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## Civil Procedure

### Depositions

#### Breaking Down Borders: The Power of Federal Rule of Civil Procedure 30 to Compel the Deposition of a Corporate Party's Foreign Employee

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U.S. companies that do business around the world may have employees in far flung places—from China to Germany to Saudi Arabia. Can those companies be required to produce its foreign employees for deposition in U.S. litigation? The answer increasingly is *yes*.

Many litigators instinctively turn to the Hague Convention on the Taking of Evidence Abroad,<sup>1</sup> which does allow for depositions of foreigners in many cases. But, the Hague Convention has serious drawbacks and geographical limitations. For example, depositions in mainland China, which is not a party to the Hague Convention, are strictly forbidden,<sup>2</sup> and depositions in Switzerland are limited to voluntary witnesses, pending prior approval from Switzerland's Federal Department of Justice and Police, and must be conducted by a U.S. consular officer at the U.S. Embassy or consulate.<sup>3</sup> Perhaps the biggest drawback to the Hague Convention is that the requests can take over a year to process as parties are forced to go through different courts to get the appropriate authorization.

Many litigators, however, may not realize that a large number of foreign employees might be subject to deposition under Federal Rule of Civil Procedure [30\(b\)\(1\)](#)—without resort to the Hague Convention at all. Under Rule 30(b)(1), a specific "officer, director, or managing agent" of a corporate party may be compelled to give testimony pursuant to a notice of deposition.<sup>4</sup> Because a district court has personal jurisdiction over a party, "[r]esort to the procedures of the Hague Convention [or similar international treaty] is not required."<sup>5</sup> Accordingly, a party can depose an opposing party's "officer, director, or managing agent" after service of a notice of deposition, regardless of where that person resides. In other words, whether the employee is located Shanghai or Chicago, they can be deposed if they qualify as a corporate party's "officer, director, or managing agent."

A corporate employee or agent who does *not* qualify as an officer, director, or managing agent is not subject to deposition by notice.<sup>6</sup> Such an employee is treated as any other nonparty witness, and must be subpoenaed pursuant to [Rule 45](#) of the Federal Rules of Civil Procedure; or, if the witness is overseas, the procedures of the Hague Convention or other applicable treaty must be utilized.<sup>7</sup>

#### *When Can an Employee Be Considered a "Managing Agent"?*

In most cases, it will be relatively clear whether a prospective deponent is a party's officer or director. The trick to Rule 30(b)(1), however, is determining whether a particular employee

qualifies as a "managing agent"—and that is much less clear under the Rule.<sup>8</sup> The murkiness surrounding the "managing agent" status flows from the fact-specific, case-by-case inquiry courts conduct to determine whether a prospective deponent qualifies as a party's managing agent.<sup>9</sup> As part of that inquiry, district courts apply a three to five factor test that looks at (1) whether the individual is invested with general powers allowing him to exercise judgment and discretion in corporate matters; (2) whether the individual can be relied upon to give testimony, at his employer's request, in response to the demands of the examining party; (3) whether any person or persons are employed by the corporate employer in positions of higher authority than the individual designated in the area regarding which the information is sought by the examination; (4) the general responsibilities of the individual respecting the matters involved in the litigation; and (5) whether the individual can be expected to identify with the interests of the corporation.<sup>10</sup>

However, qualifying as a managing agent may not be as much of an insurmountable hurdle as some attorneys might assume. This stems at least in part from the "modest" evidentiary burden imposed on the party noticing the deposition<sup>11</sup> and the recognition by courts that "all doubts are to be resolved in favor of the examining party."<sup>12</sup> And, ties go to the requesting party: "the examining party satisfies its burden when it produces 'enough evidence to show that there is at least a close question whether the proposed deponent is the managing agent.'"<sup>13</sup> Courts have explained that the virtue of this approach "permits discovery to proceed, while deferring until trial the ultimate question of whether the witness's testimony is binding on the corporation."<sup>14</sup>

