testify, shall have knowledge of the following matters: (a) The manner and system of keeping, maintaining and indexing the records maintained by Westinghouse in which the documents described in the attached order of the Court were contained. (b) The details of any search conducted by Westinghouse in an endeavor to comply with the attached order.

*Id.*

<sup>35</sup> *Paparelli v. Prudential Ins. Co. of Am.*, 108 F.R.D. 727, 728 (D. Mass. 1985).

notice of deposition and instructed the deponent not to answer the question.<sup>36</sup>

Ruling that questions posed at a deposition pursuant to Rule 30(b)(6) cannot stray beyond the scope stated in the notice of deposition, the United States District Court for the District of Massachusetts stated that “if a party opts to employ the procedures of Rule 30(b)(6) F.R.Civ.P., to depose the representative of a corporation, that party must confine the examination to the matters stated ‘with reasonable particularity’ which are contained in the Notice of Deposition.”<sup>37</sup> The court extrapolated two purposes justifying this limitation

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 730. The court based its decision on what it perceived to be the intent of the Rule as stated in the Advisory Committee Notes to the Rule. *Id.* at 729. The Advisory Committee Notes state, in pertinent part:

[A] party may name a corporation, partnership, association, or governmental agency as the deponent and designate the matters on which he requests examination, and the organization shall then name one or more of its officers, directors, or managing agents, or other persons consenting to appear and testify on its behalf with respect to matters known or reasonably available to the organization . . . This procedure supplements the existing practice whereby the examining party designates the corporate official to be deposed. Thus, if the examining party believes that certain officials who have not testified pursuant to this subdivision have added information, he may depose them . . . The new procedure should be viewed as an added facility for discovery, one which may be advantageous to both sides as well as an improvement in the deposition process. It will reduce the difficulties now encountered in determining, prior to the taking of a deposition, whether a particular employee or agent is a “managing agent.” See Note, Discovery Against Corporations Under the Federal Rules, 47 Iowa L.Rev. 1006-1016 (1962). It will 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 it. Cf. *Haney v. Woodward & Lothrop, Inc.*, 330 F.2d 940, 944 (4th Cir. 1964). The provision should also assist organizations which find that an unnecessarily large number of

from the Rule's Advisory Committee Notes.<sup>38</sup> The first purpose of Rule 30(b)(6) was to permit a party to depose a corporation without naming the individual to be deposed.<sup>39</sup> The second purpose was to permit the corporation to effectively prepare a representative to answer questions on certain matters on its behalf.<sup>40</sup> In addition, the

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their officers and agents are being deposed by a party uncertain of who in the organization has knowledge. Some courts have held that under the existing rules a corporation should not be burdened with choosing which person is to appear for it. E.g., *United States v. Gahagan Dredging Corp.*, 24 F.R.D. 328, 329 (S.D.N.Y. 1958). This burden is not essentially different from that of answering interrogatories under Rule 33, and is in any case lighter than that of an examining party ignorant of who in the corporation has knowledge.

FED. R. CIV. P. 30(b)(6) advisory committee's note; *see also* *Haney v. Woodward & Lothrop, Inc.*, 330 F.2d 940, 946 (4th Cir. 1964) (ruling defendant's refusal to comply with court order to produce documents justified new trial); *United States v. Gahagan Dredging Corp.* 24 F.R.D. 328, 329 (S.D.N.Y. 1958) (holding that requiring corporation to determine the individual to appear as unduly burdensome). The *Paparelli* court added, however, that nowhere in the rule or the Advisory Committee Notes does it explicitly state that the matters outlined within the notice of deposition limit the scope of the examination. *Paparelli*, 108 F.R.D. at 729. The court also acknowledged that the portion of the Rule stating that "the persons so designated shall testify as to matters known or reasonably available to the organization" could be interpreted to mean that the deposition is not limited in scope to the matters outlined in the notice of deposition. *Id.*

<sup>38</sup> *See Paparelli v. Prudential Ins. Co. of Am.*, 108 F.R.D. at 729-30 (deducing from rule and notes a limitation on scope of subpoena). The court stated that the limitation of the deposition to the matters set forth in the notice of deposition is implied by the procedures set forth in the Rule. *Id.* at 729.

