Entity Designee Depositions

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Before the advent of Federal Rule of Procedure (FRCP) 30(b)(6), counsel seeking information from an entity that could not be gleaned from written discovery had to guess at who within the entity to depose, and then keep taking depositions until getting the necessary information or running out of permissible depositions.[2] Unsurprisingly, this encouraged entities to resist providing useful information. FRCP 30(b)(6)[3] made the process of extracting information from entities both more useful and less frustrating by requiring the entity to produce one or more deponents to testify about topics listed on a deposition notice. Although these depositions are sometimes called corporate designee depositions, this phrase is too restrictive because the Rule applies to "a public or private corporation, a partnership, an association, a governmental agency, or other entity." FRCP 30(b)(6). The Rule requires the party seeking the deposition to "describe with reasonable particularity the matters for examination." *Id*. The entity "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." *Id*. A non-party must be served with a subpoena advising it of its duty to make such a designation. *Id.* Whether a party or non-party, the persons designated by the entity "must testify about information known or reasonably available to the organization." *Id*.

Maryland's analog is Rule 2-412(d).[4] Although derived from FRCP 30(b)(6), perhaps notably, it lacks both the "or other entity" language set forth above and the last sentence of 30(b)(6), which reads: "This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules." For a case enforcing the Maryland Rule, *see Saxon Mortg. Servs. v. Harrison*, 186 Md. App. 228, 973 A.2d 841 (2009). Note that, because the Maryland Rule is derived from the Federal Rule, when both rules align, cases from Federal Courts on issues not addressed by Maryland's appellate courts may serve as persuasive authority for a Maryland Circuit Court Judge (there are far more cases interpreting 30(b)(6) than 2-412(d)).

A typical deposition notice can often be quickly prepared once the logistics of the deposition are known. On the other hand, entity deposition notices require far more preparation and the depositions themselves require more advanced planning. To effectively prepare a notice, you must understand the law that applies to the case and the proof needed to satisfy it. Also, consider what defenses are likely to be raised, and how you can defeat them. A visit with the pattern jury instructions will assist you. When drafting topics to include in the notice, be mindful that while the discovery sought must be "relevant to any party's claim or defense…relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." FRCP 26(b)(1).

Nearly every time we request an entity designee deposition, defense counsel will respond by asking for a draft notice or list of topics. This is so that they can figure out who should be designated and learn of that person's (or those persons') availability. So we send a draft notice—typically by email—along with a request

for deposition dates. Diary your calendar to follow-up with defense counsel if the dates are not forthcoming within a reasonable time period (perhaps a week or two). Occasionally, you will receive push-back. Sometimes it will come as a legitimate critique of one or more of your listed topics; on other occasions, it will seem like an illegitimate exercise in generating billable hours. We generally welcome the former as it is an opportunity to tighten up the notice and have a better deposition. As for the latter, make a record by replying in writing, take the deposition, and follow the procedures for a motion to compel[5] if your questions about properly listed topics are obstructed.[6]

Lastly, make sure you give yourself enough time to accomplish all of this before discovery closes.

The Notice

Designee depositions can be helpful in several types of cases, including: premises liability, premises security, serious crash, nursing and medical malpractice cases.

Because opposing counsel's entity client will be present for the deposition, these depositions may inspire bad behavior on the part of some defense attorneys. For this reason, if it is cost effective, consider videotaping the deposition in order to deter improper behavior and capture it if it occurs. In order to reserve this right, you should indicate in the notice that you *will* video the deposition.

As long as you give 30-days-notice, you can include in the notice a document production schedule.[7] This is essential if you want documents from a non-party. If the entity is a party, it can still be useful to propound any document requests that you omitted from your request for production of documents and to include a catch-all request such as "Any documents requested by Plaintiff's Request for Production of Documents (RPDs) to this Defendant that have not already been produced." Consider whether to include a definitions section for the document schedule, just as you would for a set of RPDs. The guiding principal here is to make it as hard as possible for defense counsel to avoid giving you what ought to be produced. These depositions often unearth documents not produced in response to a Request for Production of Documents, so be prepared to be reviewing and copying documents before you go on the record. For sample entity designee notices in a variety of cases, go to: http://www.stravitzlawfirm.com/attorney-resources.html. Lastly, some attorneys will send a letter to opposing counsel with the notice stating that they will move to strike the Defendant's defenses if the

deponent(s) unreasonably answer "I don't know" or "I will need to check" to questions which ought to be answered substantively at the deposition.