Courts have also taken care to point out that the issue of who qualifies as a managing agent is not to be determined strictly on the prospective deponent's job title, but rather his or her actual job functions and responsibilities.<sup>15</sup> Likewise, courts have rejected an approach focusing solely on the deponent's ability to make decisions that would bind the corporation,<sup>16</sup> reasoning that such an approach would unduly limit the Rule's reach to only the highest echelons of corporate officers.<sup>17</sup>

Courts have, however, emphasized two factors in the managing agent analysis: that the deponent's interests remain aligned with those of the corporation,<sup>18</sup> and that the deponent had been vested with some sort of authority and discretion.<sup>19</sup>

The U.S. District Court for the District of Maryland has called the alignment of the prospective deponent's interest with that of his or her corporate employer the "paramount test."<sup>20</sup> Other courts have disagreed as to whether so much weight should be attached to this one factor.<sup>21</sup> While this "alignment of interests" factor is not dispositive in determining whether a prospective deponent qualifies as a managing agent, it is at least a prerequisite. If there is a clear conflict of interests between the corporate party and its employee, it would seem unlikely that a court would ever find that employee to be a managing agent.

After ensuring there is an "alignment of interests" between the employee and employer, courts next focus on the employee's authority and discretion in order to ensure that companies are not being bound by the testimony of low-level employees.<sup>22</sup> For example, in *Dubai Islamic Bank v. Citibank*, the U.S. District Court for the Southern District of New York found that seven employees who had supervisory authority over areas of the bank implicated by the fraud at issue were indeed managing agents.<sup>23</sup> The court noted that two employees who were not found to be managing agents held purely clerical positions and lacked any decision-making power, and for a third, who was a "subordinate" to another managing agent being deposed, the record was "sparse and ambiguous" as to his level of authority and discretion.<sup>24</sup> When examining the question of authority, courts look at whether a higher ranking corporate employee could be deposed as a consideration, but that factor alone is not dispositive.<sup>25</sup> Therefore, several different rungs of the corporate ladder could be considered managing agents and a requesting party is

not limited solely to the highest employee on the totem pole.

Consider for example, whether a salesman could qualify as a managing agent. Just based on job title it might seem far-fetched to deem a salesman a managing agent of a corporate party. Indeed, in one case, a court found that "a mere salesman" was not a managing agent because he was "locally managed, without discretion in the conduct of the local office except to solicit orders for acceptance by the home office of the corporation."<sup>26</sup> Perhaps the easier case would be where the salesman was actually an account manager, charged with supervising a team of sales people, managing the corporation's relationship with a large international client, and negotiating high-value procurement deals—even if he or she lacked final authority to bind the corporation. While the issue may still come down to the individual facts, the authority and discretion vested in the sales manager makes him a more likely candidate for qualifying as a managing agent. Thus a cursory look at an employee's title or his or her absence from a corporation's upper echelon of officers may not preclude qualification as a managing agent.

#### *Can Former Employees Be "Managing Agents"?*

Regardless of the position and authority once held, a prospective deponent likely will *not* qualify as a managing agent if he or she is no longer employed at the time the deposition is noticed. Generally, former employees are not managing agents, the rationale being that corporations lack control over their former employees.<sup>27</sup> Instead—like any other employee that does not qualify as an officer, director, or managing agent—a former employee can only be deposed pursuant to a subpoena, or through the procedures of the Hague Convention or other treaty, depending where the former employee resides.<sup>28</sup>

However, there are exceptions to this rule, and several courts have held that under certain circumstances a former party-employee or a nonemployee can be a managing agent.<sup>29</sup> In most cases where courts have found an exception to this rule, the prospective deponent maintains a strong connection to the corporate-party, even though they may not technically be an officer, director, or employee.<sup>30</sup> For example, in *Calgene, Inc. v. Enzo Biochem, Inc.*, the U.S. District Court for the Eastern District of California held that a consultant and advisory board member who identified with interests of the corporate-party and who had "power regarding the subject matter of the litigation" was a managing agent.<sup>31</sup> Similarly, in *Founding Church of Scientology v. Webster*, the U.S. Court of Appeals for the D.C. Circuit held that, because he "retained preeminence as spiritual or ecclesiastical head of Scientology," L. Ron Hubbard was a managing agent despite no longer having a formal role in the Scientology Church.<sup>32</sup> At least one court also found a former employee to be managing agent where the defendant-corporation terminated the employee in an attempt to avoid disclosure in litigation, but the former employee stood "ready to serve" the defendant-corporation.<sup>33</sup>

