
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

R.J. Zayed, in his Capacity as
Court-Appointed Receiver for Trevor G.
Cook et al.,

Petitioner,

Civil No. 11-cv-1042 SRN/FLN

v.

David Buysse, Steven and Pamela Cheney,
Walter Defiel, John Dzik, Terry Frahm,
Steven and Jenene Fredell, William Harris,
Michael Heise, Michael and Cynthia Hillesheim,
Larry Hopfenspirger, Steven Kautzman,
James McIntosh, George and Karen Morrisset,
Reynold Sundstrom, and Dot Anderson,

Respondents.

**RESPONDENT DOT ANDERSON'S MEMORANDUM IN OPPOSITION
TO THE RECEIVER'S MOTION FOR PROTECTIVE ORDER**

INTRODUCTION

Respondent Dot Anderson ("Mrs. Anderson") submits this Memorandum in Opposition to the Receiver's Motion for Protective Order. The Receiver's motion is an attempt to shirk his obligations as a litigant and his responsibilities acting on behalf of the Receivership Entities to cooperate in discovery. To try and evade the 30(b)(6) deposition, the Receiver conflates the two issues of (1) a deposition of the Receiver and (2) the 30 (b)(6) deposition notices served by the Lender Respondents and Mrs. Anderson.

The Receiver's motion starts from the fundamentally flawed premise that Mrs. Anderson seeks a deposition of counsel. That assertion could not be further from the truth. Mrs. Anderson seeks a corporate representative deposition of the Receivership Entities on a variety of factual issue relevant to the claims and defenses in this lawsuit. While Mrs. Anderson supports the Lender Respondent's efforts to depose the Receiver as the named plaintiff in this case, that deposition is fundamentally different from the corporate representative deposition notice Mrs. Anderson served on the Receivership Entities.

The Receiver's motion for protective order also sets up another straw man - that the deposition requests the mental impressions and conclusions of counsel. Mrs. Anderson is simply interested in the **facts** relating to various issues. A party cannot hide **facts** underlying claims by purporting to rely on either the attorney-client privilege or work product doctrine. The Federal Rules of Civil Procedure permit discovery into underlying **facts**, regardless of whose possession they are in.

And the Receiver's refusal to designate a corporate representative is another effort in a long line of improper procedural tactics designed to incrementally prejudice the Respondents in this case. To date, most of the deponents who have been identified by the Receiver have known nothing about the Respondents or the claims against them. To circumvent the Receiver's approach to written discovery and efforts to not disclose relevant facts and documents, Mrs. Anderson served a corporate representative deposition notice of the Receivership Entities, on whose behalf the Receiver acts, to obtain a witness who could testify about the facts here.

The Receiver's motion asks the Court to prohibit a corporate representative deposition and force Anderson to rely on interrogatory responses, prepared by counsel and not even verified by the receiver, as "proof" of the claims. The Receiver's positions fundamentally narrow the scope of permissible discovery and would impermissibly impinge on the Respondents' ability to prepare their case. Respondents cannot cross-examine an interrogatory response. Respondents cannot ask an interrogatory response whether it considered other facts or issues. And Respondents cannot explore with an interrogatory the effect other facts would have on the answer.

Distilled to its essence, the Receiver's motion argues for the extraordinary proposition that because the Receiver has responded to some interrogatories and produced some documents, that no deposition of anyone on the Receivership Entities' behalf is appropriate. But the claimed reasons identified by the Receiver as impediments to the deposition are no different than those any entity faces when served with a 30(b)(6) deposition notice. Dot Anderson respectfully request that the Court permit the appropriate 30(b)(6) deposition of the Receivership Entities as the Rules of Civil Procedure contemplate.

FACTUAL BACKGROUND

The Receiver's fact section omits significant information directly bearing on Mrs. Anderson's request for a corporate representative deposition (and which undercut the Receiver's claims of fraudulent transfer and unjust enrichment) Accordingly, Mrs. Anderson submits the following section to provide additional facts developed by the parties.

