

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DATA TREASURY CORPORATION,

Plaintiff

v.

WELLS FARGO & COMPANY; et al.

Defendants

2:06-CV-72 DF

MOTION FOR ENTRY OF DEPOSITION PROTOCOL

The Court's Order From Scheduling Conference and Docket Control Order (Docket No. 325) require the parties to report to the Court regarding their agreement to a Deposition Protocol governing the conduct of depositions in this matter. Pursuant to the Court's Order, the parties submit two versions of the proposed Deposition Protocol for the Court's consideration. All Defendants propose the deposition protocol attached as Exhibit A. The Plaintiff proposes the protocol attached as Exhibit B. The parties' proposals are identical except for Paragraph 10 of the Defendants proposal (Exhibit A) which the Plaintiff opposes in its entirety.

Defendants' (Exhibit A's) Paragraph 10 provides:

10. Depositions will be videotaped by either one or two cameras. If there is one camera, it will focus on the deponent at all times from a fixed position and distance, without alteration of focal length. If there is a second camera, it will focus at all times on any exhibit being shown to the deponent, from a fixed position and distance, without alteration of focal length. No other video or still cameras are permitted in the deposition room.

Plaintiff has indicated that it intends to employ a third camera to record the questioning attorney. Plaintiff also presumably opposes the remaining limitations because it intends to alter

the camera distance and/or focal length while recording testimony. If allowed, these tactics will unnecessarily complicate depositions and potentially distort the testimony.

The Defendants' proposed limitation is necessary to promote the orderly conduct of depositions and to prevent any party from manipulating deposition recordings to distort the record. Depositions in this case will already be crowded with the witness, attorneys for the numerous interested parties, a court reporter, and two videographers. A third camera would add more equipment and people to already overly-crowded deposition rooms. Furthermore, if the camera distance and focal length are not set, a party may unfairly change the camera's perspective in a manner designed to distract from or alter the actual testimony. A deposition's video recording is meant to neutrally capture the testimony and should not be manipulated for the benefit of the noticing party.

The extra recording equipment and modified recording parameters will not clarify or enhance the testimony and ultimately will only lead to more confusion, distraction, and discovery disputes. Thus the limitations in Exhibit A's paragraph 10 will simplify an already-complex deposition process without sacrificing any benefit to the testimony.

Data Treasury opposes paragraph 10 of Exhibit A because Data Treasury opines that footage reflecting the questioning attorney as well as the answering witness will more accurately reflect what took place at the deposition and will more closely record, for the jury, the testimony as it would have transpired in court if the witness had been present to testify at trial.

Dated: November 9, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 9, 2006 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Thomas M. Melsheimer

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