

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
CREW CONCEPTS, INC.,)
)
Defendant.)
_____)

Case No. CV 06-388-S-EJL

ORDER

Currently pending before the Court is Defendant’s Motion for Protective Order (Docket No. 35). In the interest of avoiding delay, and because the Court conclusively finds that the decisional process on the pending motion would not be significantly aided by oral argument, the Court will address and resolve the motion without a hearing. Having carefully reviewed the record and otherwise being fully advised, the Court enters the following Order.

I.

BACKGROUND

On June 21, 2007, Plaintiff, the Equal Employment Opportunity Commission (“EEOC”) served Defendant, Crew Concepts, Inc. (“Crew Concepts”) with a Notice of Rule 30(b)(6) Deposition scheduled for July 12, 2007 at 9:00 am (“Deposition Notice”). *Motion for Protective Order*, Ex. A (Docket No. 35). On July 2, 2007, Crew Concepts filed the instant Motion for Protective Order (Docket No. 35) seeking to quash the entire Deposition Notice, because it has “permanently ceased its operations” and cannot designate anyone within 100 miles of this Court

to comply with the Deposition Notice. *Memorandum in Support of Motion for Protective Order*, p. 2 (Docket No. 36). Crew Concepts also objects to the relevancy of certain categories of questions set forth in the Deposition Notice. *Id.* at 4-5. Specifically, Crew Concepts objects to questions related to the relationship between Crew Concepts and Mustang Helicopters, Inc.; Helicraft, Inc.; Placement B. Allard; and Coast to Coast Helicopters, as these entities are not parties to this lawsuit. *Id.* at 4. In addition, Crew Concepts objects to question surrounding the voluntary surrender of its Federal Aviation Administration Certificate of Operation. *Id.* at 5. Finally, Crew Concepts seeks its attorneys fees and costs associated with the pursuit of the Protective Order.

II.

ANALYSIS

“Upon motion by a party or by the person from whom discovery is sought,” Rule 26(c) of the Federal Rules of Civil Procedure authorizes the Court to make “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense.” “The Supreme Court has interpreted this language as conferring ‘broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.’” *Phillips ex. rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)). A protective order may issue, however, only “for good cause shown.” Fed. R. Civ. P. 26(c).

A. Motion to Quash Deposition Notice

Defendant’s Motion for Protective Order asks the Court to quash Plaintiff’s Deposition Notice in its entirety. Crew Concepts argues that it cannot comply with the Deposition Notice,

because it is no longer in operations, no officer or director of the company lives within 100 miles of Boise, and the individuals with the most knowledge of the subject matter described in the Deposition Notice live in Canada and do not consent to testify on Crew Concept's behalf.

Memorandum in Support of Motion to Compel (Docket No. 36).

Defendant does not cite to the Federal Rules of Civil Procedure or any applicable case law in support of its argument. See Local Dist. Idaho Loc. Civ. R. 7.1(b)(1) (“[e]ach motion . . . must be accompanied by a separate brief . . . containing all the reasons and points and authorities relied upon by the moving party”). As a result, Defendant appears to ignore the fact that Crew Concepts, an Idaho corporation in good standing, has certain obligations it must honor when named as a deponent pursuant to Rule 30(b)(6).

Pursuant to Rule 30(b)(6), a party may name as the deponent a public or private corporation and “describe with reasonable particularity the matters on which examination is requested.” Fed. R. Civ. P. 30(b)(6). “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.” *Id.* Once named as a deponent pursuant to Rule 30(b)(6), a corporation has two central duties: (1) designate one or more individuals who consent to testify on its behalf and (2) prepare the witness or witnesses to answer questions on the topic identified in the notice of deposition. “The corporation . . . must not only produce such number of persons as will satisfy the request, but, more importantly, prepare them so that they may give complete, knowledgeable and binding answers on behalf of the corporation.” *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989).

A corporation is not relieved from preparing its Rule 30(b)(6) designee even when it no longer employs individuals who remember the earlier event. *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996). “[T]he 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.” *Id.* “The deponent must prepare the designee to the extent matters are reasonably available, whether from documents, past employees, or other sources.” *Bank of New York v. Meridien BIAL Bank Tanzania Ltd.*, 171 F.R.D. 135, 151 (S.D.N.Y. 1997) (citing *S.E.C. v. Morelli*, 143 F.R.D. 42, 45 (S.D.N.Y. 1992)).

To comply with Rule 30(b)(6), the corporation must demonstrate that it made a good faith effort to find and prepare a corporate designee. A corporation “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.” *Id.*

Upon receipt of the Deposition Notice, Crew Concepts, an Idaho corporation with its principal place of business in Nampa, Idaho, was obligated to designate and prepare an individual in Idaho to act as its corporate designee. The record here does not demonstrate that Defendant has met its obligations under the Rule.

