UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Case No. MDL 1394 -GAF(RCx) Date: November 21, 2001
ALL RELATED CASES

Title: In Re Air Crash at Taipei, Taiwan on October 31, 2000

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DOCKET ENTRY

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PRESENT: **HON. ROSALYN M. CHAPMAN, UNITED STATES MAGISTRATE JUDGE**

Debra Taylor-Spears	None
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR	ATTORNEYS PRESENT FOR	ATTORNEYS PRESENT FOR DEFENDANT
PLAINTIFFS:	DEFENDANT SIA:	UNITED AIRLINES:
Brian J. Panish	Rod D. Margo	Richard G. Grotch
Stuart R. Fraenkel	Stephen R. Ginger	
	Scott D. Cunningham	
	Debby L. Zajac	

PROCEEDINGS: DEFENDANT SINGAPORE AIRLINES, LTD.'S MOTION FOR PROTECTIVE ORDER

On October 24, 2001, defendant Singapore Airlines, Ltd. filed a notice of motion and motion for protective order, with joint stipulation and supporting declarations of Foo Kim Boon, Daniel Y.M. Song and Stephen R. Ginger,[1] with exhibits. On November 7, 2001, plaintiffs and defendant Singapore Airlines, Ltd., filed supplemental memoranda. On November 8, 2001, defendant Singapore Airlines, Ltd. filed an objection to plaintiffs' supplemental memorandum.[2]

Oral argument was held before Magistrate Judge Rosalyn M.

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[1] Plaintiff's motion to strike hearsay statements in Mr. Ginger's declaration is granted, Jt. Stip. 21:4-5, and paragraph 5 is stricken.

[2] Defendant Singapore Airline, Ltd.'s request to strike those pages in excess of five pages in plaintiffs' supplemental memoranda is denied.

Chapman on November 21, 2001. Plaintiffs were represented by Brian J. Panish and Stuart R. Fraenkel, attorneys-at-law. Defendant Singapore Airlines, Ltd. was represented by Rod D. Margo, Stephen R. Ginger, Scott D. Cunningham and Debby L. Zajac, attorneys-at-law. United Airlines and Star Alliance were represented by Richard G. Grotch, attorney-at-law.

DISCUSSION

I

As a preliminary matter, this Court is concerned about the procedural posture of defendant Singapore Airlines, Ltd.'s motion for protective order. A brief summary of the tortuous history of the motion for protective order will help explain the Court's concern: On August 15, 2001, plaintiffs issued three deposition notices under Rule 30(b)(1) to depose the pilots on flight 006 that crashed in Taipei, Taiwan, on October 31, 2000, setting their depositions on September 26 and 27, 2001, in Santa Monica, California.[3] On the same date, plaintiffs noticed Rule 30(b)(6) depositions on three matters,[4] also setting those depositions on September 27, 2001, in Santa Monica, California. On September 14, 2001, defendant Singapore Airlines, Ltd. ("SIA") filed a notice of motion and motion for protective order, and the matter was set for an expedited hearing on September 24, 2001, before Judge Chapman. On September 21, 2001, three days before the hearing, SIA withdrew its motion for protective order, stating "plaintiffs have now withdrawn the Notices of Depositions which are the subject of the Motion for Protective Order. . . ."

On October 5, 2001, the parties filed a "Joint Request for Rescheduling of Hearing on Motion for Protective Order," in which the parties argued that a hearing was necessary for three reasons: (1) In "their [joint] discovery plan, counsel stated that they will need the assistance of the Court to determine whether the Flight SQ006 pilots are 'managing agents' of SIA"; (2) on October 5, 2001, "Judge Feess advised the parties to

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[3] The three pilots are Captain Foong Chee Kong, First Officer Latiff Cyrano, and relief pilot Ng Khen Leng. Foo Kim Boon Decl. ¶ 2.

[4] The descriptions of these matters are set forth below.

proceed with a hearing on the managing agent issue before Magistrate Judge Chapman so that the issue of the pilots' depositions may be resolved as soon as possible"; and (3) "[u]nder the present discovery schedule, SIA liability depositions are scheduled to take place during November 2001." Joint Request at 2:2-19. On October 10, 2001, this Court denied the parties' request to set a hearing **on the withdrawn motion**, noting that "no new or narrowed discovery motion and joint stipulation are currently before the Court, although the parties have had ample opportunity to prepare such documents" since SIA's withdrawal of its initial motion. Further, the Court advised the parties that "a new motion and joint stipulation" containing pertinent declarations were needed, and offered to "permit the parties to use previously filed declarations with copies of signatures, rather than new original signatures" to ease the burden of preparing a new joint stipulation.