A. Mrs. Anderson's Request to Close Her Account.

The case is an attempt by a Receiver to claw back funds paid to a number of investors who either closed their accounts or received distributions before the Ponzi scheme collapsed.

Mrs. Anderson initially made her investment with "Basel Institutional" on June 15, 2009. Kohlhepp Dec Ex. 1 (Anderson Depo.) at 44. Mrs. Anderson provided \$102,000 to her grandson Grant Gryzbowski, who worked for a Receivership Entity, to be invested with Basel. *Id.* at 43. Mrs. Anderson filled out the appropriate paperwork to open her account. Those account opening documents gave Mrs. Anderson the right to request her funds back at any time. Declaration of Adam S. Huhta in Opposition to the Receiver's Motion for Protective Order (Huhta Dec.) Ex. 2 (Gryzbowski Depo.) at 185-86. Mrs. Anderson saw newspaper articles addressing the lawsuit filed by some Ohio investors who had invested in Crown Forex, and decided to close her account. She signed the necessary paperwork, and withdrew the \$102,000 she had invested. Mr. Gryzbowski did not ask anyone to handle his grandmother's withdrawal differently than any other account. Huhta Dec. Ex. 2 (Gryzbowski Depo.) at 186. Documents produced by the Receiver confirm that the funds were withdrawn from the "Basel" account at Associated Bank into which Mrs. Anderson's deposit had been made.

"Basel" was apparently an entity being set up given the bankruptcy involving the Crown Forex entities.¹ Basel was an operation that Cook had set up and intended to run legitimately. Huhta Dec. Ex. 1 (Cook Depo.) at 122. The entities were never able to get

¹ The reasons why Basel was set up is one of the 30(b)(6) topics.

the trading platform set up. According to Cook “It never got started.” Huhta Dec. Ex. 1 (Cook Depo) at 122-123. “Her [Mrs. Anderson’s] money was just sitting there and it wasn’t being managed or it wasn’t being traded or anything.” Huhta Dec. Ex. 1 (Cook Depo.) at 122-123. Cook testified that if a withdrawal request was made, they were all honored up to a certain day. *Id.* at 123-124. Cook was not involved in Mrs. Anderson’s decision to close her account. *Id.* at 125. Mrs. Anderson did not profit from her brief investment. *Id.* at 126-27. She put in \$102,000, and received \$102,000 back. *Id.*

B. Discovery in this Case.

Given a number of issues raised by the Receiver, Mrs. Anderson provides the following facts, to put various assertions in context.

On September 1, 2011, the Lender Respondents, represented by Mohrman & Kaardal, P.A., noticed the Receiver’s deposition, and a 30(b)(6) deposition of the Receivership. Huhta Dec. ¶5. The topics of the corporate representative deposition notice included the factual basis for a number of allegations relating to the claims against all the Respondents, including Dot Anderson. Huhta Dec. ¶6. Anderson’s counsel was served with a copy of those deposition notices by e-mail on September 2, 2011. Huhta Dec. ¶7.

On the afternoon of September 8, the Receiver’s counsel filed a Motion for Protective Order seeking to prevent the depositions. At that time, the Receiver’s counsel indicated they would not produce any deponents for the depositions. Huhta Dec. ¶8.

Because Anderson’s counsel thought that the Receiver’s counsel and the Lender Respondents’ counsel might reach an agreement that would withdraw the deposition

notices in the meet and confer process, counsel served a deposition notice on behalf of Respondent Dot Anderson to preserve Mrs. Anderson's ability to participate in the corporate representative deposition that had been noticed. Huhta Dec. ¶9.