<sup>39</sup> *Id.* The court reasoned that it made no sense for a party to state specific matters in a subpoena to ensure that the corporation could provide a deponent to address those specific matters and then ask questions on matters different than those in the subpoena. *Id.* at 729-30. This purpose was an explicitly stated goal of the Advisory Committee. *See* FED. R. CIV. P. (30)(b)(6) advisory committee's note (stating that Rule will curb "bandying" by corporate officers).

<sup>40</sup> *Paparelli*, 108 F.R.D. at 730. The court stated that the rule was designed to avoid the old problem of a subpoena noticing a particular employee

court reasoned that since the notice of deposition requires that the subject matters of the deposition be stated with “reasonable particularity”, it is implied within Rule 30(b)(6) that the deposition itself is subject to the same limitation.<sup>41</sup>

The court went on to add, however, that the instruction by the Westinghouse employee’s counsel not to answer the deposition question was improper according to Rule 30(c).<sup>42</sup> All deposition

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but not telling the employee and the corporation what matters would be covered in the deposition. *Id.* Under these circumstances, the employee and the corporation could not prepare for the deposition and had no way of knowing if the employee had any knowledge of the matters on which he would be deposed. *Id.* The court noted that this problem would persist if a party could ask a deponent any question beyond the scope stated in the subpoena. *Id.*

<sup>41</sup> *Id.* The court concluded that if a party was free to ask any question, regardless of scope stated in the subpoena, the requirement that matters be listed with “reasonable particularity” would not exist in the statute. *Id.* The court determined that “matters”, as used in that part of the rule that states “matters upon which examination is requested”, has the same meaning as “matters” as used in that part of the rule that states “matters known or reasonably available to the organization.” *Paparelli v. Prudential Ins. Co. of Am.*, 108 F.R.D. 727, 730 (D. Mass. 1985). Therefore, the representative for the corporation has a duty to testify on “matters known or reasonably available to the organization” which are only those “matters upon which the examination is requested.” *Id.*

<sup>42</sup> *Id.* Rule 30(c) provides in pertinent part:

. . . All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections.

FED. R. CIV. P. (30)(c); *See Dominick v. Troscoso*, CIV.A. No. 94-2395-B, 1996 WL 408769 at \*2 (Mass. Super. Jul. 17, 1996) (holding instructions not to answer deposition questions improper); *Raytheon Co. v. Tully*, No. 9203097, 1994 WL 879778 at \*2 (Mass. Super. Mar. 30, 1994) (affirming decision of *Paparelli* court); *see also Ralston Purina v. McFarland*, 550 F.2d 967, 973 (4th

questions must generally be answered by the deponent to aid in the discovery process.<sup>43</sup> Counsel for Westinghouse did not cite any of the limited exceptions to Rule 30(c) or utilize the mechanism built into the Federal Rules of Civil Procedure by seeking a Rule 30(d) protective order.<sup>44</sup> Had Westinghouse's counsel applied for a

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Cir. 1977) (stating no grounds for objection at deposition exist based on inadmissibility of evidence at trial); *Protective Nat'l Ins. Co. of Omaha v. Commonwealth Ins. Co.*, 137 F.R.D. 267, 278 (D. Neb. 1989) (stating factual information not covered by attorney-client privilege in deposition).

<sup>43</sup> FED. R. CIV. P. 30(c). See *International Union of Elec., Radio and Mach. Workers v. Westinghouse Elec. Corp.*, 91 F.R.D. 277, 279 (D.D.C. 1981) (holding all deposition questions must be answered except those revealing trade secrets or privileged information); *United States v. International Bus. Mach. Corp.*, 79 F.R.D. 378, 381 (S.D.N.Y. 1978) (upholding court order instructing parties to answer all deposition questions); *Preyer v. United States Lines, Inc.*, 64 F.R.D. 430, 431 (E.D. Pa. 1973) (holding plaintiff's assertion of irrelevance did not usurp obligation to answer deposition questions); Lawrence Iason, *Problems in Dealing With Your Adversary: Addendum*, 437 PLI/Lit 71, 78 (explaining that instructions not to answer should be limited to exceptional circumstances); Steven J. Helmers, *Depositions: Objections, Instructions and Sanctions*, 33 S.D. L. REV. 272, 277 (stating majority view requires witnesses to answer despite objections).