The Deposition

After giving the witness preliminary instructions, we will always ask the witness if he understands that his testimony can bind the entity. Also, be careful when phrasing questions with the word "you." Counsel should make clear whether the reference to "you" in the notice or during the deposition means the individual deponent or the entity itself. Most of these depositions will concern the time leading up to an event that damaged your client. As a general proposition, depending on the subject of the question, the years, months, or days leading up to and including the date of the event will be most important. Thus, prefacing questions with something a statement: "Do you understand that, unless I tell you otherwise, this deposition concerns the month leading up to and including [insert date of event]?"[8] If you do not do this, you could realize when preparing for trial that what you thought was great designee testimony is, well, less than great.

Asking what the deponent has done to gather the materials responsive to the notice, and how they became knowledgeable about the information requested in the notice on behalf of the company, is a very important part of the deposition. This can often lead to supplemental discovery requests and/or support a motion to compel. If the designee has not performed an exhaustive search, or has not asked for assistance from appropriate employees, then he or she has not met their obligations as a designee. Asking where documents might be stored, and how far that is from the room where the deposition is taking place, can shut down evasion tactics. Taking a break so that the designee can go look in a file cabinet or on the computer right down the hall can only happen, however, if the deposition is taking place at the corporate offices.

For useful cases regarding Rule 30(b)(6), *see Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 432-34 (5th Cir. 2006)[9] and *Keepers, Inc. v. City of Milford*, 807 F.3d 24, 34-35 (2d Cir. 2015).[10]

Focus your questions so that you are not asking the deponent for his or her personal knowledge, but rather, for the entity's knowledge on a given subject. Thus, you may want to preface a line of questions with, "As the [insert entity] V.P. of Operations…?" or "What protocols did your company have in place on…" Some attorneys will use only the deposition notice as their outline for the deposition.

Creating a more detailed outline with lines of questions stemming from the topic areas in the notice can result in better deposition. Paradoxically, I find that the process of preparing the outline means that I do not need to refer to it very much when questioning the deponents.

Using the Notice at Deposition

While I have issued entity designee deposition notices with as many as 30 topics, I prefer to keep them shorter. Often, the depositions do not yield "home runs," but instead show how the entity defendant did not have a focus on safety, made bad choices, and thus, made the injurious event more likely. Below are some examples of a few topics (among many) used in three different cases, and how they played out at each entity designee depositions.

Example 1: Premises Liability Case

Facts: Plaintiff was visiting his daughter in DC. While staying at her apartment he took attempted to take out her trash. To do so, he descended the steps to the basement of her apartment building. As soon as he stepped from the last stair to the basement floor, he slipped and broke his ankle in several places. This caused a permanent injury. Though a janitor working for the apartment admitted that he mopped the floor shortly before my client fell, according to my client, no wet floor sign had been erected in the vicinity (the defendant disputed this).

The Notice (topics only):

1. The **incident**[11] at issue.
2. Policies, procedures, protocols, methods, manuals, instructions, bulletins, **documents** and/or writings regarding the cleaning of **the floor** and/or the area where Plaintiff alleges she fell.
3. Policies, procedures, protocols, methods, manuals, instructions, bulletins, **documents** and/or writings that **you** had in effect generally regarding the cleaning done by **your** company and/or **your workers** on the date **the incident** took place.
4. Policies, procedures, protocols, methods, manuals, instructions, bulletins, **documents** and/or writings that **you** had in effect generally regarding the safety on the date **the incident** took place.
5. The command structure within **your** company.
6. The position description for all individuals in **your** company, including but not limited to, those in charge of supervising maintenance and/or cleanup of **the floor** and/or the area in which Plaintiff fell and the position description for those scheduled to perform that function on the day at issue.
7. The duties and/or responsibilities of the individuals who held the various job titles that existed in **your** company on or about May 12, 20__.
8. Any investigation **you** conducted into the **incident** before defense counsel was assigned.
9. Any photographs, images, and/or video footage of **the floor** and/or the area where **the incident** took place.
10. Any complaints, regardless of the source (or **your** assessment of their validity), that pre-dated **the incident** regarding the alleged acts and/or omissions of **your workers** that concerned alleged falls, near falls, and/or any failures to deploy wet floor signs, warning signs, and/or caution signs.
11. Any insurance claims and/or lawsuits brought against **you** at any time for an alleged failure to remove liquid from any floors on which **your workers** worked and/or any alleged failure to warn of wet and/or dangerous floors.
12. Any disciplinary procedures **you** had in effect regarding **your workers** and the purpose of those procedures.
13. When **you** were first contacted about the **incident**.
    a. Who initiated the **contact**.
    b. How the **contact** was made.
    c. What actions were taken by the Defendant as a result of that first **contact**.
14. Any later **contacts** between the Plaintiff (excepting her attorneys) and **you** and/or **your workers**.
15. The composition and characteristics of the cleaning solution and/or liquid **your worker** used on **the floor** the last time he cleaned it before Plaintiff fell.
16. Any **documents** and/or things produced in response to the "Documents and Things" request below.
17. Defendant's Answers to Interrogatories.
18. The factual basis for any of Defendant's Answers to Interrogatories.
19. The **identity** of any individuals who saw (a) [janitor] place any "wet floor sign" as Defendant stated in its Answer to Plaintiff's Interrogatory No. 9 and/or (b) who saw a wet floor sign in the place indicated by the Defendant in its Answer to Plaintiff's Interrogatory No. 9 on the date of the **occurrence** before Plaintiff fell.
20. Whether on May 12, 2008 at **the premises**, the stairway leading to the basement floor and the basement floor itself were off limits to residents/tenants at the premises and/or their guests.
    a. If so, the means with which this was communicated to the residents/tenants and/or their guests, and when it was communicated.
21. Whether on May 12, 2008 any areas at the premises other than those referenced in ¶20, above were off limits to residents/tenants at the premises and/or their guests.
    a. If so, the means with which this was communicated to the residents/tenants and/or their guests, and when it was communicated.
22. The **identity** of the [janitor's] employer at the time of the **occurrence**, the days and hours he worked at **the premises**, his job title, job duties, equipment he brought to his work at **the premises**, and how he came to be employed by the Defendant.
23. **Your** discovery responses to date including, but not limited to, Answers to Interrogatories, Responses to Requests for Production of Documents**,** and any **documents** and/or things produced therewith.
24. The authenticity of all **documents** and/or materials that Defendant has produced in discovery or will produce at this deposition.