That notice was served on September 9, 2011 the day after the Receiver filed the motion for protective order relating to the Lender Respondent's deposition notices. The deposition was set for the only day remaining in the period to conduct discovery that depositions were not already scheduled in the case. Huhta Dec. ¶10. Anderson's counsel informed the Receiver's counsel that he was willing to accommodate the witnesses schedules, and would be happy to schedule the deposition at a time mutually convenient to the witnesses and counsel. Huhta Dec. ¶11. The Receiver's office has scheduled depositions on a shorter time frame than that. Huhta Dec. ¶12-16.

The Receiver asserts that he has produced all potentially responsive documents in discovery, and that the Receiver has made documents available for inspection since late January 2011. Contrary to the Receiver's assertions, the Receiver first produced Documents to Dot Anderson on May 2, 2011. Huhta Dec. ¶18. Although the Receiver's counsel had produced a CD of approximately 20,000 documents to the Lender respondents, the Receiver initially refused to provide those documents to Mrs. Anderson. Huhta Dec. ¶18; Huhta Dec. Ex. 6.

The receiver's purported reason for refusing to produce documents was because Mrs. Anderson had not yet produced her documents. Mrs. Anderson's discovery responses were delayed because Mrs. Anderson, an 89 year old woman, experienced significant health issues, including an antibiotic resistant infection, which had her

hospitalized in isolation out of state and unable to assist in the discovery process. Huhta Dec. ¶20.

The Receiver also claims that they voluntarily produced the notes of Mr. Ostrom and Mr. Austrum, the investigators retained by the Receiver who interviewed various witnesses in this matter. Every page of the notes that were produced by the Receiver and available for use by Respondent's counsel during the depositions of Mr. Ostrom and Austrum were significantly (and inappropriately) redacted by the Receiver. Huhta Dec. ¶¶ 21-22.

Of the fourteen pages of notes (IR002476-2490) relating to the investigator's interview of Grant Gryzbowski, ten pages were completely redacted leaving no information on the pages - yet were still marked as "confidential" under the protective order entered in this case. Huhta Dec. ¶ 22. The first page contained only the date, Gryzbowski's counsel's name and Gryzbowski's name. The remaining information on the page was completely redacted. *Id.* Only about a page and half of the notes were actually provided without redaction for use at the investigators' deposition.²

The Receiver's Initial Disclosures, and supplements to those disclosures, only generically identify witnesses and documents. The disclosures do not identify which witnesses have information relating to any specific Respondent.

On July 6, Anderson's counsel asked the Receiver's counsel to identify which witnesses in their disclosures relate to the claim against Mrs. Anderson, given the generic

² The Receiver has since produced a full copy of the Gryzbowski interview notes, the day before Gryzbowski's deposition, in light of the Respondents' counsel's threat of a motion to compel.

nature of the Receiver's disclosures. Huhta Dec. ¶24; *Id.* at Ex. 7 (July 6 letter from Huhta to Norgard). The Receiver's counsel did not respond until August 1, 2011. Huhta Dec. ¶ 25; *Id.* at Ex. 8 (August 1 e-mail from Norgard to Huhta). Despite that narrowing of the witnesses, the Receiver continues to expand, rather than limit, the witnesses they intend to rely upon.

The Receiver's motion is the continuation of a long line of efforts by the Receiver to frustrate the respondents' attempts to obtain proper discovery in this case thereby procedurally prejudicing the Respondents' preparation.

Just before the close of discovery, the Receiver's counsel indicated that they have not produced to the Respondents all relevant documents supporting their claims, as their responses to document requests indicated. In response to Mrs. Anderson's discovery, the Receiver indicated that "Receiver will produce relevant and responsive documents to the extent that those documents are in the Receiver's possession, custody, or control and can be located after reasonable investigation." *See* Huhta Dec. Ex. 9 (Receiver's Objections And Responses To Investor Respondent Dot Anderson's First Set Of Requests For Production)(Response to No. 2 (seeking "All documents supporting, evidencing, documenting, or relating to your claim that any transfer to Mrs. Anderson was fraudulent:); *see also* response to Request No. 3 (seeking "All documents supporting, evidencing, documenting, or relating to your claim that any transfer to Mrs. Anderson unjustly enriched her.")). The receiver has Bates labeled and produced a variety of documents to the Respondents. In light of Mrs. Anderson's requests and the Receiver's

Responses, there should be no documents supporting the Receiver's claims that have not been bates-labeled and produced to Mrs. Anderson.