<sup>44</sup> *Paparelli*, 108 F.R.D. at 731. The court cited to previous federal court rulings which held that Rule 30(c) should not require disclosure of trade secrets or privileged information that do not pertain to the issue under litigation. *Id.* at 730. Adopting a standard of "potential harm" to determine if the requirements of Rule 30(c) disclosure should be waived, the court found that none of the reasons given by counsel for Westinghouse indicated that Westinghouse would suffer any serious harm if the questions were answered. *Id.* at 731. See *International Union*, 91 F.R.D. at 279 (ruling trade secrets and privileged information need not be revealed); *Riddell Sports Inc. v. Brooks*, 158 F.R.D. 555, 557 (S.D.N.Y. 1994) (outlining when deposition questions do not have to be answered). The *Paparelli* court added that "the impropriety of defendant's counsel's instructions is more apparent when it is considered that there is a remedy in the rules for dealing with the type of problem which defendant's counsel faced." *Paparelli*, 108 F.R.D. at 731. Rule 30(d) should be used to seek a protective order from the court when counsel is faced with a deposition question that counsel believes should not be answered. *Id.* Even when counsel is correct when instructing the client not to

protective order, pursuant to Rule 30(d), the court would have ruled that deposition questions straying beyond the scope of the notice of deposition would not have to be answered.<sup>45</sup> The *Paparelli* court's limitation of the scope of the deposition to the matters described with reasonable particularity stood alone for almost ten years as the standard interpretation of Rule 30(b)(6).<sup>46</sup>

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answer a deposition question, counsel must immediately seek a protective order from the court. *Id.* Only the court can order that a deposition be limited or that certain questions need not be answered. *Id.*

Rule 30(d)(3) provides in pertinent part:

At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c).

FED. R. CIV. P. 30(d)(3); *see Haney v. Woodward & Lothrop, Inc.* 330 F.2d at 945-46 (stating relevancy and privilege are determinations made by court); *Hearst / ABC-Viacom Entertainment Serv. v. Goodway Mktg., Inc.*, 145 F.R.D. 59, 62 (E.D. Pa. 1992) (ruling court order necessary to stop or limit a deposition); *Smith v. Logansport Community Sch. Corp.*, 139 F.R.D. 637, 643 (N.D. Ind. 1991) (affirming protective order required to stop bad faith deposition).

<sup>45</sup> *Paparelli*, 108 F.R.D. at 731. The court ultimately held that plaintiff's motion for sanctions against Westinghouse should be denied because plaintiff's counsel's questions were improper pursuant to Rule 30(b)(6). *Id.* But, the defendant's counsel was also at fault for improperly instructing the defendant to refrain from answering deposition questions and failing to seek a protective order from the court. *Id.*

<sup>46</sup> *See Wilson, supra* note 25, at 88 (stating *Paparelli v. Prudential Ins. Co. of Am.* and *King v. Pratt & Whitney* are only cases to rule on allowable scope); *Means, supra* note 12, at 16 (examining disparity between *Paparelli* and *King* in interpretation of Rule 30(b)(6)).

#### IV. THE THIRD CIRCUIT'S INTERPRETATION OF RULE 30(b)(6)

*King v. Pratt & Whitney*, a Third Circuit case, directly challenged the *Paparelli* interpretation of Rule 30(b)(6).<sup>47</sup> In *King*, counsel for the Thomas King (Plaintiff) served three notices of deposition on the defendant corporation, Pratt & Whitney.<sup>48</sup> These notices requested Pratt & Whitney to designate representatives to testify on the issues contained therein.<sup>49</sup> During the deposition, counsel for Plaintiff asked two representatives of Pratt & Whitney questions that went beyond the scope stated in the notices of deposition.<sup>50</sup> Pursuant to these questions, counsel for Pratt & Whitney objected, terminated the deposition, and sought a protective order to limit the scope of questioning to that which was defined in the three notices of deposition.<sup>51</sup>