25. The names, forwarding addresses, dates of birth, and any phone numbers of any people who lived in the "one apartment on the basement floor" (see Defendant's Answer to Plaintiff's Interrogatory No. 27) of **the premises** from May 12, 20__ through May 12, 20__. [A 5-year period.]
26. Regarding any wet floor or similar signs allegedly located on **the premises** as of May 12, 200_, the **identity** of the **person** that made such sign(s), the **identity** of the **person** that supplied such sign(s), when any such signs were purchased, and how often they were purchased.

The Deposition:

[This first entity designee deponent was an attorney.]

Q: Did Defendant LLC, at the time we've been talking about have any employee handbooks, procedural manuals, instructions or any kind of documents that it would give to people in [the janitor's] position?
A: It did not.

Q: Do you know if a background check was ever run on him to find out, for example, if he had a record of being convicted of crimes?
A: I don't believe so.

Q: You would agree that, when he worked at the building, he came into contact with tenants?
A: I would expect so, yes.

Q: And at times that contact would be in the basement of the building, correct?
A: I would imagine.

Q: Did Defendant LLC have any disciplinary policies in effect, let's say, if someone like [janitor] mopped a floor and didn't put up a wet floor sign?
A: Not that I know of specifically.

Q: Was that cleaning solution provided for him by Defendant or was that something he brought to the job?
A: I don't know.

Q: Did [janitor], back in May of 2008, have a supervisor regarding his work at the building?
A: Other than -- to the best of my knowledge, other than [entity designee 2 ("D2")], no.

Q: Did D2 work on site at the property, the building we've been talking about?
A: I guess she visits on occasion. I don't believe she has a regular schedule.

Q: How often would you visit the property?
A: I don't think I've ever been inside the building. I have driven past it once or twice.

Q: Is Defendant aware of any person or witness who saw [janitor] display or put up any kind of wet floor or caution sign on May 12th, 2008 before Mr. Plaintiff alleges he fell?
A: No.

Q: At the time he fell, was the basement itself off limits to residents of the building?
A: I'm not -- I don't understand the question.

Q: Sure. Were there any signs prohibiting tenants or guests from walking from the first floor down to the basement level of the building?
A: Not that I know of.

Q: Had Defendant or anyone who worked for it sent out any notices saying, you know, you need to avoid the basement, to tenants?
A: Not that I know of.

Q: So in walking from the first level down the steps to the basement and stepping onto the basement landing, Mr. Plaintiff wasn't violating any rule of the building, correct?
A: Not that I'm aware of.

MR. STRAVITZ: At this time, I want to reserve the right to reopen this deposition because a lot of the information I requested, by the deponent's own admission, is potentially available, but he didn't bring it with him today. Hopefully, it can be provided by [D2] or, you know, in written form to counsel so we don't need to reopen this. But, with that, I'm finished with my questions at this time.

[The second entity designee deponent—in the interest of saving space, I'll describe some of the points from her deposition.]

She was responsible for managing 10 properties simultaneously.

She had numerous duties, none of which involved inspecting the properties, but she would visit each property once or twice a month, especially if she was showing an apartment.

She was never there when the building was mopped.

The entity hired an individual to inspect and make repairs at its properties. She [thus, the entity] had no idea how often this individual did so. He was also responsible for safety.

She did not know when the janitor was hired. [There were many pieces of information that she did not have with her but said she could look up on her computer and likely provide, so defense counsel and I each kept a list and he promised to email her the list so that the information would be provided.]