Given the Receiver's use of documents at depositions that have not been Bates labeled and produced, Mrs. Anderson's counsel specifically asked whether there were additional documents the Receiver intended to rely upon for the claims against Mrs. Anderson that had not been Bates labeled and produced to Respondents. Huhta Dec. ¶ 30; *Id.* at Ex. 10 (Huhta e-mail to Kohlhepp). On September 13, 2011, Mr. Kohlhepp confirmed that there are documents that the Receiver purports to have "made available for inspection" that have not been Bates labeled and produced. Huhta Dec. ¶31; *Id.* at Ex. 11 (September 13 e-mail from Kohlhepp to Huhta).

ARGUMENT

I. THE RECEIVER'S MOTION FOR PROTECTIVE ORDER SEEKING TO PROHIBIT A 30(b)(6) DEPOSITION OF THE RECEIVERSHIP ENTITIES SHOULD BE DENIED.

A. The Receiver's Motion Fails to Meet the Standard for Granting a Protective Order.

The Federal Rules of Civil Procedure start from the fundamental premise that discovery is to be broad. Rule 26 permits discovery of all non-privileged matter which is relevant to the subject matter of the action, whether it pertains to a claim or defense. The discovery rules "are to be accorded a broad and liberal treatment." *Hickman v. Taylor*, 329 U.S. 495, 507 (1947). The instruments of discovery serve as devices to narrow and clarify issues, to unearth facts or information pertaining to the existence and whereabouts of relevant facts, and to determine the adverse party's version

of relevant facts and the purpose which they can serve. Cf., *United States v. Beatrice Foods Company*, 52 F.R.D. 14 (Minn. 1971).

The rules governing depositions recognize this broad standard as well. Federal Rule of Civil Procedure 30(a)(1) sets a broad standard - a party may depose “any person”. Indeed, Rule 30 “provides a broad right.” *Credit Lyonnais, S.A. v. SGC Int'l, Inc.*, 160 F.3d 428, 430 (8th Cir. 1998). Under Rule 30(b)(6), the organization must provide a witness to “testify as to matters *known or reasonably available to the organization.*” Fed.R.Civ.P. 30(b)(6) (emphasis added).

Against the broad scope of discovery allowed by the Federal Rules of Civil Procedure, the Receiver’s attempt to shirk his responsibility in designating someone to testify on behalf of the Receivership Entities should be denied.³

Federal Rule of Civil Procedure 26 allows a district court to issue an order protecting a party from discovery only upon showing of “good cause” including annoyance, embarrassment, oppression, or undue burden or expense. “The burden is therefore upon the movant to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements .” *Gen. Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1212 (8th Cir. 1973). “It is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error.” *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979). Protective orders totally

³ The receiver’s Motion does not challenge any of the topics, or claim the topics fail to adequately describe the issues to be addressed.

prohibiting a deposition are rarely granted absent extraordinary circumstances. *Salter v. Upjohn Co.*, 593 F.2d 649, 653 (5th Cir. 1979); *N.F.A. Corp. v. Riverview Narrow Fabrics*, 117 F.R.D. 83 (M.D.N.C. 1987).

B. Rule 30(b)(6) Obligates the Receivership Entities to Designate an Individual to Testify to Matters Known or Reasonably Available to the Entities.

