

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

SAMUEL K. LIPARI,)	
)	
)	Plaintiff,
)	
vs.)	Case No. 07-CV-02146-CM-DJW
)	
U.S. BANCORP, and)	
)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
)	
Defendants.)	

**DEFENDANT’S MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER
FOR NOTICE OF DEPOSITION DUCES TECUM**

Defendants by and through their attorneys, Shughart Thomson & Kilroy file this Memorandum in Support of their Motion for Protective Order for Plaintiff’s Corporate Designee Notice of Deposition *Duces Tecum*. Defendant’s Motion for Protective Order must be granted. Plaintiff’s corporate designee notice is not proper in that it fails to describe the matters of inquiry with reasonable particularity as required by Rule 30(b)(6) and his *duces tecum* request is facially overly broad and burdensome. Additionally, the plaintiff’s unilateral choice of location in Minneapolis, Minnesota is unduly burdensome in that no discovery response has shown any witness with knowledge of facts in this matter resides in Minnesota. Therefore, this Court should enter a protective order vacating plaintiff’s Notice of Deposition *Duces Tecum* (Doc. No. 73).

I. FACTS

On April 30, 2001, plaintiff filed his Notice of Deposition *duces tecum* for a Corporate Designee and notification was sent via the ECF system on May 1, 2008. *See*, Doc. No. 73. The notice sought a corporate designee to appear at defendants’ headquarters in Minneapolis,

Minnesota, to testify to (1) “the conduct of US Bancorp’s current or former employees, the employees of its subsidiaries, and the conduct of its agents described with detail in ¶¶ 1-263 of the plaintiff’s complaint,” and (2) “all documents in [defendants] possession or control or the possession of its agents related to the conduct of its agents described in detail in ¶¶ 1-263 of plaintiff’s complaint.” *Id.* It also sought production of “all documents in its possession or control or the possession of its agents related to the conduct of its agents described in detail in ¶¶ 1-263 of the plaintiff’s complaint.” *Id.*

On May 8, 2008, defendants’ counsel wrote to plaintiff in a good faith effort to resolve the dispute. Defendants’ counsel stated plaintiff’s notice was improper and cited to its deficiencies. Defendants’ counsel gave plaintiff until May 15 to respond. *See, Exhibit A.* On May 15, 2008, defendants’ counsel Jay Heidrick spoke with the plaintiff via telephone and again re-iterated that plaintiff’s notice was improper and did not comply with Rule 30(b)(6). Unfortunately, the parties were unable to resolve the dispute and defendants now seek a formal protective order to vacate plaintiff’s Corporate Designee Notice of Deposition *Duces Tecum*.

II. ISSUE PRESENTED

The issue before the Court is whether plaintiff’s Corporate Designee Notice of Deposition describes “with reasonable particularity” the areas of inquiry sought by the plaintiff and whether his *duces tecum* request complies with the document production requirements of Rule 34.

III. ARGUMENT

A. Plaintiff’s Notice of Deposition does not describe “with reasonable particularity” the areas upon which inquiry is requested.

Rule 30(b)(6) of the Federal Rules of Civil Procedure states that a party seeking a corporate designee must describe in the notice “with reasonable particularity the matters upon

which examination is requested.” In *Reed v. Bennett*, 193 F.R.D. 689, 692 (D.Kan. 2000) the court addressed the need for matters to be described with reasonable particularity. There, the plaintiff served a notice that set forth the areas of inquiry sought, but broadened the areas of inquiry by stating the areas of inquiry would include and not be limited to the specific areas of inquiry listed. *Id.* The court therefore held the notice did not describe with reasonable particularity the matters upon which examination was requested and was improper. The court recognized that an overly broad notice pursuant to Rule 30(b)(6) subjects a party to an “impossible task” of producing witnesses to testify as to matters where the outer limits of the inquiry are not enumerated or face possible sanctions for failing to produce a witness. *Id.* Accordingly, the court quashed plaintiff’s corporate designee notice. *Id.*

Plaintiff’s notice in this matter is even broader than that discussed in *Reed*. Lipari does not set out any areas of inquiry but, rather, seeks a corporate designee to discuss every allegation and every document related to the 263 paragraphs and 80 pages of allegations in his Complaint. This clearly does not set forth the areas of inquiry with reasonable particularity. In fact, Federal courts have historically recognized that corporate designee notices seeking witnesses to testify to all matters referenced in the Complaint do not comply with Rule 30(b)(6). *See e.g., Budget Dress Corp. v. Joint Bd. of Dress and Waistmakers' Union of Greater New York*, 24 F.R.D. 506, 508 (S.D.N.Y.,1959) (quashing corporate designee notice that sought designees “who have knowledge of the facts set forth in the pleadings herein.”); *Park & Tilford Distillers Corp v. Distillers Co.*, 19 F.R.D. 169, 171 (S.D.N.Y. 1956) (quashing corporate designee notice that sought “such other directors, officers or employees as have knowledge or information concerning the matters or any of them referred to in the complaint.”)

Significantly, plaintiff is seeking a designee of the defendant corporations to testify as to *his* allegations. The notice is tantamount to asking the corporations to find a witness who can be prepared to testify as to what *he* is thinking, the factual basis for *his* assertions, and the substance of what *he* is claiming. But those matters in the Complaint are plaintiff's allegations, not the defendants'. The notice places defendants in an impossible position to respond and imposes upon them the "impossible task" of producing a designee to discuss the plaintiff's Complaint.

Because Lipari's Notice of Deposition fails to comply with the provisions of Rule 30(b)(6), this Court should issue a protective order quashing his Notice of Deposition *Duces Tecum*.

