**UNITED STATES DISTRICT COURT**
**DISTRICT OF MINNESOTA**

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| GRUPO PETROTEMEX, S.A. DE C.V. and DAK AMERICAS LLC,<br><br>Plaintiffs,<br><br>v.<br><br>POLYMETRIX AG,<br><br>Defendant. | Civil No. 16-cv-2401 (SRN/HB)<br><br>**ORDER ON PLAINTIFFS' MOTION TO COMPEL POLYMETRIX TO IDENTIFY 30(b)(6) WITNESSES AND DESIGNATION OF TOPICS** |

This matter is before the Court on Plaintiffs' Motion to Compel Polymetrix to Identify 30(b)(6) Witnesses and Designation of Topics [Doc. No. 608]. Plaintiffs originally sought to compel Polymetrix to identify (1) any additional Rule 30(b)(6) witnesses beyond those it had previously identified, and (2) the topics on which each Rule 30(b)(6) witness intends to testify, at least one week in advance of the depositions. In its opposition filing Polymetrix indicated that it had responded to Plaintiffs' first request by identifying three additional potential Rule 30(b)(6) witnesses, Beat Gfeller, Björn Ahrendt, and Martin Wilming. Accordingly, the Court denies that aspect of Plaintiffs' motion as moot.

The second aspect of Plaintiffs' motion is less easily resolved. Federal Rule of Civil Procedure 30(b)(6) sets out the process by which a company or organization is deposed. It provides that "[t]he named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify

on its behalf; and it may set out the matters on which each person designated will testify." Fed. R. Civ. P. 30(b)(6). The parties agree that Rule 30(b)(6) does not, by its terms, obligate Polymetrix to give prior notice of which designee will testify as to which topic, but they disagree as to whether the Court has the inherent authority to nonetheless require it.

This court has "very wide discretion in handling pretrial discovery," *United States ex rel. Kraxberger v. Kansas City Power and Light Co.*, 756 F.3d 1075, 1082 (8th Cir. 2014), and "inherent authority to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases," *Zerger & Mauer LLP v. City of Greenwood*, 751 F.3d 928, 931 (8th Cir. 2014) (internal quotations omitted). But that power is not without limit. A court cannot exercise its authority in a manner that conflicts with statutes or the federal rules. *G. Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 652 (7th Cir. 1989). "We have recognized that federal courts may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress. Whatever the scope of this inherent power, however, it does not include the power to develop rules that circumvent or conflict with the Federal Rules of Criminal Procedure." *Carlisle v. United States*, 517 U.S. 416, 425–26 (1996) (internal quotations omitted). "[D]istrict courts have inherent power to control their dockets, but not when its exercise would nullify the procedural choices reserved to parties under the federal rules." *Atchison, Topeka & Santa Fe Ry. Co. v. Hercules Inc.*, 146 F.3d 1071, 1074 (9th Cir. 1998).

Polymetrix contrasts the use of "must" in Rule 30(b)(6)—requiring the responding organization to designate someone to testify on its behalf—with its use of "may"—

permitting the parties to "set out" in advance "the matters on which each person designated will testify." Polymetrix argues this word choice represents an affirmative decision by those involved in drafting and promulgating the rules to preserve for the responding corporation the choice whether to identify in advance which designee will testify as to which topic.

Polymetrix's interpretation of the Rule has support in the very few reported decisions that have addressed the question. *See, e.g.*, *United States ex rel. Bibby v. Mortg. Inv'rs Corp.*, Case No. 1:12-CV-4020-AT, 2017 WL 8222659, at *2 (N.D. Ga. Oct. 12, 2017), *report and recommendation adopted*, Case No. 1:12-CV-4020-AT, 2017 WL 8221392 (N.D. Ga. Oct. 13, 2017) ("However, since Rule 30(b)(6) speaks in permissive, not mandatory, terms about setting out the matters on which a designated witness will testify . . . the Special Master cannot and does not recommend compelling MSP to set out the matters on which each designated witness (if more than one) will testify."); *Grajales v. Puerto Rico Ports Auth.*, 897 F. Supp. 2d 7, 11 (D.P.R. 2013) ("Rule 30(b)(6) only requires an organization to designate a person to testify on behalf of it. . . . The rule then states clearly that '[the organization] *may* set out the matters on which each person designated will testify' but does not require the organization to do so.") (emphasis in original).

The Court is sympathetic to GPT/DAK's position that it makes common sense for the topic/witness pairings to be disclosed in advance so that counsel can prepare in an organized fashion for the depositions. Indeed, the Court suspects that one of the reasons so few courts appear to have considered this issue is that advance (and reciprocal)

disclosure of the names of corporate designees and the topics that each will address makes sense for both sides and is commonplace, at least (in the Court's experience) in this District. Nevertheless, the Court is persuaded by Polymetrix's argument that the permissive language used in Rule 30(b)(6) reflects a deliberate choice to make any such advance disclosure voluntary, and it is not within the province of this Court to overwrite that choice. Nor is this an unreasonable construct, particularly in view of the potential consequences for a corporate party that fails to present a witness who is adequately prepared to address a given topic[1] and the fact that, for a number of reasons, witness preparation may not be completed until shortly before the deposition begins.

Therefore, the Court will not compel Polymetrix to disclose in advance of the Rule 30(b)(6) deposition which topics will be addressed by which witnesses. The Court notes two important points, however, both of which Polymetrix acknowledged during oral argument. First, once the deposition of a given designee begins, that witness, directly or through the defending attorney, must, when asked, identify clearly and unequivocally all of the topics about which he or she has been designated to testify. Second, Polymetrix agreed that it is within GPT/DAK's rights, as the party noticing the Rule 30(b)(6) deposition (and particularly in the absence of advance information about topic designations that might otherwise facilitate a good faith meet and confer on the sequence of witnesses), to set the order in which it wishes to conduct the depositions on those

[1] *See, e.g.*, *See Prairie River Home Care, Inc. v. Procura, LLC*, Case No. 17-cv-5121, July 19, 2019 Order at 38–41 [Doc. No. 444], awarding sanctions under Fed. R. Civ. P. 37(d)(1)(a)(1) for failure to present a properly prepared witness for a Rule 30(b)(6) deposition.

topics, whether that is the order in which they appear in the notice or some other order, and even if it means that witnesses may have to make multiple appearances as their respective topics come up.

Accordingly, no later than one week before the start of the Rule 30(b)(6) deposition of Polymetrix, GPT/DAK shall notify Polymetrix of the order in which it wishes to proceed with the topics, so that Polymetrix can arrange the availability of its witnesses in the specified order. If GPT/DAK does not specify an alternate order of topics by that time, Polymetrix must produce the witnesses in the order in which the topics appear in GPT/DAK's Rule 30(b)(6) notice, unless the parties agree otherwise. Notwithstanding the foregoing, once a given witness identifies all of the topics on which he or she has been designated, GPT/DAK may, at its option, elect to complete that witness's testimony as to all such topics in one sitting. The parties shall meet and confer in good faith as to the timing and order of any depositions of witnesses in their personal capacity.

Accordingly, Plaintiffs' Motion to Compel Polymetrix to Identify 30(b)(6) Witnesses and Designation of Topics [Doc. No. 608] is **DENIED** as set forth herein.

Dated: June 23, 2020

s/ *Hildy Bowbeer*
HILDY BOWBEER
United States Magistrate Judge