Rule 30(b)(6) explicitly requires entities to designate a person to testify on its behalf as to “all matters known or reasonably available” to it. A Rule 30(b)(6) deponent need not have personal knowledge of every subject noticed for his deposition. Rather, the deponent has an affirmative obligation to educate himself as to the matters listed in the deposition notice. This includes all matters that are known or reasonably available to the corporation. Even if the documents are voluminous and the review of the documents would be burdensome, the deponents are still required to review them in order to prepare themselves to be deposed. *Concerned Citizens v. Belle Haven Club*, 223 F.R.D. 39, 43 (D. Conn. 2004) (quoting *Calzaturificio S.C.A.R.P.A. v. Fabiano Shoe Co., Inc.*, 201 F.R.D. 33, 36 (D. Mass. 2001)).

Judge Davis’ November 2009 Order appointing the Receiver mandates that all employees and agents of the Receivership Entities cooperate with the Receiver:

Defendants Cook's and Kiley, the Defendant Shall Companies, the Relief Defendants, their agents, servants, employees, and attorneys, and any persons acting for or on behalf of the Receiver Estates, are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully all requests for information and documents from the Receiver.

Order Appointing Receiver, (Document No. 13) ¶ VI, *SEC v. Cook et al*, 09-cv-3333
MJD/JJK.

Under the Order, all employees of the Receivership Entities are required to cooperate with the Receiver and provide him with truthful information. Given that Order, there is no excuse for the Receivership Entities failure to designate a witness, and the Receiver's argument that he has no "personal knowledge" does not exempt the Receivership Entities from designating a representative to testify on the entities' behalf.

Indeed, a common issue faced by entities is the fact that no current employee has personal knowledge of the topics listed in a corporate representative deposition notice. Because of the nature of Rule 30(b)(6), it is possible that a designated corporate representative will not have personal knowledge regarding all of the matters contained in the notice of deposition. In that instance, the corporation is obligated to prepare the corporate representative so that he or she may give knowledgeable and binding answers for the corporation. *Dravo Corp. v. Liberty Mut. Ins. Co.*, 164 F.R.D. 70, 75 (D. Neb. 1995); *see also Buycks-Roberson v. Citibank Federal Sav. Bank*, 162 F.R.D. 338, 343 (N.D. Ill. 1995) (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.). But the fact that no current employee has personal knowledge of the deposition topics does not mean the entity can shirk its discovery obligations under Rule 30(b)(6). Cases recognize that the entity's obligation can extend to obtaining information from former employees. "If necessary, the deponent must use documents, past employees, and other resources in performing this required preparation." *Bridgell v.*

St. Gobain Abrasives Inc., 233 F.R.D. 57, 60 (D. Mass. 2005). Indeed, an entity can even designate former employees as corporate representatives. *See, e.g., Employers Ins. Co. of Wausau v. Nationwide Mut. Fire Ins. Co.*, No. 2005-0620, 2006 U.S. Dist. LEXIS 23419, at *2 (E.D.N.Y. Apr. 26, 2006) (“By its terms, Rule 30(b)(6) does not limit an organization from designating a person other than an employee to be deposed on behalf of that organization.”); *Village of Kiryas Joel Local Dev. Corp. v. Ins. Co. of N. Am.*, No. 90-Civ-4970, 1991 U.S. Dist. LEXIS 3407, at *5–6 (S.D.N.Y. Mar. 21, 1991) (“[T]he fact that [the witness] may no longer be a director, officer or managing agent does not disable him from being a Rule 30(b)(6) designee of plaintiff.”); *Hilburn v. Deere & Co.*, No. 88-3692, 1990 U.S. Dist. LEXIS 10299, at *9–10 (E.D. Pa. Aug. 7, 1990) (holding that a current consultant/former employee was the most knowledgeable, and therefore a binding 30(b)(6) witness).

And the fact that some deposition topics relate to actions of former employees of the Receivership Entities does not relieve the Receivership Entities from appropriately preparing a 30(b)(6) witness. Sometimes the knowledge of a corporation is maintained more thoroughly by a former employee. In such instances, the corporation must take action to inform and educate the 30(b)(6) representative regarding the actions taken by the former employee. *See, e.g., United States v. Massachusetts Indus. Fin. Agency*, 162 F.R.D. 410, 412 (D. Mass. 1995) (rejecting corporation’s arguments that it was not required under Rule 30(b)(6) to educate its witness about actions taken by former employees of the corporation).

