

California Courts Cannot Force Out-of-Town Employees to Travel to California Depositions

Construction Practices Newsletter

December 2011

By: [Frederic Grannis](#)

In an important ruling for corporations sued in California, the Second Appellate District of the California Court of Appeal in *Toyota Motor Corporation v. Superior Court* (July 27, 2011) No. B225393, held under Code of Civil Procedure section 1989 that trial courts lack jurisdiction to compel non-resident witnesses to appear for deposition in California.

The decision arose from a product liability lawsuit filed against Toyota Motor Corporation and its North American and U.S. subsidiaries. The plaintiffs obtained an order from the trial court under Code of Civil Procedure section 2025.260, compelling five Toyota employees, all residents of Japan, to appear for deposition in California. Toyota then petitioned the Court of Appeal for writ of mandate to overturn the order.

The issue on appeal was framed by the apparent conflict between Sections 1989 and 2025.260 of the Code of Civil Procedure. Section 1989 states categorically that "[a] witness . . . is not obliged to attend as a witness before any court, judge, justice or any other officer, unless the witness is a resident within the state at the time of service." The term "witness" is defined elsewhere in the code as any "person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination, *or by deposition* or affidavit." C. Civ. Proc. § 1878.

California's deposition statute (C. Civ. Proc. §§ 2025.010-620), as a general rule, requires that witnesses be deposed within 75 miles of their residence—150 miles if the deposition occurs within the county where the lawsuit is pending. C. Civ. Proc. § 2025.250. However, Section 2025.260 authorizes a trial court in its discretion to order "an officer, director, managing agent or employee" of a corporate litigant to appear for deposition at a more distant location.

In its appeal, Toyota argued the discretion granted by 2025.260 applied only to corporate employees who happened also to be California residents, and that Section 1989 prohibited the court from exercising its discretion to compel a non-resident employee to travel to California. After reviewing extensively the legislative histories of both statutes, the Court of Appeal sided with Toyota and found the trial court lacked the authority to compel the Japanese witnesses to travel to California for deposition.

The decision is likely to have a major impact on litigation involving overseas corporations. Legal restrictions many foreign countries impose on taking depositions inside their borders mean that advanced planning, patience and strict compliance with sometimes complex legal requirements will be needed to arrange and complete depositions of foreign witnesses. Deprived of the easy remedy of seeking an order for the witnesses to travel hundreds or thousands of miles to California, some litigants may simply abandon attempts to depose overseas witnesses.

Of course, litigants may seek to circumvent Section 1989 by deposing the corporation itself under Section 2025.230, which allows a party to describe in its notice of deposition the "matters on which examination is requested" and requires the corporation to designate and produce those of its employees "who are most qualified to testify on its behalf as to those matters." The code allows such depositions to occur within 75 miles of the corporation's "principal executive or business office *in California*." C. Civ. Proc. §2025.250, subd. (b) (*italics added*). (The distance is extended to 150 miles, if the deposition occurs in the county where the lawsuit is pending.) It remains to be decided if Section 1989's residency requirement imposes any limitation on the place of the deposition of a corporate designee.

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