

The Limited Power of California Courts to Compel Witness Attendance at In-State Depositions

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Ms. Sungaila, a partner in Snell & Wilmer's Appellate Practice, and Ms. Micklis filed an amicus brief in support of Toyota in *Toyota v. Superior Court*.

In a case that could have broad impact on discovery in this state as well as save corporate defendants from needless business disruption, last month the Second District Court of Appeal in Los Angeles confirmed in a published opinion (*Toyota v. Superior Court (Stewart)*) that California courts lack the power to compel a foreign witness to come to California to be deposed. If a party wants to depose an individual who resides out of state or out of the country, the party must conduct the deposition in the individual witness' home country or state of residence.

Plaintiffs in the case filed a California product liability action arising from an accident that took place in Idaho, and sought to depose in California five employees of Toyota who were Japanese residents. They were designated as individual employees, not as corporate representatives. Toyota responded that the depositions could take place in Japan, but not California, and cited a California statute that limits the power of California trial courts to compel the attendance of nonresidents at deposition and trial. The trial court granted the motion to compel. Toyota filed a writ petition, and the Court of Appeal agreed to hear it on the merits, held argument, invited amicus briefing

from interested parties, and last month granted Toyota's writ petition and remanded to the trial court to vacate the order compelling the depositions to take place in California.

"Code of Civil Procedure section 1989," the appellate court observed, "provides that a nonresident of California is not obliged to attend as a witness in this state. After a careful review of the relevant statutes and related legislative history, we conclude that this residency limitation applies not only to trials, but also to discovery. As a result, the trial court has no authority to compel Japanese residents to come to Los Angeles to attend depositions. Neither the legislative history nor the meager case authority on this issue persuasively provide otherwise." The appellate court unanimously concluded that "[t]he plain language of the statutory scheme and the legislative history of that language fully support the conclusion that a trial court cannot order a non-resident to appear at a California deposition. This conclusion is not limited to individual witnesses, but also applies to a court order directing that a party produce for deposition a specifically named non-resident witness (e.g., an employee, officer, or director of a corporation)."

Nor could California courts independently gain authority to compel in-state depositions of nonresidents. While the California Supreme Court has recognized that courts have "fundamental inherent equity, supervisory,

and administrative powers, as well as inherent power to control litigation before them” (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967), that power “may only be exercised to the extent not inconsistent with the federal or state Constitutions, or California statutory law” (*Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 762). Moreover, while the matter of taking depositions was a frequent proceeding in courts of equity in England, they routinely issued commissions to depose foreign witnesses abroad, rather than requiring them to come to England. Accordingly, even absent the statutory scheme, the traditional power of equity courts was consistent with the method

urged by Toyota and followed by the appellate court: taking the deposition of foreign witnesses in their home country, rather than compelling them to visit the United States to provide testimony.

Presiding Justice Joan Dempsey Klein, in a concurring opinion, noted, however, that it may be time for the Legislature to revisit the statutory scheme. She observed that “the current statutory scheme is inadequate and inappropriate in today’s era of globalization” and appears out of step with the laws in federal courts and those of other states, under which foreign nationals can be compelled to attend depositions in the United States.



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M.C. Sungaila has successfully briefed and argued appeals raising cutting-edge and core business issues statewide as well as nationally and internationally. Clients appreciate her “clear, concise, and persuasive” manner, laud her as a “great strategic thinker who plays five or six moves ahead,” and call on her to craft winning approaches to emerging legal issues across multiple cases and jurisdictions. Clients also value M.C.’s strategic approach during pretrial and trial consultations in cases where an appeal by either side appears inevitable or a “key case” outcome might impact a whole series of cases for a client.

M.C. has received multiple awards and recognition for her work. Repeatedly named one of California’s Top Women Litigators by the *Los Angeles* and *San Francisco Daily Journals*, she is also one of a select group of women to receive the Frances E. Willard Award, Alpha Phi International Fraternity’s highest alumnae honor for professional achievement on a national and international level. In 2011, M.C. was the only lawyer named in OC Metro business magazine’s annual list of the “Top 20 Women to Watch in Orange County.”

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