#### *Where the Deposition of a Corporate Party's Foreign Employee Might Take Place*

Assuming a foreign employee constitutes an "officer, director, or managing agent," the location of the deposition will likely be different depending on whether the requesting party is the defendant or the plaintiff in the matter. The general rule is that corporate defendants and their employees ought to be deposed at the corporation's principal place of business.<sup>34</sup> Whereas plaintiffs, on the other hand, will almost certainly have to produce its foreign "officers, directors, and managing agents" in the district where the litigation is underway.

Although the general rule is that defendant-corporations and employees of a corporate defendant ought to be deposed at the corporation's principal place of business, the rule "is not an inflexible one and is subject to modification when justice so requires."<sup>35</sup> Accordingly, a number of courts have held that circumstances may warrant that a foreign defendant's "officer,

director, or managing agent" appear in the district in which the court is located to be deposed, rather than at their principal place of business abroad. Reasons for such an order might include convenience of counsel<sup>36</sup> or an anticipation that judicial supervision of the deposition may be necessary.<sup>37</sup>

More commonly, courts have also taken such action when the laws of foreign countries make it difficult or impossible to conduct depositions in the witness's home country. In *In re Honda American Motor Co. Inc. Dealership Relations Litigation*, the district court required that depositions of defendant-Honda's managing agents be taken in Baltimore because of impediments to conducting the depositions in the witnesses' home country, Japan.<sup>38</sup> Specifically, the court pointed out that Japan, which is not a party to the Hague Convention, "generally disdains the United States' system of open discovery and compulsory depositions," and instead restricts discovery to *voluntary* depositions under the Consular Convention and Protocol.<sup>39</sup> Likewise, in *Triple Crown America, Inc. v. Biosynth AG*, the court held that, because Swiss law placed substantial restrictions and procedural requirements on the taking of depositions, future depositions of officers, directors, or managing agents of the Swiss defendant should be held in the district.<sup>40</sup>

Unlike corporate defendants, there is a general presumption that a plaintiff that selects a forum should be prepared to be deposed in that forum.<sup>41</sup> The rationale being that since the plaintiff has chosen a particular forum, it should not be able to impose upon the defendant the extraordinary expense and burden of traveling to a foreign country to conduct a deposition—at least absent compelling circumstances.<sup>42</sup> Indeed, decisions from the Southern District of New York suggest it is unlikely most corporate plaintiffs would ever be able to demonstrate sufficiently extraordinary hardship to justify holding depositions of its employees outside of the forum.<sup>43</sup> Burdens on a busy executive's time or financial costs to fly foreign employees to the forum are unlikely to sway courts.<sup>44</sup>

### *Conclusion*

Even when a potential witness resides in a far-off country that is not party to the Hague Convention and does not allow depositions, a party may still be able to depose that witness. Rather than navigate through the lengthy and expensive Hague Convention process, it may be as simple as serving a Rule 30 deposition notice. Nonetheless, requesting parties should be prepared for a fight. However, if the party can demonstrate that the interests of the company and witness are aligned and that the employee had some authority over the issues in the litigation, the requesting party will likely succeed in getting that witness in the chair.

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*The opinions expressed in this article do not necessarily reflect the views of O'Melveny or its clients, and should not be relied upon as legal advice.*

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<sup>1</sup> Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, 23 U.S.T. 2555.