These cases illustrate that the Receiver's objections to the 30(b)(6) deposition are not appropriate. Judge Davis' Order mandates that all employees and former employees of the Receivership Entities cooperate with the receiver and truthfully respond to request for information. As such, the Receiver can certainly identify appropriate former employee to address the topics in the respondents' deposition notice.

Where is an affidavit outlining the steps the Receiver has taken, on behalf of the Receivership Entities, to try to identify an appropriate witness in response to the 30(b)(6) deposition notices served by Respondents? Conspicuously absent from the Receiver's motion for protective order is any admissible factual support for the claim that the Receiver cannot identify appropriate witness to testify on behalf of the Receivership Entities. And the reason is simple. The receiver apparently has undertaken no such efforts, despite Judge Davis' Order that the Receivership Entities, their employees and agents servants are all ordered to cooperate with receiver in every respect. The Receiver therefore fails to carry their burden to establish that a protective order is appropriate.

C. The 30(b)(6) Topics Do Not Impermissibly Seek Work Product or the Deposition of Opposing Trial Counsel.

The Receiver's entire opposition is built on the flawed premise that *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1987) governs the issue. That case has no applicability here. There, Shelton sought the deposition of "opposing counsel in an attempt to identify the information that opposing counsel has decided is relevant and important to me as legal theories and strategy". *Id.* at 1327. Not surprisingly, the Eighth

Circuit took a narrow view on when a party could take the deposition of "opposing trial counsel."

But Mrs. Anderson does not seek the deposition of "opposing trial counsel." Rather, Mrs. Anderson seeks a corporate representative, not the named plaintiff who instituted the lawsuit. And Mr. Zayed has taken no depositions, argued no motions, and signed no pleadings other than the Petition. He is the court appointed Receiver--not an attorney for the receivership entities. Simply put, *Shelton's* three-part test has no applicability here.

The Receiver argues that the 30(b)(6) topics seek attorney-work product. But Mrs. Anderson does not seek the receiver's work product or information protected by the attorney-client privilege. Rather, we simply seek the facts. Facts supporting the claims. Facts relating to the defenses. Facts that cannot be hidden in discovery or sanitized through a written discovery response prepared by counsel. And the identification of facts does not implicate work-product. "Facts relevant to the case are not ordinary or opinion work-product of an attorney. The disclosure of relevant facts does not necessarily reveal the origin of the facts or how, why and by whom certain facts upon which defendants rely were selected." *Mead Corp. v. Riverwood Nat. Resources Corp.*, 145 F.R.D. 512, 518 (D. Minn. 1992).

Merely because a 30(b)(6) deposition seeks facts supporting legal contentions does not mean a protective order is appropriate. The court in *In Re Douglas Asphalt Co.*, 436 B.R. 246 , 251(S. D. Ga. 2010) dismissed a similar argument, finding that a party and

their counsel should be permitted to chose the method of discovery they thought appropriate. The court noted:

According to F & D, these topics seek either (1) F & D's legal positions or (2) matters protected by attorney-client privilege as information known only through discussions with, and investigation by, F & D's counsel. F & D asserts that when a Rule 30(b)(6) notice seeks legal contentions or matters protected by privilege, courts have held that a deposition is not an appropriate discovery tool.

These two arguments are unavailing. "The deposition-discovery regime set out by the Federal Rules of Civil Procedure is an extremely permissive one to which courts have long accorded a broad and liberal treatment...." *In re Subpoena Issued to Dennis Friedman*, 350 F.3d at 69 (internal quotation marks omitted). Here, the Law Firms have a right to conduct discovery in whatever manner they choose, and F & D has not shown good cause to restrict that right.

