

inter alia, a description of the facts and procedural history of this case.

On January 22, 1999, BHC sent Unicare a 30(b)(6) notice of deposition listing 13 topics. BHC asserts that Unicare failed to designate proper 30(b)(6) representatives for 3 of the 13 topics. Unicare designated Joseph Noonan and Elizabeth Studer to testify to Topic One (contracts among the parties), Studer to testify to Topic Ten (the lapsing of BHC's policy) and Doreen Newell to testify to Topic Nine (claims handling). BHC asserts that Noonan, Studer and Newell "had little or no knowledge as to the designated subject areas" and requests sanctions under Rule 37 of the Federal Rules of Civil Procedure. (BHC's Br. in Supp. of Mot. for Sanctions for Failing to Designate Appropriate Witnesses Pursuant to Fed. R. Civ. P. 30(b)(6) ("BHC's Mot. for Sanctions") at 2.) Unicare asserts that it designated appropriate 30(b)(6) witnesses. (Unicare's Br. Opposing BHC's Mot. for Sanctions for Failing to Designate Appropriate Rule 30(b)(6) Witnesses ("Unicare's Opp'n to Sanctions") at 4.) Unicare alleges that although the witnesses were unable to answer every question posed at their depositions, each provided ample testimony to constitute compliance with Rule 30(b)(6).¹ Id.

On June 12, 2000, BHC filed the instant motion for sanctions to which Unicare filed its opposition on July 17, 2000. BHC

¹ In fact, the record shows that Noonan's deposition transcript ran 190 pages; Studer's was 133 pages; and Newell's deposition was 62 pages. Id. at 4.

filed a motion for leave to file a reply brief in support of its motion for sanctions on August 3, 2000.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 30(b) provides, in relevant part:

A party may in the party's notice and in a subpoena name as the deponent a public or private corporation . . . 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 The persons so designated shall testify as to matters known or reasonably available to the organization.

Fed. R. Civ. P. 30(b)(6).

Rule 30(b)(6) "puts certain burdens on both parties."

Alexander v. FBI, 186 F.R.D. 137, 139 (D.D.C. 1998). Once the plaintiff notices the deposition and describes the subject matter to be inquired upon with reasonable particularity, the defendant must designate one or more persons to testify. Id. at 140. When a designee is unable to adequately respond to certain relevant areas of inquiry, the designating party has a duty to substitute an appropriate deponent. Id. at 141.

Sanctions for failure to comply with Rule 30(b)(6) may be brought under Rule 37 when the violating party "acted wilfully or in bad faith to obstruct discovery." United States v. Massachusetts Indus. Fin. Agency, 162 F.R.D. 410, 412 (D. Mass. 1995). An inability to fully testify on all topics set forth in

a 30(b)(6) notice is not tantamount to a complete failure of the corporate designee to appear that would justify sanctions. Id.

III. DISCUSSION

BHC seeks sanctions under Rule 37 of the Federal Rules of Civil Procedure, alleging that Unicare failed to designate proper 30(b)(6) representatives. BHC asserts that Noonan, Studer and Newell, whom Unicare designated to testify to Topic One (contracts among the parties), Topic Ten (the lapsing of BHC's policy), and Topic Nine (claims handling) "had little or no knowledge as to the designated subject areas." (BHC's Mot. for Sanctions at 2.)²

Topic One of BHC's deposition notice sought testimony on "any and all agreements between or among (a) BHC, RGP Holdings, Inc. and General Refractories Company and (b) MassMutual Life & Health Insurance Company and Unicare Life & Health Insurance Company." (BHC's Reply Br. in Supp. of Mot. for Sanctions

² Unicare's unopposed motion for an extension of time to respond to BHC's motions for sanctions will be granted. The request for extension pertains to both the instant motion for sanctions and to BHC's Motion for Sanctions Relating to Unicare's Counsel's Conduct and for Filing a Baseless Protective Order as to Charles Muse. Pursuant to Unicare's request for an extension of time, Unicare had until July 17, 2000 to file its responses to BHC's motions for sanctions. Said responses were filed on July 17, 2000.

Likewise, BHC's motion to file a reply brief in support of its motion for sanctions for failure to designate appropriate Rule 30(b)(6) witnesses will be granted and the reply brief will be incorporated into the motion for sanctions.

Against Unicare for Failing to Designate Appropriate Rule 30(b)(6) Witnesses ("BHC's Reply Br.") at 1.) Unicare designated Noonan and Studer to testify as to Topic One. BHC asserts that Noonan and Studer did not identify which documents constituted the contract, stated that they were not experts in contractual documents and did not know if the form policy was sent to BHC. (BHC's Mot. for Sanctions at 4-5.)