<sup>2</sup> United States Department of State, *China Judicial Assistance*, [http://travel.state.gov/law/info/judicial/judicial\\_694.html](http://travel.state.gov/law/info/judicial/judicial_694.html) (last visited Sept. 17, 2009).  
United States Department of State, *Switzerland Judicial Assistance*,

- <sup>3</sup> [http://travel.state.gov/law/info/judicial/judicial\\_4303.html](http://travel.state.gov/law/info/judicial/judicial_4303.html) (last visited Sept. 17, 2009); Embassy of the United States, Bern, Switzerland, *Judicial Assistance*, [http://bern.usembassy.gov/obtaining\\_evidence.html](http://bern.usembassy.gov/obtaining_evidence.html) (last visited Sept. 17, 2009).
- <sup>4</sup> See, e.g., *Dubai Islamic Bank v. Citibank, N.A.*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002). The Federal Rules of Civil Procedure provide two methods for deposing employees of an opposing party where that opposing party is a corporation: a [Rule 30\(b\)\(6\)](#) notice – where the noticing party is generally stuck with the witness the opposing party designates to testify, or noticing a specific employee for deposition under Rule 30(b)(1). See, e.g., *Triple Crown Am. v. Biosynth AG*, [No. 96-cv-07476](#) (E.D. Pa. Apr. 30, 1998). Although not stated on the face of Rule 30, courts have explained that "it is well known [that] the corporation is responsible for producing its officer, managing agents, and directors if notice [of deposition] is given; a subpoena for their attendance is unnecessary, and sanctions may be imposed against the corporation if they fail to appear." *Mapes v. Wellington Capital Group*, No. 07-cv-00077, [2008 BL 43971](#), at \*4–5 (D. Neb. Mar. 4, 2008) (internal quotation omitted).
- <sup>5</sup> *Triple Crown Am.*, [No. 96-cv-07476](#) (E.D. Pa. Apr. 30, 1998) (citing *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. for the S. Dist. of Iowa*, [482 U.S. 522, 542](#) (1987)).
- <sup>6</sup> See, e.g., *United States v. Afram Lines (USA), Ltd.*, [159 F.R.D. 408, 413](#) (S.D.N.Y. 1994); *Sugarhill Records Ltd. v. Motown Record Corp.*, [105 F.R.D. 166, 169](#) (S.D.N.Y. 1985); *DeNoto v. Pa. R.R. Co.*, [16 F.R.D. 567, 567](#) (S.D.N.Y. 1954).
- <sup>7</sup> See *Afram Lines*, [159 F.R.D. at 413](#); see also *In re Honda Am. Motor Co., Inc. Dealership Relations Litig.*, [168 F.R.D. 535, 540](#) (D. Md. 1996).
- <sup>8</sup> See *In re Honda Am. Motor Co.*, [168 F.R.D. at 540](#) (noting that "the law concerning who may properly be designated a managing agent is sketchy").
- <sup>9</sup> See *Afram Lines*, [159 F.R.D. at 413](#) (citation omitted).
- <sup>10</sup> *Dubai Islamic Bank v. Citibank, N.A.*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002) (citing *Sugarhill Records*, [105 F.R.D. at 170](#) (internal quotations and citations omitted); *Boss Mfg. v. Hugo Boss AG*, [No. 97-cv-08495](#) (S.D.N.Y. Jan. 13, 1999) (recognizing that the number of factors generally considered by courts ranges from three to five); *Afram Lines*, [159 F.R.D. at 413](#); *Zurich Ins. Co. v. Essex Crane Rental Corp.*, [No. 90-cv-02263](#) (S.D.N.Y. Jan. 29, 1991).
- <sup>11</sup> See *Dubai Islamic Bank*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002) (citing *Boss Mfg.*, [No. 97-cv-08495](#) (S.D.N.Y. Jan. 13, 1999) ("[I]t is not entirely clear whether the burden [of establishing the deponent's status] is one of production or persuasion or both."); *Afram Lines*, [159 F.R.D. at 414](#) (suggesting that the burden may vary depending on whether the examining party has had complete discovery on the issue of whether the deponent is an employee of the opposing party)).
- <sup>12</sup> See *Dubai Islamic Bank*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002) (citing *Boss Mfg.*, [No. 97-cv-08495](#) (S.D.N.Y. Jan. 13, 1999); *Afram Lines*, [159 F.R.D. at 414](#); *Sugarhill Records*, [105 F.R.D. at 171](#)).
- <sup>13</sup> *Id.* (citations omitted).
- <sup>14</sup> "[I]t is proper to defer final determination of managing agent status until trial since at that time examining party will have had full discovery regarding that status" and "[t]he witness's deposition testimony itself may well provide the best evidence of his or her status." *Dubai Islamic Bank*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002) (citations omitted).
- <sup>15</sup> See *Young & Assocs. Pub Relations, L.L.C. v. Delta Air Lines, Inc.*, [216 F.R.D. 521](#) (D. Utah 2003) ("[W]hether witnesses fall within the category of 'managing agent' under [Rule 32\(a\)\(2\)](#) requires a determination of what the employee actually did, rather than what title or position she held.").
- <sup>16</sup> See, e.g., *In re Honda Am. Motor Co., Inc. Dealership Relations Litig.*, [168 F.R.D. 535, 541](#) (D. Md. 1996) (stating that the power to bind is not determinative of a managing agent).
- <sup>17</sup> See *Rubin v. Gen. Tire & Rubber Co.*, [18 F.R.D. 51, 55–56](#) (S.D.N.Y. 1955) (discussing the absurdity of defendant's position where the only people who would come within the category of "managing agent" are those "whose rank in the corporate hierarchy was so exalted that