Regarding oversight of the janitor, the entity relied on tenant's complaints, her 1-2 visits/month and the hired inspect and repair person (whom she did not know how often visited the premises).

She thought there was one wet floor sign on the premises but testified "it was not my field of importance when I was on the site."

She did not know if the janitor put up a wet floor sign at the time in question.

She could not tell me whether anyone working for the entity had ever seen the janitor mopping.

She testified that my client's daughter contacted her to say her father had a "little fall." [This characterization was patently ridiculous.]

She/the entity did not know what cleaning solution was used or what the ratio of solution to water was.

She discussed the matter of my client's fall with the janitor. She could not say with 100% certainty he had told her he put up a wet floor sign in the area where my client fell. "I'm pretty sure because, otherwise, I would have yelled and screamed and I might have remembered that." If he did tell her he put up the sign, she does not recall him saying where he erected it.

She admitted that the erection of the sign and its placement is important.

The extent of the guidelines she give him (only orally) were: "Pick up trash, sweep and mop the halls…and basically put up wet floor signs when he mopped. But aside from that, it's not a difficult job."

She gave no instructions regarding the placement of the wet floor signs.

She agreed that wet floor signs are important so people don't slip and fall.

Tenants could enter the building from the basement.

I asked questions to establish that with only one wet floor sign, given the configuration of the basement, even had the sign been erected, either people coming down the internal stairs or people coming from outside would not be able to see the sign if the janitor had moved on to the laundry room (also in the basement). She did not know the answer.

The entity did not dispute that my client fell in the building.

The entity did not know whether or not the janitor had mopped the portion basement tile floor on which client claimed he fell just beforehand.

[Over objection] It would concern her [the entity] if the janitor was mopping and not erecting the wet floor sign.

She only had a W-9 in the janitor's personnel file and had never run a background check on him.

No meetings were ever held concerning safety.

Example 2: Crash Case

Facts: Client was struck by a medical transport van just beyond a lane of travel while servicing a customer at a drive through.

The Notice:

1. The facts and circumstances of the **occurrence.**
2. The **identity** of all of **your** agents, servants, employees, representatives, workers, independent contractors, and/or attorneys with knowledge of the **occurrence**.
3. The **identity** of all of all of **your** agents, servants, employees, representatives, workers, independent contractors, and/or attorneys that interacted with the **Plaintiff** on the date of the **occurrence** and/or since the date of the **occurrence.**
4. The **identity** of any and all **persons** known to **you** that witnessed all or part of the **occurrence,** and all **persons** who were at or near the scene and/or arrived at the scene of the **occurrence** within 2 hours after it took place.
5. **Your** business as it existed on the date of the **occurrence**, including, but not limited to: what **your** business was?, how **you** conducted it?, how it generated money? what, if any, rules **you** followed in doing it?, how many employees **you** had and, for each, their names, titles and functions.
6. Any corporate knowledge of how the **occurrence** took place communicated by **your driver** and/or through any other source of information.
7. Any investigation **you** conducted into the **occurrence** in the ordinary course of business, including, but not limited to, the nature and extent of any such investigation, what it revealed, how it revealed it, and any **documents** generated by it.
8. The number of background checks, if any, **you** conducted regarding **your driver**.
9. A description of what was done for each background check and/or investigation **you** conducted regarding **your driver**.

10. The information and/or **documents** generated as a result of any background check and/or investigation regarding **your driver**.
11. The contents of any personnel file **you** have regarding **your driver**.
    a. If **you** once had, but no longer have, a personnel file for **your driver**: **your document** destruction policies regarding retaining **documents** regarding one of **your** drivers after **you** have been notified that he or she was involved in a collision that was investigated by the police.
12. The number of tickets, infractions, and/or traffic violations – if any – that **your driver** had received in the 10 years leading up to and including the date of the **occurrence**, and the disposition of each one.
13. The number of criminal convictions – if any – that **your driver** had received in the 15 years leading up to and including the date of the **occurrence**.
14. **Your** policies, procedures, protocols, guidelines and/or rules regarding the use of **your** vehicles by **your** drivers that were in effect on the date of the **occurrence**.
15. **Your** policies, procedures, protocols, guidelines and/or rules that were in effect on the date of the **occurrence** – if any – regarding the use of **your** vehicles by **your** drivers for things other than transporting patients.
16. **Your** policies, procedures, protocols, guidelines and/or rules that were in effect on the date of the **occurrence** – if any – regarding the personal use of **your** vehicles by **your** drivers.
17. **Your** corporate address and the nature of the building at that address.
18. The hours that **your driver** worked for **you** from July 21, 2010 to August 8, 2010.
    a. The paystubs and/or any other **documents** that you or **your driver** generated that show same.
19. Whether **your driver** was operating one of **your** vehicles at the time of the **occurrence**.
20. How **your driver** came to possess (i.e., be in a position to operate) the vehicle of **yours** that he was operating at the time of the **occurrence**.
21. If you contend that **your driver** was operating **your** vehicle at the time of the **occurrence** without **your** permission, set forth:
    a. The **identity** of any **person** who communicated this to him before the **occurrence** took place?
    b. How many times it was communicated and, for each communication, how it was communicated, and the contents of the communication.
22. **Your** discovery responses.
23. The **documents you** produced in discovery.
24. The **documents** requested below.
25. Any contracts, agreements, and/or other such **documents** in effect on the date of the **occurrence** between **you** and **your driver**.