Stating that a better reading of Rule 30(b)(6) exists than that offered by the *Paparelli* court, the United States District Court for the Southern District of Florida held that all relevant questions must be answered at a deposition regardless of whether or not the questions fall within the scope outlined in the notice of deposition.<sup>52</sup> The court observed that the *Paparelli* interpretation of Rule 30(b)(6) merely slows down the discovery process and ultimately does not prevent those questions that exceed the scope defined in the notice of deposi-

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<sup>47</sup> See Wilson, *supra* note 25, at 88 (analyzing juxtaposition of *Paparelli* and *King* holdings).

<sup>48</sup> *King v. Pratt & Whitney*, 161 F.R.D. at 475. This case came before the court upon the defendant's motion seeking a protective order to prohibit the scope of Plaintiff's 30(b)(6) deposition questions from exceeding that which was stated in Plaintiff's three notices of deposition. *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* The court did not record the specific facts giving rise to the litigation between the parties. *King*, 161 F.R.D. at 475.

<sup>52</sup> *Id.* at 476. The court noted that the only case directly on point with respect to the issue of the scope of 30(b)(6) depositions was *Paparelli*. *Id.*

tion from being answered.<sup>53</sup> If a corporate representative does not answer a question beyond the scope of the notice in a 30(b)(6) deposition, the other party can simply re-notice that party under the standard notice provisions of Rule 26(b)(1) which allow all relevant questions to be asked at a deposition without limitation.<sup>54</sup>

The court re-interpreted Rule 30(b)(6) as having four basic provisions.<sup>55</sup> First, the Rule obligates the responding corporation to provide a witness or witnesses who can address the issues specified within the notice of deposition.<sup>56</sup> Second, the failure of the corporate representative(s) to address issues raised in the notice of deposition is equivalent to a failure of the corporation to comply with its Rule 30(b)(6) obligation, which may subject it to sanctions.<sup>57</sup> Third, if deposition questions exceed the scope described in the notice of deposition, the general deposition rules stated in Rule 26(b)(1) apply

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<sup>53</sup> *Id.* The court asserted that “Rule 30(b)(6) should not be read to confer some special privilege on a corporate deponent responding to this type of notice. *Id.*

<sup>54</sup> *King*, 161 F.R.D. at 476. The court reasoned that “[p]laintiff should not be forced to jump through that extra hoop absent some compelling reason.” *Id.* See FED. R. CIV. P. 30(b)(6) advisory committee’s note (stating Rule is intended to supplement existing deposition practices).

Rule 26(b)(1) states in pertinent part:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of any other party . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

FED. R. CIV. P. 26(b)(1).

<sup>55</sup> *King*, 161 F.R.D. at 476.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* The court added that Rule 30(b)(6) creates an affirmative duty on the corporation “to produce a representative who can answer questions that are both within the scope of the matters described in the notice and are ‘known or reasonably available’ to the corporation.” *Id.*



and all relevant questions may be asked.<sup>58</sup> Fourth, if the corporate representative(s) cannot answer the questions that are outside the scope described in the notice of deposition, it is not the fault of the corporation, and the deposing counsel has no recourse.<sup>59</sup> The mandate within Rule 30(b)(6) that the notice of deposition “describe with reasonable particularity the matters on which examination is requested” is not a limitation on the scope of the deposition but an imposition of obligation upon the corporation to provide a representative able to address the issues specified in the notice of deposition.<sup>60</sup>

The court concluded that Rule 30(b)(6) was adopted to ensure that the right representative appeared at a deposition and that the rule was not intended to provide a greater level of protection to a corporate party as opposed to a natural person.<sup>61</sup> Addressing the theme of facilitating discovery, the court concluded that Rule 30(b)(6) only defined a corporation’s obligation to produce a representative able to address the specific issues outlined in the notice of deposition.<sup>62</sup>

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<sup>58</sup> *Id.* The court also stated that “no special protection is conferred on a deponent by virtue of the fact that the deposition was noticed under 30(b)(6).” *King*, 161 F.R.D. 476.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* The court declared that “[t]he Rule is not one of limitation but rather of specification within the broad parameters of the discovery rules.” *Id.* The court further supported its holding by citing directly to the Rule and the Advisory Committee’s Note. *King*, 161 F.R.D. at 476.