they would be extremely unlikely to have any knowledge of the day to day dealings of the corporation with its customers and suppliers.").

- <sup>18</sup> See, e.g., *M.F. Bank Restoration Co. v. Elliott, Bray & Riley*, No. 92-cv-00049 (E.D. Pa. Jan. 11, 1994) (calling the alignment of interests factor "critical").
- <sup>19</sup> See *Dubai Islamic Bank*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002) (focusing "managing agent" analysis on authority and discretion vested in employees).
- <sup>20</sup> See *In re Honda Am. Motor Co.*, [168 F.R.D. at 535](#) (Honda's general manager of public relations satisfied the "paramount test"—that his interests were aligned with those of the corporation—and, although he did not have final authority to bind Honda, he was imbued with "general powers to exercise his judgment and discretion in a position of trust.") In courts that use a three factor test, like the U.S. District Court for the District of Maryland, the "alignment of interests" prong of the test and the prong that looks at whether an individual can be relied upon to give testimony at his employer's request may be condensed into one factor. In other words, those courts will examine whether there is an alignment of interests between the prospective deponent and his or her corporate employer, such that the deponent can be relied upon to give testimony at his or her employer's request. Even if considered as separate factors in some courts, the two prongs are closely related.
- <sup>21</sup> *Libbey Glass, Inc. v. Oneida, Ltd.*, [197 F.R.D. 342, 350](#) (N.D. Ohio 1999) (opining that calling the alignment of interests the "paramount test" overstates the role of a deponent's identity with the principal's interests, because it would apply to many agents and employees who do not function with that degree of authority connoted by the term "managing" agent).
- <sup>22</sup> See, e.g., *Dubai Islamic Bank*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002) (focusing "managing agent" analysis on authority and discretion vested in employees).
- <sup>23</sup> *Id.* See also *Murata Mfg. Co. v. Bel Fuse, Inc.*, [242 F.R.D. 470, 477](#) (N.D. Ill. 2007) (inquiring whether the prospective deponent had a "clear position of authority", exercised "independent discretion", or "held high-ranking or high-level status.").
- <sup>24</sup> See *Dubai Islamic Bank*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002).
- <sup>25</sup> See *Malletier v. Dooney & Bourke, Inc.*, No. 04-cv-05316, [2006 BL 129404](#), at \*41 (S.D.N.Y. Nov. 29, 2006) (noting that even though the plaintiff could depose a person of superior authority about a similar or even the same subject, that fact was "not dispositive" in determining whether a proposed deponent was a managing agent).
- <sup>26</sup> *Cohen v. American Window Glass Co.*, [41 F. Supp. 48, 49](#) (S.D.N.Y. 1941).
- <sup>27</sup> See, e.g., *Dubai Islamic Bank*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002) (citing *Boss Mfg. Co. v. Hugo Boss AG*, No. [97-cv-08495](#) (S.D.N.Y. Jan. 13, 1999)).
- <sup>28</sup> See, e.g., *Faro Tech., Inc. v. Romer, Inc.*, [No. 06-cv-00013](#) (M.D. Fla. Feb. 12, 2007).
- <sup>29</sup> See *Dubai Islamic Bank*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002) (noting that courts take a practical approach to the "managing agent" test, focusing not just on the formal connection between the party and the witness, but also on their functional relationship). On occasion, courts have also compelled a corporate party to produce a nonemployee to serve as a Rule 30(b)(6) witness. See *Sierra Rutile Ltd. v. Katz*, [No. 90-cv-04913](#) (S.D.N.Y. Jan. 11, 1995) (majority shareholder in parent company of dormant and inactive defendant-corporation was held to be managing agent for purposes of Rule 30(b)(6) deposition, where the defendant-corporation had no other current officers with knowledge of the transactions at issue); *Nippondenso Co., Ltd. v. Denso Distributors*, No. 86-cv-03982 (E.D. Pa. Sept. 21, 1987) (ordering the plaintiff to produce a retired executive for a deposition who had a continuing connection to the plaintiff corporation). The court held that the retired executive "may be deemed the proper designee of plaintiff under Federal Rule of Civil Procedure 30(b)(6). Absent some evidence to the contrary, it is fair to assume that, as between the parties, [the retired executive's] interests and loyalties remain with the plaintiff. Plaintiff should gain no tactical advantage over defendant because of [the executive's] retirement subsequent to plaintiff filing this action." *Id.*
- <sup>30</sup> See, e.g., *States v. Afram Lines (USA), Ltd.*, [159 F.R.D. 408, 414](#) (S.D.N.Y. 1994) (citations

