

EXERCISE

ASKING GOOD DEPOSITION QUESTIONS

Background

Your firm's client invested in a start-up, based on the CEO's representation that the start-up had reduced its operating expenses from the prior month by 10%. In reality, the start-up's operating expenses had remained stable and the CEO had relied on data that was inaccurate. In exchange for the investment, your client received an equity stake in the start-up.

Within a few years, the start-up failed to turn a profit. Your client sued alleging fraudulent misrepresentation and is seeking the return of his investment. The fraudulent misrepresentation claim requires that your client prove that (1) the start-up's statement about the operating expenses was false, (2) the start-up knew it was false, (3) your client relied on the false statement, and (4) your client suffered damages.

You've learned in discovery that the start-up's operating expenses were tracked in expense reports that were distributed at the end of each month. But only certain expenses were tracked monthly; some annual expenses appear to have been left out. For example, the biggest annual expenditure, the start-up's flood insurance for its office, was not included in these reports. It's unclear if this was intentional, but there are documents where some of the start-up's employees, including Betsy Jones, remind management that certain expenses haven't been accounted for yet and that actual expenses may be higher at year end. Betsy Jones, along with other employees in the accounting and finance department, was responsible for preparing and distributing the expense reports.

Your team is preparing for the depositions of the start-up's employees and management team in the coming weeks. A senior associate on your team will be taking several of these depositions. She is asking you and your colleagues to draft questions for certain topics and witnesses using the funnel approach, taking into account answers you might expect from the witnesses. For Betsy Jones's deposition, she wants you to draft some possible questions about how the monthly expense reports were prepared.

Instructions

Come prepared to discuss:

- The steps of the funnel approach; and
- How you would use the funnel approach with this topic.