Rule 30(b)(6) states, “This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.” FED. R. CIV. P. 30(b)(6). The Advisory Committee’s Note states, “The new procedure should be viewed as an added facility for discovery, one which may be advantageous to both sides as well as an improvement in the deposition process.” FED. R. CIV. P. 30(b)(6) advisory committee’s note.

<sup>62</sup> *King v. Pratt & Whitney*, 161 F.R.D. at 476. Pratt & Whitney’s motion for a protective order was subsequently denied and King’s counsel was permitted to reconvene the depositions. *Id.* at 477-77.

## V. THE DISPARITY BETWEEN THE FIRST AND THIRD CIRCUIT

Corporations and their counsel must prepare to face both the *Paparelli* and *King* interpretations of Rule 30(b)(6) since personal jurisdiction doctrine subjects a corporation that meets minimum contacts requirements to the jurisdiction of more than one forum.<sup>63</sup> In addition, 28 U.S.C. § 1332(c)(1) deems a corporation a citizen of potentially two different forum states: (1) the state of its incorporation; and (2) the state of its principle place of business.<sup>64</sup> Whether a jurisdiction adopts the *Paparelli* or the *King* interpretation of Rule 30(b)(6), corporate counsel should object to any question beyond the scope of the subpoena and note for the record that answers to questions beyond the scope should not be binding on the corporation.<sup>65</sup>

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<sup>63</sup> See, e.g., *Burger King v. Rudzewicz*, 471 U.S. 462, 472-73 (1985) (establishing low minimum contacts threshold when corporation purposely directs activities into forum); *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957) (finding minimum contacts when state has substantial interest in protecting citizens from actions of corporation); *International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement*, 326 U.S. 310, 317-20 (1945) (defining presence of foreign corporation within forum and subjecting such corporations to jurisdiction of forum).

<sup>64</sup> See 28 U.S.C. § 1332(c)(1) (1994) (establishing corporate dual citizenship). The statute states in pertinent part that “a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” 28 U.S.C. § 1332(c)(1) (1994). See, e.g., *In re Balfour MacLaine Int’l Ltd.*, 85 F.3d 68, 76 (2d Cir. 1995) (declaring corporation’s dual citizenship for diversity purposes); *Rodriguez v. SK & F Co.*, 833 F.2d 8, 8 (1st Cir. 1987) (affirming corporation’s dual citizenship for purposes of diversity jurisdiction); *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 654 (2d Cir. 1979) (stating for purposes of diversity and removal, corporation has dual citizenship).

<sup>65</sup> See *Wilson*, *supra* note 25, at 90 (suggesting tactics when deposition questions must be answered). Since questions beyond the scope of the subpoena should be governed by the general deposition rules, answers to those questions are not answers pursuant to a Rule 30(b)(6) subpoena and should not be intended

This strategy is consistent with the *King* decision that seeks to avoid the inefficiency of re-noticing a deponent to ask the same question.<sup>66</sup> It is also consistent with the *Paparelli* decision, since counsel is attempting to keep the corporation from being bound by any answer beyond the scope.<sup>67</sup>

## VI. THE FIRST CIRCUIT'S UNREASONABLE INTERPRETATION OF "REASONABLE PARTICULARITY"

The *Paparelli* court faced the daunting task of interpreting a rule that had no judicial history despite the fact that it had been in existence for sixteen years.<sup>68</sup> The court was, therefore, left to determine the allowable scope of a Rule 30(b)(6) deposition, based solely on its reading of the rule and the accompanying Advisory Committee Notes.<sup>69</sup> Unfortunately the court ignored the specific goal expressly stated in the Advisory Committee Notes and the underlying philosophy of the discovery process.<sup>70</sup>