omitted).

- <sup>31</sup> No. 93-cv-00195 (E.D. Cal. Aug. 23, 1993).
- <sup>32</sup> [802 F.2d 1448](#), [1455-57](#) (D.C. Cir. 1986). Other cases where district courts have found nonemployees to be managing agents include *Alcan Int'l Ltd. v. S.A. Day Mfg. Co.*, [176 F.R.D. 75, 79](#) (W.D.N.Y.1996) (permitting deposition of retired employee of foreign affiliate of corporate party because former employee had direct knowledge of the facts at issue and traveled to the United States to present marketing information to corporate party's employees); and *Petition of Manor Investment Co.*, [43 F.R.D. 299, 300](#) (S.D.N.Y. 1967) (holding that, although deponent did not hold any office or formal position in the corporation, as holder of 100 percent stock in corporation owning vessel, he controlled its affairs and performed functions "of a supervisory nature," making him a "managing agent").
- <sup>33</sup> *Independent Prods. Corp. v. Loew's, Inc.*, [24 F.R.D. 19, 23-24, 26](#) (S.D.N.Y.1959).
- <sup>34</sup> *Bro-Tech Corp. v. Thermax*, No. 05-cv-02330, [2006 BL 2330](#) (E.D. Pa. Nov. 16, 2006) (citing *Triple Crown Am., Inc. v. Biosynth AG*, [No. 96-cv-07476](#) (E.D. Pa. Apr. 30, 1998); *Socodis-Booch Trading, Inc. v. M/V Humboldt Rex.*, No. 91-cv-01474 (E.D. Pa. June 16, 1992); 8A Charles Wright, Arthur R. Miller & Richard Marcus, *Federal Practice & Procedure* § 2112 at 81-82)).
- <sup>35</sup> *South Seas Catamaran, Inc. v. Motor Vessel Leeway*, [120 F.R.D. 17, 21](#) n. 5 (D.N.J. 1988), *aff'd*, [993 F.2d 878](#) (3d Cir. 1993). See also *El Camino Resources Ltd. v. Huntington Nat. Bank*, No. 07-cv-00598, [2008 BL 129760](#), at \*5-6 (W.D. Mich. June 20, 2008).
- <sup>36</sup> *Socodis-Booch Trading, Inc. v. M/V Humboldt Rex.*, No. 91-cv-01474 (E.D. Pa. June 16, 1992) (ordering depositions to be held in Philadelphia, where counsel for all the parties were located, despite the fact that defendant's corporate offices were located in Japan).
- <sup>37</sup> *Bro-Tech Corp.*, [2006 BL 2330](#), at \*3-4 (ordering that director of defendant-Indian corporation be deposed at the Federal Courthouse in Philadelphia because of past complications, delays, and the contentious relationship between opposing counsel, making judicial supervision necessary); *Custom Form Mfg., Inc. v. Omron Corp.*, [196 F.R.D. 333, 337](#) (N.D. Ind. 2000) ("Depositions may be conducted away from a corporation's principal place of business for a number of reasons, including the need to have the court readily available to exercise its authority to resolve discovery disputes."). See also *R.F. Barron Corp. v. Nuclear Fields (Australia) Pty., Ltd.*, No. 91-cv-07610 (N.D. Ill. Aug.28, 1992) (requiring depositions of Dutch and Australian defendants in Chicago "to promote a just, speedy and inexpensive resolution of this litigation").
