

VT SUPERIOR COURT
WASHINGTON UNIT
STATE OF VERMONT

SUPERIOR COURT
Washington Unit

2017 SEP 29 P 1:11

CIVIL DIVISION
Docket No. 443-7-14 Wncv

STATE OF VERMONT
Plaintiff

FILED

v.

LIVING ESSENTIALS, LLC, and
INNOVATION VENTURES, LLC
Defendants

ENTRY ORDER

Defendants' Motion to Compel Production of 30(b)(6) Witness (MPR 62)

Defendants noticed a Rule 30(b)(6) deposition of the State in February 2017 and narrowed its scope slightly in August 2017. Rule 30(b)(6) allows a party to name an organizational deponent, which then must identify the person(s) who will testify on its behalf. The rule expressly applies to governmental agencies. The State has resisted any Rule 30(b)(6) deposition, arguing that it is tantamount to deposing opposing counsel without any legitimate need to do so. Defendants ask the court to compel the State to identify Rule 30(b)(6) witnesses.

The court is sensitive to the State's fear that Defendants' inquiries may invariably wander into work product and attorney-client privileged areas. Defendants' legitimate need to learn the facts underlying the State's allegations is no guarantee against overreach. 8A Wright & Miller et al., Federal Practice & Procedure: Civil 3d. § 2103 ("Questioning of a corporate representative pursuant to Rule 30(b)(6) about the facts underlying allegations in pleadings may present a particular problem verging on taking the deposition of counsel. Often the grounds for such allegations are best (or only) known to counsel, and in that sense could be regarded as work product." (citation omitted)).

However, the State's objection could be as readily raised in virtually any case in which an enforcement action both originated within and is being prosecuted by the office of the attorney general; that is, cases in which the office of attorney general effectively operates as both client and lawyer. There is no exemption from Rule 30(b)(6) in this situation and the court declines to impute one. A defendant sued by the State represented by the Attorney General's office should not be deprived of the opportunity for discovery about the specifics of a claim that is otherwise available to defendants in other cases. The court declines to conclude that discovery necessarily amounts to the improper deposition of opposing counsel.

The State also argues that the information sought is available through the use of interrogatories. It is not the court's role to limit Defendants as to which of the available discovery tools they must use. Deposition allows for a more flexible and in-depth process of discovery that can result in benefit to all parties and the court in preparation for trial. Where it is


not obvious that a particular named individual is the one to provide the discovery sought, a Rule 30(b)(6) deposition is appropriate.

Whether the State chooses a deponent who is an attorney or not is up to the State. The Defendant has not specified an attorney, and the court is not mandating that the deponent be an attorney.

Review of the subject matter for the deposition identified by Defendant shows a very broad range of subject matter and includes topics that may very well be subject to attorney work product objections. Therefore, prior to the deposition taking place, the attorneys shall attempt to narrow the breadth and sharpen the particularity of the matters subject to examination so the State may identify appropriate person(s) for deposition and so that protected areas may be avoided or limited.

Defendants' motion to compel is *granted* as set forth above

Dated at Montpelier, Vermont this 29th day of September 2017.



Mary Miles Teachout
Superior Judge