The Advisory Committee Notes state that Rule 30(b)(6) "should be viewed as an added facility for discovery, one which may be advantageous to both sides as well as an improvement in the discovery process."<sup>71</sup> However, *Paparelli* limits the scope of discovery.<sup>72</sup> While *Paparelli* interprets 30(b)(6) as eliminating problems associated

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by the deponent to be answers of the corporation on whose behalf the deponent is appearing. *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> See *King v. Pratt & Whitney*, 161 F.R.D. at 476 (stating *Paparelli* as only previous interpretation of Rule 30(b)(6)); *Edison Corp. v. Town of Secaucus*, 17 N.J. Tax at 181-82 (citing *Paparelli* and *King* as only cases interpreting Rule 30(b)(6)).

<sup>69</sup> See *Paparelli v. Prudential Ins. Co. of Am.*, 108 F.R.D. at 729 (citing and analyzing Advisory Committee Notes to define purpose of Rule 30(b)(6)).

<sup>70</sup> *Id.* See *Edison Corp.*, 17 N.J. Tax at 181 (juxtaposing *Paparelli* interpretation of Advisory Committee Notes with a plain reading of the Notes).

<sup>71</sup> FED. R. CIV. P. 30(b)(6) advisory committee's note.

<sup>72</sup> See *Paparelli*, 108 F.R.D. at 729 (finding limitation on scope of deposition implied in procedures of Rule 30(b)(6)).

with (1) specifically naming or identifying a deponent to testify on behalf of a corporation; and (2) preparing a witness for a deposition on behalf of the corporation, it creates the new problem of limiting the deposing party to the scope outlined with reasonable particularity in the deposition subpoena.<sup>73</sup> Thus, *Paparelli* forecloses the deposing party from two of the most significant benefits of the deposition as a tool in the discovery process: (1) the ability to explore previously undisclosed areas of a case that are revealed by a deponent during deposition questioning; and (2) the ability to witness a deponent's response to an unexpected question.<sup>74</sup>

A deposing party faced with the foreclosure from discovery imposed by *Paparelli* is left to choose between forgoing investigating the unexplored topics or re-deposing the same party under Rule 26(b)(1).<sup>75</sup> This decision is exacerbated by the fact that Federal Rule of Civil Procedure 30(a)(2)(A) limits a party to ten depositions if local rules or court orders do not extend the allowable number of depositions.<sup>76</sup> Ultimately the deposing party is left with a choice that can

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<sup>73</sup> See *id.* at 730 (holding deposition must be confined to scope defined in subpoena with reasonable particularity). See also *King*, 161 F.R.D. at 476 (stating *Paparelli* may force a party to jump through an extra hoop to obtain relevant information).

<sup>74</sup> See *Ralston Purina Co. v. McFarland*, 550 F.2d at 973 (stating deponent has no grounds for objection based on inadmissibility of evidence at trial); *Preyer v. United States Lines*, 64 F.R.D. at 431 (holding any deposition question reasonably calculated to lead to discovery of admissible evidence as relevant); *Spaeth v. Warner Bros. Pictures, Inc.*, 1 F.R.D. at 731 (holding deponent must answer any question relevant to subject matter of pending action).

<sup>75</sup> See *King*, 161 F.R.D. at 476 (stating a party foreclosed from questioning beyond scope by *Paparelli* may re-notice deponent under Rule 26(b)(1)).

<sup>76</sup> FED. R. CIV. P. 30(a)(2)(A) states:

A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties, a proposed deposition would result in more than ten depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third party defendants.

hardly be viewed as the facility to discovery envisioned by the Advisory Committee.<sup>77</sup>

*Paparelli* also ignores the liberal discovery requirements of Rule 26(b)(1).<sup>78</sup> Rule 26(b)(1) outlines general discovery requirements and states that “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . .”<sup>79</sup> By limiting the scope of a 30(b)(6) deposition to that which is defined in the deposition subpoena, *Paparelli* frustrates the objectives of Rule 26(b)(1) whenever a deposing party seeks information relevant to the subject matter of the pending litigation that was not specified in the deposition subpoena.<sup>80</sup>