B. Lipari's *Duces Tecum* Request is Facially Overly Broad and Burdensome

In his corporate designee notice, Lipari seeks defendants to produce "all documents in its possession or control or the possession of its agents related to the conduct of its agents described in detail in ¶¶ 1-263 of the plaintiff's complaint." This request violates rules 30(b)(5) and 34 of the Rules of Civil Procedure.

Pursuant to Federal Rule of Civil Procedure 30(b)(5) all *duces tecum* requests shall be governed by Rule 34 of the Federal Rules of Civil Procedure. Cases within the District of Kansas have repeatedly held that document requests seeking production of "all documents related to" a general category are facially overly broad and unduly burdensome. *See, e.g., Aikens v. Deluxe Financial Services, Inc.*, 217 F.R.D. 533, 535 (D. Kan. 2003); *Cardenas v. Dorel Juvenile Group, Inc.*, 232 F.R.D. 377, 382 (D. Kan. 2005).

Plaintiff's *duces tecum* request is facially overly broad and unduly burdensome.¹ His request seeks defendants to produce every document that may be related to the 80 pages of

¹ Undoubtedly, plaintiff's *duces tecum* request would also encompass documents that are protected from discovery under the attorney-client privilege and work product doctrine. But

allegations in his Complaint. Such a request is improper because it “requires the [defendants] to ‘engage in mental gymnastics to determine what information may or may not be remotely responsive.’” *Aikens*, 217 F.R.D. at 538. Moreover, plaintiff has already served document requests and the *duces tecum* portion of the notice is duplicative and overly burdensome.

Because plaintiff’s *duces tecum* request is facially overly broad and burdensome, defendants request the Court issue a protective order quashing the *duces tecum* request.

C. The Location Of The Deposition Is Unduly Burdensome On Defendants

A trial court is vested with great discretion in determining the time and location of a deposition. *In re Standard Metals Corp.*, 817 F.2d 625, 628 (10th Cir. 1987). The court may change the location for a corporate designee if justice so requires. *Starlight Intern. Inc. v. Herlihy* 186 F.R.D. 626, 644 (D.Kan. 1999). Lipari has unilaterally identified the defendants’ corporate offices in Minneapolis, Minnesota as the location for taking a corporate designee deposition. But there is no basis for that selection and defendants have never offered their own offices for a deposition. Moreover, no discovery in this case -- let alone the Complaint --has indicated any corporate witness with knowledge of the facts involved resides in Minnesota. It would be an undue burden and expense to require a witness to travel from another city to Minneapolis to attend a deposition. Should any deposition take place, it should occur in the city where the witness resides.

WHEREFORE, the above stated reasons, the defendants request the Court issue a protective order vacating plaintiff’s Notice of Deposition *Duces Tecum* (Doc. No.73) and for all other relief defendants are justly entitled.

given the breadth of plaintiff’s *duces tecum* request, it is impossible for defendants to even begin to list or identify which documents would be entitled to such protection. However, defendants do not waive the right to assert objections as to attorney-client privilege and/or work product to any later *duces tecum* request.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was filed electronically with the above-captioned court, with notice of case activity to be generated and sent electronically by the Clerk of said court (with a copy to be mailed to any individuals who do not receive electronic notice from the Clerk) this 19th day of May, 2008, to:

Mr. Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064

/s/ Jay Heidrick
Attorney for Defendants

The Law Firm Of



A Professional Corporation

Jay E. Heidrick
jheidrick@stklaw.com
Direct Dial (816) 691-3743
Direct Fax (816) 222-0519
Fax (913) 451-3361

May 8, 2008

VIA EMAIL

Mr. Samuel Lipari
297 NE Bayview
Lee's Summit, MO 64064

Re: Lipari vs. U.S. Bancorp, et al.

Dear Sam:

We received your Notice of Deposition *Duces Tecum* for a corporate designee from US Bancorp on June 2, 2008 at 9:00 a.m. in Minneapolis, Minnesota. We do not believe your Notice of Deposition complies with Rule 30(b)(6) of the Federal Rules of Civil Procedure. Pursuant to Rule 30(b)(6), a party seeking a corporate designee deposition shall "describe with reasonable particularity the matters on which the examination is requested." You seek a designee to discuss (1) "the conduct of US Bancorp's current or former employees, the employees of its subsidiaries, and the conduct of its agents described with detail in ¶¶ 1-263 of the plaintiff's complaint," and (2) "all documents in [defendants] possession or control or the possession of its agents related to the conduct of its agents described in detail in ¶¶ 1-263 of plaintiff's complaint." Such a notice does not describe with reasonable particularity the matters of examination and therefore does not comply with Rule 30(b)(6).

Likewise, your *duces tecum* request seeks the defendants to provide "all documents in its possession or control or the possession of its agents related to the conduct of its agents described in detail in ¶¶ 1-263 of the plaintiff's complaint." Federal Rule of Civil Procedure 30(b)(5) states that all *duces tecum* requests shall be governed by Rule 34 of the Federal Rules of Civil Procedure. As we have previously briefed in our pending Motion for Protective Order, broad generic phrases such as "all documents related to" are facially overly broad and unduly burdensome. Therefore, your *duces tecum* request also does not comply with the Rules of Civil Procedure.

Please accept this as a good faith attempt to resolve this dispute. If we do not hear from you by May 15, we will file a Motion for a Protective Order. As always, I am available for a call to discuss this issue should you feel it would be beneficial.

Thank you for your attention to this matter. I look forward to hearing from you.

Very truly yours,

JAY E. HEIDRICK

Exhibit A

JEH:amo

Twelve Wyandotte Plaza, 120 W. 12th Street, Kansas City, MO 64105 • (816) 421-3355 • www.stklaw.com

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Mr. Samuel Lipari
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Enclosure
cc: Mark A. Olthoff, Esq.