The four topics that F & D argues should be stricken as not relevant to this adversary proceeding are fully within the scope of a discovery regime in which "[r]elevancy is broadly construed," *Johnson v. Kraft Foods N. Am., Inc.*, 236 F.R.D. 535, 541 (D. Kan. 2006).

* * *

As to whether contention interrogatories are more appropriate than a Rule 30(b)(6) deposition for inquiry into the remaining five topics-that question is for the Law Firms to decide. A court may alter the manner of discovery as it deems appropriate. Fed.R.Civ.P. 26(c)(1)(C). Here, however, F & D has not shown good cause for me to prescribe a discovery method other than the one the Law Firms selected.

Id. at 251. Here, the Respondents should be permitted the opportunity to take a deposition of the Receivership Entities, rather than be forced to rely on unverified interrogatory responses prepared by counsel that cannot be cross-examined or questioned.

1. The Cases Cited by the Receiver Are Distinguishable.

The Receiver's Memorandum cites three cases in which the SEC was successful in mandating contention interrogatory responses rather than a 30(b)(6) deposition. Those

cases are distinguishable. *SEC v. Morelli* does not apply to the facts here. Indeed, the case stands for the same propositions as *Shelton* – that a party’s attorney should not be deposed. Mrs. Anderson does not seek the deposition of the receiver’s trial counsel.

Nor is the Receiver an arm of the government responsible for statutory enforcement. And importantly, one of the factors that the *Morelli* court relied upon was the fact that the SEC had produced all relevant documents. *S.E.C. v. Morelli*, 145 F.R.D. 42, 47 (S.D.N.Y. 1992). Here, the receiver has not done so, and only recently disclosed that they intend to rely on documents not Bates labeled and produced to the Respondents. Huhta Dec. ¶28-32.

Importantly, even in cases involving the SEC, courts have refused to follow the line of SEC cases cited by the Receiver. For example, as recently as April 1, 2011, Judge Steven D. Merryday sitting in the Middle District of Florida reversed the Magistrate Judge's decision to deny a 30(b)(6) deposition of the SEC. *S.E.C. v. Kramer*, 778 F. Supp. 2d 1320 (M.D. Fla. 2011). In response to identical issues and arguments, the Court mandated the 30(b)(6) deposition of the SEC, stating:

In this instance, Magistrate Judge McCoun relied upon the Commission's assertion that, because Commission counsel lacked "independent knowledge" of the facts and because only Commission counsel worked on the case, a deposition of the Commission would necessarily intrude upon the work product and deliberative process privileges. *Kramer*, however, sought to discover only the facts underlying the claim against him and not the mental impressions of Commission counsel. Rule 30(b)(6) contains no requirement that *Kramer* first seek by other means of discovery the facts underlying the claim against him. Under Rule 30(b)(6), the Commission could designate any person (i.e., someone other than counsel) to depose in response to *Kramer's* request.

* * *

Permitting the Commission in this instance to assert a blanket claim of privilege in response to a Rule 30(b)(6) notice creates an unworkable circumstance in which a defendant loses a primary means of discovery without a meaningful review of his opponent's claim of privilege.

S.E.C. v. Kramer, 778 F. Supp. 2d 1320 (M.D. Fla. 2011).

Other courts recognize that answers to contention interrogatories are an inadequate substitute for deposition testimony pursuant to Rule 30(b)(6). *Ierardi v. Lorillard, Inc.*, 1991 WL 158911at *1 (E.D.Pa. 1991). There, the court noted that “the deposition process provides a means to obtain more complete information and is, therefore, favored.” *Id.* at *1-2, (quoting *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (D. N.C. 1989)). Corporate representative depositions are recognized as appropriate tools that complement other methods of discovery. “Rule 30(b)(6) ... is an additional, supplementary and complimentary deposition process designed to aid in the efficient discovery of facts.” See *Mitsui & Co. (U.S.A.), Inc. v. Puerto Rico Water Resources Authority*, 93 F.R.D. 62, 65 (D.P.R. 1981) (citing Advisory Committee Note to Rule 30(b)(6)); *Atlantic Cape Fisheries v. Hartford*, 509 F.2d 577 (1st Cir. 1975).