The record shows, however, that Noonan explained that although he did not consider himself an expert in contract law, he had a working knowledge of Unicare's contracts, could testify as to how they would be used regarding a client and could state Unicare's position with respect to the interpretation of a contractual provision.³ (Noonan Dep. at 70-71 & 90.) Likewise, Studer testified that she was not an expert in interpreting contractual documents and that because she was not responsible for sending contracts to policyholders, she did not know whether the policy contract was sent to or signed by BHC. (Studer Dep. at 10-13.) However, this does not mean that Studer "had little or no knowledge" as to the agreements between BHC and Unicare. For example, the record shows that Studer identified the policy contract and the Minimum Premium Plan Letter of Financial Agreement. Id.

Unicare also designated Studer to testify to Topic Ten, Unicare's decision to lapse BHC's policy. BHC alleges that

³ The court notes that BHC apparently plans to continue Noonan's deposition.

Studer was not properly prepared to testify about the decision to lapse BHC's account. (BHC's Mot. for Sanctions at 5.) Although Studer testified that she did not recall making the determination to terminate BHC's policy, and that Unicare's accounting department would have handled the physical issuance of the lapse notice, under Rule 30(b)(6), a witness does not have to be personally involved in the topic area about which they are to testify. United States v. J.M. Taylor, 166 F.R.D. 356, 361 (M.D.N.C. 1996). Further, Studer did testify about what happens when a policy lapses, providing answers on Unicare's behalf. (Studer Dep. at 46-47 & 117.)

Unicare designated Doreen Newell to testify to Topic Nine, Unicare's policies and procedures with respect to claims handling. BHC argues that Unicare's designation of Newell to testify was inadequate because she never personally worked in the claims office and her "job was to review problem claims that were sent to her." (BHC's Mot. for Sanctions at 6.) A Rule 30(b)(6) witness is not required to have been personally involved in the matter about which she is designated to testify. J.M. Taylor, 166 F.R.D. at 361. The record shows that Newell testified about Unicare's claims handling procedures. Specifically, Newell testified about Unicare's procedures for handling claims questions, Unicare's procedures for reviewing claims and how a specific claim for benefits was processed. (Newell Dep. 6-8, 13-

17 & 28.)⁴

Additionally, the court notes that a witness's failure to testify fully on all the topics set forth in a Rule 30(b)(6) notice is not tantamount to a complete failure to appear justifying sanctions. Massachusetts Indus. Fin. Agency, 162 F.R.D. at 412 (where designated witness was not able to testify fully regarding five of eight topics). Here, both Noonan and Studer testified on other topics. (Unicare's Opp'n to Mot. for Sanctions at 14 n.6.) Further, BHC has not shown that Unicare acted "in bad faith or to obstruct discovery." Massachusetts Indus. Fin. Agency, 162 F.R.D. at 412. Thus, the court will deny BHC's motion for sanctions.

III. CONCLUSION

For the reasons set forth above: BHC's motion for leave to file a reply brief will be granted; Unicare's motion for an extension of time to respond to BHC's motions for sanctions will be granted; and BHC's motion for sanctions for failure to designate appropriate Rule 30(b)(6) witnesses will be denied.

An appropriate Order follows.

⁴ The court also notes that BHC's bad faith cause of action as to claims handling was dismissed. Memos. & Orders dated April 27, 2000 & December 1, 2000.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BELMONT HOLDINGS CORPORATION	:	CIVIL ACTION
	:	
v.	:	
	:	
UNICARE LIFE & HEALTH INSURANCE COMPANY	:	NO. 98-2365

ORDER

AND NOW, TO WIT, this day of December, 2000, upon
consideration of the following, IT IS ORDERED that:

- 1) plaintiff Belmont Holdings Corporation's ("BHC") Motion for Leave to File a Reply Brief in Support of its Motion for Sanctions Relating to Unicare's Failure to Properly Designate Witnesses Pursuant to Fed. R. Civ. P. 30(b)(6) (Doc. #83) is GRANTED; BHC's reply brief is hereby incorporated into the motion for sanctions;
- 2) defendant Unicare Life and Health Insurance Company's ("Unicare") Motion for an Extension of Time to Respond to Plaintiff's Motions for Sanctions (Doc. #78) is GRANTED; and
- 3) BHC's Motion for Sanctions Relating to Unicare's Failure to Properly Designate Witnesses Pursuant to Fed. R. Civ. P. 30(b)(6) (Doc. #77) is DENIED.

LOUIS C. BECHTLE, J.