The *King* decision is an accurate and more logical interpretation of Rule 30(b)(6).<sup>81</sup> While *Paparelli* interprets the “reasonable particularity” requirement of Rule 30(b)(6) as limiting the scope of the deposition, *King* interprets the requirement as ensuring that the corporation produces a witness prepared to testify.<sup>82</sup> Therefore, the “reasonable particularity” requirement as interpreted by *King* facili-

FED. R. CIV. P. 30(a)(2)(A). FED. R. CIV. P. 26(b)(2) states in pertinent part that “the court may alter the limits in these rules on the number of depositions . . .” FED. R. CIV. P. 26(b)(2).

<sup>77</sup> FED. R. CIV. P. 30(b)(6) advisory committee’s note.

<sup>78</sup> See FED. R. CIV. P. 26(b)(1) (allowing discovery of any relevant information not privileged).

<sup>79</sup> FED. R. CIV. P. 26(b)(1)

<sup>80</sup> Compare *Paparelli*, 108 F.R.D. at 730 (limiting scope of deposition to issues defined with reasonable particularity in the subpoena), with *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. at 124 (stating relevant evidence is not limited to precise issues set out in pleadings or merits of case).

<sup>81</sup> See *King*, 161 F.R.D. at 476 (interpreting Rule 30(b)(6) as imposing no limitation).

<sup>82</sup> See *id.* (stating Rule 30(b)(6) merely requires corporation to produce deponent able to address issues stated in subpoena).

tates discovery as the Advisory Committee intended, instead of hampering discovery as *Paparelli* does.<sup>83</sup>

*King* further holds that a 30(b)(6) deposition is not limited to the scope defined in the deposition subpoena.<sup>84</sup> Instead, the deponent is only expected to provide information on the topics outlined in the subpoena and cannot be sanctioned for a failure to provide information that was not defined in the subpoena.<sup>85</sup> With no limitation on the scope of a deposition, *King* comports with Rule 26(b)(1) and the expressed intention of the advisory committee that Rule 30(b)(6) ultimately facilitates discovery.<sup>86</sup> Recent decisions in three other jurisdictions demonstrate further support for the *King* interpretation.<sup>87</sup>

## VII. CONCLUSION

The liberal scope of the discovery process intends to provide parties with broad access to any information that may be relevant to a pending action. Federal Rule of Civil Procedure 30(b)(6) was enacted with the intention of facilitating discovery and improving the deposition process for both sides. *King* applied this philosophy to its interpretation of Rule 30(b)(6), and ruled that the requirement that matters on which the deposition is requested be stated with reasonable particularity was only intended to ensure that the corporation produce a witness who could testify on those particular matters. According to *King*, Rule 30(b)(6) imposed no limit on the scope of discovery.

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<sup>83</sup> See *id.* (explaining “reasonable particularity”); see also *Edison Corp. v. Town of Secaucus*, 17 N.J. Tax at 182-83 (stating *Paparelli* imposes substantive restriction on scope of discovery).

<sup>84</sup> *King*, 161 F.R.D. at 476.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> See *Overseas Private Inv. Corp. v. Mandelbaum*, No. CIV.A.97-1138, 1999 WL 137334, at \*3 (D.D.C. Mar. 15, 1999) (holding *King* ruling as better interpretation of Rule 30(b)(6)); *Stone v. Morton Int’l, Inc.*, 170 F.R.D. 498, 500 (D. Utah 1997) (adopting *King* interpretation); *Edison Corp. v. Town of Secaucus* 17 N.J. Tax 178, 182 (N.J. Tax 1998) (favoring *King* interpretation over *Paparelli* interpretation).

*Paparelli's* holding that a limitation on the deposition is implied within the procedures of Rule 30(b)(6) frustrates the discovery process and potentially limits the deposition as a discovery tool. As *Paparelli* clearly does not embody the intentions of Rule 30(b)(6) or the liberal discovery philosophy inherent in the Federal Rules of Civil Procedure, the First Circuit should abandon *Paparelli* in favor of the interpretation outlined in *King*.

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