Mrs. Anderson would like a witness who can testify to the facts on behalf of the Receivership Entities. Nothing more. The receiver’s objections are those faced by every entity faced with a 30(b)(6) deposition notice. By Court order the Receiver and Receivership Entities have access to every employee -- whose cooperation is mandated - so there are no obstacle to designating an appropriate person to testify on the Receivership Entities’ behalf.

D. The Receiver's Deficient Discovery Responses Should Not Preclude a 30(b)(6) Deposition.

Assuming that *Shelton* applies (and it does not) a number of topics identified in Mrs. Anderson's 30(b)(6) deposition notice are different from the contention interrogatories insufficiently answered by the Receiver. There are 16 topics listed in the deposition notice (Kohlhepp Dec. Ex. 17). The Receiver's Memorandum lists only 4 topics that are similar to the contention interrogatories served. Receiver's Memo at 18. Additional topics in the deposition notice include, without limitation, the creation of the Basel entity into which Mrs. Anderson invested (Topic 16), withdrawals from Basel (Topic 16), and requests for withdrawal from any Basel Entity's (Topic 16), the circumstances involving the return to Mrs. Anderson of her funds, including why her funds were returned to her (Topic 11); the terms under which Mrs. Anderson's money could be returned to (Topic 12).

And even assuming Mrs. Anderson must demonstrate that prior discovery is deficient, there are many deficiencies in the Receiver's discovery responses. For example, Interrogatory No. 9 sought the facts relating to the return to Mrs. Anderson of her funds. The "supplemental response" fails to discuss who made the transfers, fails to identify any discussions within the Receivership entities about the closing of Mrs. Anderson's account, and fails to take into consideration that proper paperwork was prepared and submitted to close Mrs. Anderson's account. Glaringly absent is any discussion of WHY Mrs. Anderson's funds were returned, or at whose request.

Interrogatory No. 12, asking for the identification of all facts on which the Receiver relies for the contention that Mrs. Anderson did not provide reasonably equivalent value in exchange for her withdrawal is similarly deficient. The response claims that:

[t]he money was stolen by Cook and his co-conspirators immediately upon receipt. The stolen money was used to further the scheme by, among other things: paying earlier victims; paying salaries and commissions of salespersons and employees who were used by Cook and his co-conspirators to lure in more victims; paying operating expenses associated with maintaining the appearance of legitimacy; funding promotional activities to lure more victims; paying the personal expenses of Cook and his co-conspirators; and using the money to support their extravagant lifestyles.”

Kohlhepp Dec. Ex. 17 at 18-19. Contrary to the argumentative “responses” prepared by the Receiver’s counsel and unverified by the Receiver, the documents illustrate that Mrs. Anderson’s funds were simply sitting in a bank account at Associated Bank, and there were no withdrawals from that account supporting any of the “facts” asserted in the interrogatory response. Mrs. Anderson ought to be able to depose someone on behalf of the Receivership Entities to explore the basis for this response as well as what withdrawals were made from the Basel entity’s bank account (Topic No. 16). These are only a few of the deficiencies in the receiver’s contention interrogatory responses. Under the circumstances, Mrs. Anderson ought to be able to explore the basis for these “facts” with a witness unvarnished by the Receiver’s counsel.

CONCLUSION

For these reasons, Mrs. Anderson respectfully requests that the Court deny the Receiver's motion and order the 30(b)(6) deposition as requested by Respondents.

Dated: September 26, 2011

s/ Adam S. Huhta
Adam S. Huhta (#236470)
Huhta Law Firm, PLLC
36 South 9th Street, Suite 200
Minneapolis, Minnesota 55402
Tel.: (612) 353-4044
Fax: (612) 353-4085
Attorney for Respondent Dot Anderson