On October 24, 2001, SIA filed the pending motion for protective order. However, serious questions exist concerning defendant SIA's compliance with Local Rule 37, and, particularly, the manner in which Stephen R. Ginger, SIA's counsel, has conducted himself regarding this matter. First, Mr. Ginger improperly noticed the motion for protective order before Judge Feess, although he was clearly aware that this Court is responsible for all pretrial discovery matters. Second, the joint stipulation regarding the pending motion is nothing more than a cut-and-paste version of the joint stipulation supporting SIA's initial, withdrawn motion, and it addresses only the deposition notices served by plaintiffs on August 16, 2001 -- not the new deposition notices served October 5, 2001.[5] Third, in

[5] This is particularly troubling since the plaintiffs specifically state that defendant SIA filed the joint stipulation without allowing them an opportunity to revise their portion of the joint stipulation. Further, although defendant SIA states that plaintiffs served amended notices of depositions on October 5, 2001, again setting the pilots' depositions and Rule 30(b)(6) depositions, this Court has not been provided copies of these deposition notices. Finally, although this Court explicitly "found the legal memoranda in the previously filed joint stipulation to be inadequate," and urged the parties to more fully brief the issues discussed herein, see October 10, 2001 Court Order at n.1., the cut-and-paste joint stipulation does not do that.

the introduction to the joint stipulation, SIA makes a request to seal the pilots' deposition transcripts, although that request is not set forth in the notice of motion and motion and is not an actual, live dispute between the parties, as noted at footnote 6 infra. Including matters in the joint stipulation that may not be in dispute clearly wastes the Court's time. Thus, it appears to the Court that Mr. Ginger has not lived up to his obligations under Local Rule 37, and he should, accordingly, be personally sanctioned in the amount of $2,000.00, pursuant to Local Rule 37-4.

II

Rule 26(b)(1), as recently amended, permits discovery in civil actions of "any matter, not privileged, that is relevant to the claim or defense of any party. . . ." Generally, the purpose of discovery is to remove surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve their dispute. Oakes v. Halvorsen Marine Ltd., 179 F.R.D. 281, 283 (C.D. Cal. 1998). Toward this end, Rule 26(b) is liberally interpreted to permit wide-ranging discovery of information even though the information may not be admissible at the trial. Jones v. Commander, Kansas Army Ammunitions Plant, 147 F.R.D. 248, 250 (D. Kan. 1993). However, like federal litigation generally, all discovery is subject to Rule 1, which directs that the rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1.

Federal Rule of Civil Procedure 26(c) governs the granting of a protective order. A protective order should be granted when the moving party establishes "good cause" for the order and "justice requires [a protective order] to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. . . ." Fed. R. Civ. P. 26(c). "Protective orders . . . which seek to regulate the terms, conditions, time or place of discovery are wholly within the court's discretion." Pro Billiards Tour Ass'n, Inc. v. R.J. Reynolds Tobacco Co., 187 F.R.D. 229, 230 (M.D. N.C. 1999). However, before a protective order issues, the moving party must show a particular and specific need for the protective order, as opposed to making stereotyped or conclusory statements. Skellerup Indus. Ltd. v. City of Los Angeles, 163 F.R.D. 598, 600 (C.D. Cal. 1995); Gray

v. First Winthrop Corp., 133 F.R.D. 39, 40 (N.D. Cal. 1990).

III

The Federal Rules of Civil Procedure provide two methods by which a corporation that is a party to a proceeding may be deposed: (1) Rule 30(b)(1) provides for the deposition by notice of a corporation through a particular officer, director or managing agent of the corporation; and (2) Rule 30(b)(6) provides for the deposition of the corporation by notice setting forth "with reasonable particularity" the matters on which the examination of the corporation's most knowledgeable person will take place. United States v. Afram Lines (USA), Ltd., 159 F.R.D. 408, 413 (S.D. N.Y. 1994); GTE Prods. Corp. v. Gee, 115 F.R.D. 67, 68 (D. Mass. 1987).

