

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

SPYRIDON C. CONTOGOURIS and  
STEPHEN A. BALDWIN

v.

WESTPAC RESOURCES, LLC,  
PATRICK N. SMITH, KEVIN M.  
COSTNER, and RABOBANK, N.A.

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CIVIL ACTION NO. 2:10-cv-04609

JUDGE FELDMAN

SECTION F

MAG. JUDGE SHUSHAN

MAG. DIV. 1

**MEMORANDUM IN SUPPORT OF  
MOTION TO QUASH TRIAL SUBPOENA ISSUED TO FRANCO VALOBRA  
AS CORPORATE REPRESENTATIVE FOR OCEAN THERAPY SOLUTIONS, L.L.C.**

Ocean Therapy Solutions, L.L.C. (“OTS”) submits this memorandum in support of its motion to quash the trial subpoena issued to Franco Valobra as a corporate representative of OTS (the “Subpoena”) (Doc. 572, filed May 31, 2012). OTS, a non-party to this proceeding, moves to quash Plaintiffs’ trial subpoena to Valobra because it attempts to improperly and unilaterally designate him as the corporate representative of a non-party, something the Federal Rules of Civil Procedure do not provide. Plaintiffs have sued OTS in a Louisiana state court suit, which is currently pending.

**I. Facts and Background**

OTS, a Louisiana limited liability company, is not a party to this proceeding. The Plaintiffs in this proceeding, Spyridon C. Contogouris and Stephen A. Baldwin, caused a subpoena to be issued to Franco Valobra, commanding him to appear “as corporate officer and

representative of Ocean Therapy Solutions, L.L.C.” [sic]. The subpoena return was filed in the record on May 31, 2012 (Doc. 572, May 31, 2012). OTS had previously objected to this attempted designation on the grounds that Plaintiffs do not have the ability to choose a non-party’s corporate representative. *See* Trial Management Schedule (Doc. 564, May 30, 2012, at p.2 n.1) (“Defendants object to the attempted designation of Mr. Valobra ‘as OTS representative,’ because OTS, a non-party, has not made that designation and plaintiffs do not choose who another entity’s representative may be.”).

## **II. Argument and Authorities**

Plaintiffs are not in a position to determine whether Mr. Valobra has the corporate knowledge to speak as OTS’s corporate representative and bind the company, yet they designated him as OTS’s corporate representative for trial because he is the only member of OTS within the jurisdictional reach of this Court. This unilateral designation by Plaintiffs is improper and the Subpoena should be quashed.

There is no provision in the Federal Rules of Civil Procedure, or elsewhere, that permits Plaintiffs to designate a non-party’s (or even an opposing party’s) corporate representative to testify at trial. Courts, including this one, have previously quashed trial subpoenas where parties asked a corporation to designate a corporate representative to appear at trial. *See, e.g., Hill v. National Railroad Passenger Corp.*, No. 88-5277, 1989 WL 87621 (E.D. La. July 28, 1989).

In *Hill*, the plaintiffs attempted to subpoena the defendant corporation by listing areas of inquiry and commanding the corporation to designate a representative to testify at trial regarding those areas. *Id.* Upon motion of the defendant corporation, Judge Livaudais quashed the subpoena finding “[t]here is no provision allowing the use of the 30(b)(6)-type designation ... to compel a particular person ... to testify at the trial.” *Id.* at \*1. Here, Plaintiffs go even further than the plaintiffs in *Hill*: rather than asking *OTS* to appoint an appropriate representative,

Plaintiffs *themselves* have unilaterally declared Mr. Valobra to be OTS's corporate representative. This procedure is even more improper than that employed (and quashed) in *Hill* and should not be permitted by this Court.

Plaintiffs had the opportunity during the discovery period to subpoena OTS for a Rule 30(b)(6) deposition, and have OTS designate the corporate representative with the most knowledge of the relevant areas of inquiry. Plaintiffs, however, chose not to do so. As the Court held in *Hill*, there is no 30(b)(6)-type process for a trial subpoena. *Id.* Indeed, the procedure employed by Plaintiffs here would be inappropriate even for a Rule 30(b)(6) deposition. *See* § 2103 Persons Subject to Examination – Corporations and Other Organizations, 8A Fed. Prac. & Proc. Civ. § 2103 (3d ed.) (“Rule 30(b)(6) imposes on the organization the obligation to select the individual witness, the party seeking discovery under that provision of the rule is not permitted to insist that it choose a specific person to testify.... Except where the employee has been designated by the corporation under Rule 30(b)(6), an employee is treated in the same way as any other witness” and “[unless the employee has been designated by the corporation] the [employee’s] deposition is not considered to be that of the corporation.”); *see also Rainey v. American Forest and Paper Ass’n., Inc.*, 26 F. Supp. 2d 82, 94 (D.D.C. 1998) (“Rule 30(b)(6) provides that when a party notices a corporation for deposition, *the latter shall designate one or more officers... to testify on its behalf*” (emphasis supplied; quotations omitted)).

Importantly, OTS does not object to the subpoena directed at Mr. Valobra in his individual capacity. To the extent Plaintiffs wish to question Mr. Valobra about his knowledge

of OTS, they are free to do so. It should be left to the jury to decide if Mr. Valobra does indeed meet the requirements necessary to speak for OTS, after hearing his testimony.<sup>1</sup>

**III. Conclusion**

Plaintiffs' attempt to unilaterally designate Mr. Valobra as corporate representative of OTS for purposes of trial testimony has no basis in the Federal Rules of Civil Procedure or any other doctrine governing proceedings in federal court. The Subpoena issued to Franco Valobra as the corporate representative of OTS should be quashed.

Respectfully submitted,

/s/ Judy Y. Barrasso

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<sup>1</sup> It should be noted that Plaintiffs recently sued OTS in a separate action in Louisiana state court. Plaintiff's eleventh-hour attempt to obtain testimony from "OTS" in this case to use against it in the state court litigation, is transparent and should be rejected.

**CERTIFICATE OF SERVICE**

I hereby certify that this 3rd day of June, 2012, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all enrolled counsel.

/s/ Judy Y. Barrasso