The Deposition:

[Again, in the interest of saving space, I'll provide points made at the deposition, rather than transcript excerpts.]

The owner spent most of his time in Africa and was away for months at a time.

The designee was both a dispatcher and a driver for the company.

Management/operations at the company consisted of himself, the owner, and a billing/filing clerk.

He discussed the information [regarding the crash] with the driver, but does not remember what he did with it.

The gist of it was that a lady had slid or bumped into the van. [We had video footage of the van ***striking her*** and launching her through the air.]

The driver made it seem to him as a minor thing.

The driver did not tell him that an ambulance had come to the scene.

He did not ask the driver if he had been transporting a passenger. The driver did not volunteer this information.

The driver told him he was using the van [it was a Saturday] because he was going to the store [it was a ***liquor store***].

He knew how to contact the entity's insurance company but did not do so here because he thought it was a minor thing.

The driver did not provide him with the victim's information.

He does not know if the driver exchanged information with the victim.

He did not ask for the victim's information.

He is unaware of the entity having "any type of written policies or procedures or rules about its drivers using its vehicles on the weekend."

They transported patients on the weekends on an "on-call basis."

He or the owner allowed the driver to take the van home with him.

The driver was allowed to take it home and keep it parked. But he could do a short run for personal use.

No one tracked the driver's mileage around the time of the crash to see if he was abusing his privilege by extensively using it for personal reasons.

He first learned of the police report LAST WEEK.

He first learned that a police officer had come to the scene of the collision LAST WEEK.

He has no knowledge of whether the entity had any written policies, procedures, or rules for its drivers about reporting collisions.

Drivers were, however, supposed to fill out an incident report within the company.

He can't remember if an incident report was filled out for this collision.

The entity did not destroy incident reports.

He reviewed the entity's documents with counsel and did not find an incident report.

There was a month-long period during which he created inspection reports (regarding the vehicles) that driver's were supposed to complete.

He did not continue this because "I kind of slacked off a little."

No one at the entity would inspect the vehicles at continuous intervals to see if drivers were damaging them. [This was important because the impact with my client's body had made a dent in the hood of the van.]

The entity did not request that the driver give any statement, written or recorded, about how the collision took place.

The entity had no knowledge about the driver being involved in any collisions before or after the subject one.

The extent of the entity's investigation into the crash was the deponent's one conversation with the driver.

The driver was disciplined verbally as a result of this collision having taken place.

He was told not to drive it any more for personal reasons.

He cannot remember if he asked the driver if an ambulance came to the scene after the collision took place.

They did a background check on the driver. He does not know what was on it, but it was acceptable. It was done through Medicaid.

[I showed him an image of the van I believed struck my client.] He admits that this was the van involved in the collision to the entity's knowledge. The entity does not know if the dent in the upper right area of the hood was made when the van collided with client. He never asked driver about it.

He thinks the driver was certified to drive for Medicare on the date of the collision, but can't be 100% sure because he could not find the documents.

He does not know how long the entity is supposed to keep its driver's certifications on file.

He and the owner keep these files.

He does not have any documentation of any drug or alcohol testing having been done for the driver after the driver was initially tested as part of the hiring process.

Driver had to wear corrective lenses.

Entity does not know if he was wearing them at time of crash.

Entity did not know if he wore them for distance or reading.

He does not know if the driver was being monitored for personal gas usage of the entity's vehicles on the weekends.

He does not think that the driver transported a patient on the date of the crash, but is not sure.

He does not know why one month after the crash the driver was excluded by the entity's insurance company from its insurance policy as a covered driver.

The entity is not aware of, on the date of the crash, the van having any problems

with visibility (from the driver's seat) . . . or mechanical problems.

[I show him a document produced in discovery a category called "safety."] The last bullet point says "remember, eyes on the road, hands on the wheel." The entity agrees with that bullet point. It was in effect on the date of the crash.

Safety is important "for everybody's general being."

"Eyes on the road basically means look in the direction you're going."

The driver told him when I spoke to him about the collision that someone claimed to have been injured as a result of it.

