The owner of a food processing plant sued a food preservative company in federal court for federal antitrust violations. During discovery, the owner's lawyer served the company with notice of a written deposition of the company. The notice stated the company's name and address and provided the name and address of the officer before whom the deposition would be taken.

The company refused to attend the written deposition. The owner moved for sanctions.

The company is likely to succeed in defeating the owner's motion on which of the following grounds?

A. The owner failed to designate an individual from the company to answer the questions.

B. The owner failed to include a subpoena with the notice.

C. The owner failed to obtain the court's leave before serving the company with the notice.

D. The owner failed to reasonably describe the matters to be examined.

Explanation:

Contents for written notice of deposition*

Type	Similar contents		Unique contents
Oral		• Deponent's name & address (if known) OR general description to identify deponent or group to which deponent belongs (if name unknown)	• Time & place of deposition • Method of recording
Written		• If deponent is organization, matters for examination described with reasonable particularity	• Officer's name / descriptive title & address • Copy of deposition questions

*Must be served on party deponent to compel his/her attendance.

A **deposition** is a method of discovery in which a deponent (party or nonparty) is examined under oath and outside court. There are two types of depositions:

- Oral depositions (most common) – in which the parties' attorneys question and cross-examine the deponent as they would at trial and an officer records that testimony

- Written depositions – in which an officer asks the deponent questions submitted by the parties and then records the deponent's responses

To compel a party deponent's attendance at either deposition, the deposing party must serve the party deponent with **written notice**.* If the **party deponent is an organization**, the notice must **describe the matters** for examination **with reasonable particularity** and satisfy all other notice requirements. Based on the matters identified for examination, the organization must then designate one or more individuals to testify on its behalf. If the deponent fails to attend the deposition, the court may impose sanctions.

Here, the owner served the company with notice of a written deposition, but the company did not attend. However, the notice was *deficient* because it failed to reasonably describe the matters for examination. As a result, the company is likely to defeat the owner's motion for sanctions on this ground.

*The deposing party must also serve a copy of the written notice on the other parties and, for written depositions, on the officer before whom the deposition will be taken.

(Choice A) The company, not the owner, must designate an individual(s) to answer the deposition questions.

(Choice B) A subpoena is required to compel a nonparty deponent's attendance, but a party deponent (eg, the company) can be compelled to attend through written notice.

(Choice C) A party may conduct a deposition without the court's leave or the parties' stipulation unless (1) the deposition exceeds the 10-deposition maximum, (2) the deposition is sought before the initial planning conference, or (3) the deponent was already deposed in the case. None of these exceptions apply here.

Educational objective:

To compel a party deponent's attendance at a deposition, the deposing party must serve the deponent with written notice. When the deponent is an organization, the notice must describe the matters for examination with reasonable particularity. The organization must then designate one or more individuals to testify on its behalf.

References

- Fed. R. Civ. P. 31 (depositions by written questions).

- Fed. R. Civ. P. 30(b)(6) (notice requirements for deposing an organization).