

A construction company bought lumber from an out-of-state supplier. The lumber was supposed to be pressure-treated, which renders the lumber resistant to rot and termites. The construction company used the lumber to build its headquarters, and after one year, the lumber began to show signs of rot and termites.

The construction company sued the supplier for breach of contract in a federal district court.

Which method of discovery should the construction company use to most efficiently identify the supplier's employees who might have information about how the lumber was treated?

- A. Interrogatories.
- B. Oral deposition.
- C. Request for production of documents.
- D. Subpoena.

## Explanation:

### Methods of discovery

<b>Depositions</b>	<ul style="list-style-type: none"><li>• Written or oral examination of party or witness under oath</li><li>• 10 per party</li></ul>
<b>Interrogatories</b>	<ul style="list-style-type: none"><li>• Written questions served on party</li><li>• Serve up to 25</li><li>• Written responses due within 30 days of service</li></ul>
<b>Request for production</b>	<ul style="list-style-type: none"><li>• Request served on party (or subpoena served on nonparty) to produce &amp; allow inspection of documents, electronic information, tangible items, or land</li><li>• No limit</li><li>• Written response due within 30 days of service</li></ul>
<b>Requests for admission</b>	<ul style="list-style-type: none"><li>• Requests served on other party to admit truth of facts within scope of discovery</li><li>• No limit</li><li>• Written response due within 30 days of service</li></ul>
<b>Physical/mental exams</b>	<ul style="list-style-type: none"><li>• Order by court or parties' agreement for physical or mental examination of party if those conditions are in controversy</li></ul>

**Interrogatories** are **written questions** served by one party on another party that may inquire about any facts, opinions, and contentions within the scope of discovery. One of the primary purposes of interrogatories is to **ascertain facts and information** that might lead to other evidence, and the main benefit of interrogatories is that they are **simple and inexpensive**. Therefore, interrogatories are the most efficient way for the construction company to identify the supplier's employees who might have information about the lumber's treatment.

**(Choice B)** A deposition is a written or oral examination of a party or nonparty under oath and outside of court. Oral depositions are useful to question potential witnesses because their answers can be used at trial if they are inconsistent with the witnesses' trial testimony or the witnesses are unavailable to testify. But an oral deposition is time-consuming and expensive, so it is not the most efficient method to identify potential witnesses.

**(Choice C)** A request for production is used to make another party produce and allow inspection of documents, electronically stored information, tangible things, or land in their control. Here, the supplier may have documents that show which employees treated the lumber. But the more efficient method to obtain this information is through interrogatories since they place the burden on the responding party (eg, the supplier) to find the answer.

**(Choice D)** A subpoena is a written court order that can be used in conjunction with other discovery methods to *compel* a person to appear in court, take part in a deposition, or produce documents in the person's possession. But it would not be useful here since the company is trying to *identify* potential witnesses.

**Educational objective:**

Interrogatories are written questions served by one party on another party that may inquire about any matter within the scope of discovery. This simple and inexpensive method of discovery is primarily used to identify facts and information that might lead to other evidence—eg, the identity of potential witnesses.

**References**

- Fed. R. Civ. P. 33 (interrogatories).

Copyright © UWorld. All rights reserved.