The message from the driver to the deponent was that he did not believe the supposed victim.

The entity did no further investigation beyond that one conversation with its driver.

The driver said he was at a shopping center near his house when this happened.

The deponent could not remember if the driver said an impact did or did not take place.

He did say that a woman said that he had hit her.

He can't remember what the driver discounted about the woman's account.

During his tenure with the entity, the driver transported wheelchair patients and patients on stretchers.

The entity had no policy of taking pictures of vehicles when they were first entrusted to drivers.

The entity is not contending that the driver was using the van without its permission.

Example 3: Nursing Home Negligence.

Here is an example of a nursing home fall case, in which the plaintiff's decedent fell in his room, sustaining a severe head injury. The purpose of the corporate designee deposition was to investigate the actions of the Defendant in setting and following policies and procedures on patient safety and fall prevention.

The Notice:

Plaintiffs request a corporate designee or designees to testify concerning the following matters. Unless otherwise specified, all requests refer to facts, conditions, and circumstances in existence as of January 1, 2015, and from that time to the present.

1. The content, effective date, and applicability of any rules, regulations, policies, procedures or protocols of this Defendant which were in effect as of the year 2015 which in any way pertain to:
   a. Fall risk assessments;
   b. Use of fall risk prevention techniques or equipment;
   c. Fall prevention;
   d. Investigations of falls;
   e. Complying with physician orders;
   f. Developing patient plan of care;
   g. Complying with patient plan of care;
   h. Use of matts to protect patients against fall injuries;
   i. Use of chair alarms;
   j. Use of bed alarms; and
   k. Monitoring of patients for falls.
2. An individual familiar with any rules, regulations, policies, procedures or protocols developed or implemented by this Defendant in any way detailing, defining or otherwise pertaining to the generation of any "incident," "occurrence," "salient event" or similar reports or communications, by whatever name known, which were in effect as of the year 2015.
3. An individual familiar with the existence and content of any "incident," "occurrence," "salient event," or similar report, by whatever name known, which in any way pertains or refers to any medical care or treatment provided to the Plaintiffs' decedent, during his admission to XYZ Defendant.
4. An individual familiar with the course and content of any education and training provided by this Defendant, and/or by anyone on its behalf, to its agents, servants and/or employees, including members of its medical and nursing staff, from the year 2010, through and including the year 2015, in any way pertaining to:
   a. Fall risk assessments;
   b. Use of fall risk prevention techniques or equipment;
   c. Fall prevention;
   d. Investigations of falls;
   e. Complying with physician orders;
   f. Developing patient plan of care;

g. Complying with patient plan of care;
h. Use of matts to protect patients against fall injuries;
i. Use of chair alarms;
j. Use of bed alarms; and
k. Monitoring of patients for falls.

5. All documents that constitute, refer or relate to any employment or other contractual relationship with regard to maintenance and repair of chair alarms, bed alarms, and fall mats.
6. All medical records, reports and other documentation authored, produced, written, ordered or generated by these Defendants, and/or their agents, servants and/or employees, in any way pertaining or referring to any examination, diagnosis, care or treatment of the Plaintiffs' decedent.

SCHEDULE OF DOCUMENTS

The Defendant's designee shall bring to the deposition the following documents:

1. All documents and other material things previously requested from this Defendant which have yet to be provided.
2. The most recent Curriculum Vitae of each designee.
3. All documents and other material things reviewed by any designee of this Defendant in preparation for his or her testimony.
4. Any and all policies, procedures or protocols of this Defendant that were in effect as of the year 2015 which in any way pertain to:
   a.Fall risk assessments;
   b.Use of fall risk prevention techniques or equipment;
   c.Fall prevention;
   d.Investigations of falls;
   e.Complying with physician orders;
   f.Developing patient plan of care;
   g.Complying with patient plan of care;
   h.Use of mats to protect patients against fall injuries;
   i.Use of chair alarms;
   j.Use of bed alarms; and
   k.Monitoring of patients for falls.