It is undisputed that Crew Concepts is no longer operating a business. *See Cox Declaration*, Ex. A (letter to Federal Aviation Administration dated August 28, 2006) (Docket No. 40-2). However, the corporate entity continues to exist. *Id.* at Ex. B (Crew Concept’s Annual Report, dated October 31, 2006). Further, Crew Concepts continues to actively defend this lawsuit, including responding to discovery requests. *Id.* at Ex. C (Crew Concept’s Response

to Plaintiff's First Set of Interrogatories and Requests for Production of Documents dated May 31, 2007). Clearly, counsel is in contact with someone currently or formerly associated with Crew Concepts with at least some knowledge relevant to the categories of information identified in the Deposition Notice. There is no evidence in the record why this individual or individuals cannot similarly prepare a Rule 30(b)(6) designee.

Defendant argues that it cannot comply with the Deposition Notice, because no officer or director of the company lives within 100 miles of Boise, and the individuals with the most knowledge of the subject matter described in the Deposition Notice live in Canada and do not consent to testify on Crew Concept's behalf. The problem with this argument is that Rule 30(b)(6) identifies that corporation as a deponent. "The designated witness is 'speaking for the corporation,' and this testimony must be distinguished from that of a 'mere corporate employee' whose deposition is not considered that of the corporation and whose presence must be obtained by subpoena." *U.S. v. Taylor*, 166 F.R.D. at 361 (citing 8A Wright, Miller & Marcus § 2103 at 36-37.) Thus, it is immaterial that the best witnesses are in Canada. The corporation is still obligated to prepare someone to testify on its behalf in Idaho pursuant to the Deposition Notice.

In short, Crew Concepts is not relieved of its duties under Rule 30(b)(6) simply because it no longer leases helicopters and two of its former employees now live in Canada. The corporation continues to exist and is obligated to make a good faith effort to designate and prepare a witness to be deposed in compliance with Plaintiff's Deposition Notice. Nonetheless, given the short timeframe involved with this expedited motion, for practical purposes, the 30(b)(6) deposition will be continued for at least fourteen (14) days in order to provide Defendant with sufficient time to prepare a designated witness.

B. Relevancy Objections

Defendant also objects to categories one and six in the Deposition Notice, which identify the following categories of questioning: (1) “[t]he interrelatedness of operations of Crew Concepts, Mustang Helicopters, Placement B. Allard, Helicraft, and Coast to Coast Helicopters” and (6) “[i]nformation regarding the forfeiture of Crew Concepts FAA certificate of operations.” *Motion for Protective Order*, Ex. A (Docket No. 35-2). Defendant argues such information is not relevant to Plaintiff’s claims. *Memorandum in Support of Motion for Protective Order*, pp. 4-5 (Docket No. 36).

As a general rule “parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1).

The Supreme Court of the United States has indicated that the definition of relevancy, for purposes of discovery, “has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350 (1978). Consistent with the liberal, notice pleading standards, “discovery is not limited to issues raised in the pleadings, for discovery itself is designed to help define and clarify the issues.” *Id.*

At the same time, there are limits to what a party may properly seek via discovery. “District courts need not condone the use of discovery to engage in ‘fishing expedition[s].’” *Rivera v. NIBCO*, 364 F.3d 1057, 1072 (9th Cir. 2004)(citing *Exxon Corp. v. Crosby-Mississippi Res., Ltd.*, 40 F.3d 1474, 1487 (5th Cir. 1995)).

In the instant case, there is no need to limit the discovery as Defendant requests. The relevancy objections are unfounded, as Plaintiff is not confined solely to the allegations in the Complaint as Defendant argues. The questions regarding corporate ownership are important and potentially relevant to this lawsuit, as Plaintiff has alleged that Crew Concepts, Mustang Helicopters, and Helicraft are an integrated enterprise and all three entities played a role in establishing the terms and conditions of employment at issue in this lawsuit. *Plaintiff EEOC's Memorandum in Support of its Motion to Amend Complaint and Join Defendants*, p. 2 (Docket No. 15-2). Further, as made clear in Crew Concept's letter to the Federal Aviation Administration, *Cox Declaration*, Ex. A (Docket No. 40-2), information related to the voluntary surrender of Crew Concept's Federal Aviation Administration license, may also lead to relevant information related to the interconnectedness of the above-identified corporate entities. Therefore, Defendant's request to limit the categories of questions sought in the Deposition Notice is denied.

C. Attorneys Fees

Because Defendant's Motion for Protective Order (Docket No. 35) is denied, its request for attorneys fees is also denied.

III.

ORDER

In accordance with the foregoing, IT IS HEREBY ORDERED that Defendant's Motion for Protective Order (Docket No. 35) is DENIED. However, the deposition will be continued for

at least fourteen (14) days for practical purposes to accommodate travel schedules and allow Defendant time to prepare its designated witness.



DATED: **July 11, 2007.**

A handwritten signature in black ink that reads "Larry M. Boyle". The signature is written in a cursive, flowing style.

Honorable Larry M. Boyle
U. S. Magistrate Judge