- <sup>38</sup> 168 F.R.D. 535, 537 (D. Md. 1996) (Motz, C.J.).
- <sup>39</sup> *Id.*
- <sup>40</sup> [No. 96-cv-07476](#) (E.D. Pa. Apr. 30, 1998).
- <sup>41</sup> See *Sugarhill Records, Ltd. v. Motown Record Corp.*, [105 F.R.D. 166, 171](#) (S.D.N.Y. 1985) (noting that the deposition of a corporation through its officers or agents normally must be taken at its principal place of business, unless the corporation is a nonresident plaintiff who chose the forum in a location away from its headquarters); *Clem v. Allied Van Lines Int'l Corp.*, [102 F.R.D. 938, 939](#) (S.D.N.Y. 1984) (because the plaintiff selects the forum for an action, absent compelling circumstances, even a nonresident plaintiff is generally required to appear for a deposition in the locality where the action is pending). Notably, a forum selection clause in the contract at issue "only supports the conclusion that its officers should be required to appear in this forum [New York] for deposition." *Dubai Islamic Bank v. Citibank, N.A.*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002).
- <sup>42</sup> See *Connell v. City of New York*, [230 F. Supp. 2d 432, 436-437](#) (S.D.N.Y. 2002); see also *Dubai Islamic Bank*, [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002) (holding that the plaintiff-bank did not overcome presumption that a plaintiff who brings suit in a particular jurisdiction should be prepared to send its agents to be deposed there).
- <sup>43</sup> Cf. *Grotrian, Helfferich, Schulz, Th. Steinweg Nachf. v. Steinway & Sons*, [54 F.R.D. 280, 281](#) (S.D.N.Y. 1971) ("Since plaintiff has chosen this forum, it cannot impose upon defendant the

extraordinary expense and burden of traveling to a foreign country to conduct a deposition except on a showing of burden and hardship to the plaintiff."); *compare with Normande v. Grippo*, [No. 01-cv-07441](#) (S.D.N.Y. Jan. 16, 2002) (holding that hardship was shown by pro se plaintiff with infant who resided in Brazil, making telephonic deposition appropriate).

<sup>44</sup> *Dubai Islamic Bank*, No. [No. 99-cv-01930](#) (S.D.N.Y. May 31, 2002).

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### **Civil Procedure**

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#### **Depositions in Foreign Jurisdictions**

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