5. All documents that constitute, refer or relate to any employment or other contractual relationship between you and Nurse A, Nurse B, and Physician C.
6. All medical records, reports and other documentation authored, produced, written, ordered or generated by this Defendant, and/or their agents, servants and/or employees, in any way pertaining or referring to any examination, diagnosis, care or treatment of the Plaintiffs' decedent.
7. All documents, including, but not limited to, incident reports, accident reports, risk management reports, ambulance reports, etc., authored, produced, written, ordered or generated by the Defendant, and/or its agents, servants and/or employees, and/or by any other individual or entity, in any way relating or pertaining to the medical diagnosis, care and/or treatment of the Plaintiffs' decedent and/or the occurrence in question.
8. All electronically generated or stored information or data, including all electronic mail communications, memoranda or transcriptions of telephone communications, medical records, "electronic" medical records, and the Defendant's complete computer database in any way relating or pertaining to the Plaintiffs' decedent, and/or the occurrence in question.
9. All bills, invoices and other documentation in any way pertaining or referring to any medical care or treatment provided to the Plaintiffs' decedent, by these Defendants, their agents, servants and/or employees, or any other health care provider.
10. All correspondence, communications and other documents and written materials between the Defendant/Healthcare Provider, its agents, servants and/or employees, and any other individual or entity, in any way pertaining or referring to any medical care or treatment provided to the Plaintiffs' decedent, the alleged injuries, damages and losses complained of by the Plaintiffs in the Complaint, and/or the instant litigation.
11. All statements or transcripts of testimony in any way pertaining to the alleged incident in question which are in the custody, possession or control of the Defendant, including any such statements made by the Plaintiffs' decedent.
12. All photographs, motion pictures, videotapes, surveillance tapes or other visual representations of Plaintiffs' decedent.

13. All documents that constitute, refer or relate to each and every liability, indemnity or other insurance agreement or policy (including any excess or umbrella policies) that insures you against liability for damages arising from the occurrence to which reference is made in the Complaint or that provides you with a defense to the claims set forth in the Complaint.
14. All documents that constitute, refer or relate to any signed or written statements and/or recordings or oral statements that have been given to you with regard to the occurrence to which reference is made in the Complaint.
15. If you contend that the Plaintiffs' decedent's injuries and/or damages were caused by or contributed to by the negligence of anyone not a party to this lawsuit, produce all documents that set forth, describe or relate to the facts on which you rely in support of the said contention.
16. All documents that constitute, describe, or relate to any admissions or declarations against interest that you contend have been made by the Plaintiffs' decedent.
17. If you contend that the Plaintiffs' decedent, was not compliant with any aspect of his medical care, all documents that describe, set forth or relate to all facts on which you rely in support of said contention.
18. Identify and produce copies of all Medical Staff By-Laws, Rules and Regulations of the Medical Staff, and similar documents, by whatever name known, promulgated or utilized at XYZ for the year 2015.
19. All documents not heretofore produced that were described and/or referred to by you in answer to Plaintiff's Interrogatories.

The Deposition:

Ask the designee about their own employment background with the defendant.

Ask what have they done to prepare for the deposition.

Ask what have they have done to gather the policies and procedures and other documents responsive to the deposition notice.

Confirm that Defendant had the expectation that their staff would follow the policies and procedures.

Confirm that the reason they have policies and procedures is for the safety of their patients.

Ask how do they know the policies and procedures were actually in effect at the time of the fall at issue in this case.

Ask where the policies and procedures are kept.

Ask how the Defendant tested their staff on their understanding of the policies and procedures.

Ask what training had been done before the fall.

Ask where that training was done.

Ask what evidence exists that they kept their staff informed on the policies and procedures that the staff was expected to follow (in the time leading up to the fall).

If they didn't bring such things to the deposition, take a break and ask them to go get it.

Do Not Be Intimidated By An Impressive Entity Designee

In a house fire case I tried for a week in the Circuit Court for Howard County, the builder, a large national company, had an entity designee testify in a way that made it appear to be a very caring company. He was smooth, well spoken and made an excellent appearance…right up until cross-examination, when he answered all of the following questions in the negative: Did you visit the fire scene? Did you check on the plaintiffs? …At any time after the fire? Did your company offer them any financial support to help them get back on their feet? Did it buy anything to replace what they had lost in the fire?

A Few Final Thoughts

Most importantly, as you prepare for these depositions and question entity deponents, try to show that the defendant made as many bad ***choices*** as possible. With each bad choice you spotlight at trial, a jury will be less likely to excuse the defendant's conduct. Be mindful that entity designee depositions can also be used with non-party deponents such as IT vendors (describing the electronic systems in your party opponent's business), accountants, risk management companies, or independent investigators. For further information, I recommend Mark Kosieradzki's 2016 book, *30(b)(6)*. Having read online its table of contents and first chapter, I expect it to become "the bible" on this topic. It can be found here: https://www.trialguides.com/product/30b6/.

Biographies

Eric N. Stravitz owns the Stravitz Law Firm, P.C., at which he handles personal injury and medical malpractice lawsuits and trials in federal and state-level courts across the region. A member of the District of Columbia and Maryland Bars, Mr. Stravitz handles Virginia cases *pro hac vice*. For five years he taught Trial Advocacy as an Adjunct Professor at The George Washington University Law School. Mr. Stravitz serves on the Board of Governors of TLA-DC. He is also member of MAJ and AAJ, and has served as a member of MAJ's Trial Reporter Editorial Board since 2000. Mr. Stravitz graduated magna cum laude from the State University of New York at Albany in 1988, and from The George Washington University School of Law in 1991.

Ellen B. Flynn is a partner in the law firm of Dugan, Babij, Tolley & Kohler, LLC, in Timonium, Maryland. She received a BS in Business Administration from the University of Richmond, and obtained her JD from the Catholic University of America, Columbus School of Law. Ms. Flynn is newly appointed to the MAJ Board of Governors. She is admitted to practice law in Federal and State Courts of Maryland, Connecticut and the District of Columbia. Her primary practice area involves representing those injured by medical negligence. She lives with her husband and two daughters in Ellicott City, Maryland.

(Endnotes)

1 Ms. Flynn wrote the Nursing Home Negligence Case example and provided other valuable suggestions.

2 See FRCP 30(a)(2)(A)(i), which, without consent, currently requires leave of court to take more than 10 depositions.

3 FRCP 30(b)(6) Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a 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.

4 Rule 2-412(d) Designation of person to testify for an organization. A party may in a notice and 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. The organization so named shall designate one or more officers, directors, managing agents, or other persons who will testify on its behalf regarding the matters described and may set forth the matters on which each person designated will testify. A subpoena shall advise a nonparty 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. (Emphasis in original.)

5 See Local Civil Rule 104(8) of the U.S. Dist. Ct. for the Dist. of Md. or Maryland Rule 2-432.

6 For methods of combating obstruction at depositions, see The Multi-Jurisdictional Practitioner...Looks at Depositions in the District of Columbia, Maryland, and Virginia. DC Trial, Volume IX, No. 4 (Fall 2009), which has been reprinted at this link: http://www.stravitzlawfirm.com/the-multi-jurisdictional-practitioner-looks-at-depositions-in-th.html.

For suggestions on dealing with deponents who repeatedly answer "I don't know" to questions to which they ought to have a substantive answer, see Quick Tips, Exhausting Deponent's Knowledge, DC Trial, Vol. XII, No. 4 (Winter 2014), which has been reprinted at this link: https://www.stravitzlawfirm.com/quick-tips-exhausting-deponent-s-knowledge-dc-trial-vol-no-201.html.

7 See FRCP 30(b)(2) and 34 and Maryland Rules 2-412(c) and 2-422.

8 If I am trying to discover whether relevant procedures, policies, or protocols exist, I will often ask about the present day. If they exist at the time of the deposition, I will work backwards to find out if they existed on the date of the event that damaged my client.

9 Rule 30(b)(6) is designed "to avoid the possibility that several officers and managing agents might be deposed in turn, with each disclaiming personal knowledge of facts that are clearly known to persons within the organization and thus to the organization itself. Therefore, the deponent must make a conscientious good-faith endeavor to designate the persons having knowledge of the matters sought by the party noticing the deposition and to prepare those persons in order that they can answer fully, completely, unevasively, the questions posed as to the relevant subject matters. The duty to present and prepare a Rule 30(b)(6) designee goes beyond matters personally known to that designee or to matters in which that designee was personally involved. The deponent must prepare the designee to the extent matters are reasonably available, whether from documents, past employees, or other sources. [¶][A] Rule 30(b)(6) designee does not give his personal opinions, but presents the corporation's position on the topic. When a corporation produces an employee pursuant to a rule 30(b)(6) notice, it represents that the employee has the authority to speak on behalf of the corporation with respect to the areas within the notice of deposition. This extends not only to facts, but also to subjective beliefs and opinions. If it becomes obvious that the deposition representative designated by the corporation is deficient, the corporation is obligated to provide a substitute.
If the designated "agent is not knowledgeable about relevant facts, and the principal has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all." (Internal quotes and citations omitted.)

See also, Reilly v. NatWest Mkts. Grp., 181 F.3d 253, 268 (2d Cir. 1999) (when party does not comply, court may impose various sanctions, including preclusion of evidence).

10 "[A]n organization's deposition testimony is 'binding' in the sense that whatever its deponent says can be used against the organization. But Rule 30(b)(6) testimony is not 'binding' in the sense that it precludes the deponent from correcting, explaining, or supplementing its statements. Nothing in the text of the Rule or in the Advisory Committee notes indicates that the Rule is meant to bind a corporate party irrevocably to whatever its designee happens to recollect during her testimony. Of course, a party whose testimony 'evolves' risks its credibility, but that does not mean it has violated the [FRCPs]. [¶] [A] Rule 30(b)(6) deponent may also amend and expand its legal conclusions. Courts have held repeatedly that a party is 'entitled to produce contrary evidence' that contradicts legal interpretations offered during a deposition. [¶] Some deponents will, of course, try to abuse Rule 30(b)(6) by intentionally offering misleading or incomplete responses, then seeking to 'correct' them by offering new evidence after discovery. Appropriate remedies are available for such situations."

11 I generally bold defined terms.