By this pending motion, defendant SIA seeks a protective order: (1) to prohibit the taking of the deposition of its pilots under Rule 30(b)(1) and, instead, to require that the Hague Convention be followed to depose the pilots; and (2) to require that all Rule 30(b)(6) depositions be taken in Singapore. Motion at 2:3-12. Additionally, SIA seeks an order to seal the pilots' depositions.[6] Jt. Stip. at 2:28-3:1.

1. Pilots' Depositions:

Under Rule 30(b)(1), plaintiffs seek to depose corporate defendant SIA through the three pilots who were on flight SQ006 that crashed at Taipei, Taiwan, on October 31, 2000. If plaintiffs are permitted to depose the three pilots under Rule 30(b)(1), plaintiffs need not depose them under the Hague Convention on the Taking of Evidence Abroad in Civil or

[6] The Court is mystified by this request since, on October 10, 2001, this Court approved a protective order permitting the designation by either party of all or part of a deposition transcript as "Confidential Information," thereby sealing all or part of the transcript. Moreover, without knowing the testimony of the pilots at their depositions, such a request is shockingly premature and not yet ripe.

Commercial Matters ("Hague Convention").[7] In re Honda American Motor Co., Inc. Dealership Relations Litigation, 168 F.R.D. 535, 540 (D. Md. 1996); Afram Lines (USA), Ltd., 159 F.R.D. at 413; cf. United States v. Drogoul, 1 F.3d 1546, 1553 (11th Cir. 1993) ("Because the witnesses are foreign nationals located outside the United States, they are beyond the subpoena power of the district court.").

Under Rule 30(b)(1), it is well recognized that "[a] subpoena is *not necessary* to compel attendance of an officer, director or managing agent of a corporate party. Serving a deposition notice on the corporation compels it to produce the designated officer, director or managing agent, or risk sanctions for failure to do so." Schwarzer, Tashima & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 11:373 (2001 rev.)(citing Bon Air Hotel, Inc. v. Time, Inc., 376 F.2d 118, 121 (5th Cir. 1967), cert. denied, 393 U.S. 815 (1968) and 393 U.S. 859 (1968))(emphasis in original)). In other words, "[i]f the corporation is a *party*, the notice compels it to produce the officer, director or managing agent named in the deposition notice. It is not necessary to subpoena such individual." Id. at 11:354 (emphasis in original); Wright, Miller & Marcus, Federal Practice & Procedure, Civ. 2d § 2103 (1994 ed.)(same).[8]

When an employee named in a deposition notice "is a director, officer, or managing agent of [a corporate party], such employee will be regarded as a representative of the

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[7] The language and negotiating history of the Hague Convention show that it does not supplant normal federal discovery rules, and thus, its use is neither exclusive nor required first before the use of the normal federal discovery rules. Societe Nationale Industrielle Aerospatiale v. United States District Court for the Southern District of Iowa, 482 U.S. 522, 533-44, 107 S.Ct. 2542, 2550-56, 96 L.Ed.2d 461 (1987); First American Corp. v. Price Waterhouse LLP, 154 F.3d 16, 21 (2d Cir. 1998).

[8] "However, a corporate employee or agent who does not qualify as an officer, director, or managing agent is not subject to deposition by notice." Afram Lines (USA) Ltd., 159 F.R.D. at 413; Libbey Glass, Inc. v. Oneida, Ltd., 197 F.R.D. 342, 349 (N.D. Oh. 1999).

corporation." Moore v. Pyrotech Corp., 137 F.R.D. 356, 357 (D. Kan. 1991); United States v. One Parcel of Real Estate at 5860 North Bay Rd., 121 F.R.D. 439, 440-41 (S.D. Fla. 1988). This means that under Rule 32(a), the deposition may be used at trial against the corporate party. Coletti v. Cudd Pressure Control, 165 F.3d 767, 773 (10th Cir. 1999); Crimm v. Missouri Pac. R.R. Co., 750 F.2d 703, 708-09 (8th Cir. 1984). However, "any determination of whether a party is a 'managing agent'. . . made in deciding a motion relating to the production of a witness for deposition . . . has 'no bearing on what the trial judge, possessed of the evidence and the responsibility for decision, must decide.'" Hughes Bros., Inc. v. Callanan Road Improvement Co., 41 F.R.D. 450, 453-54 (S.D. N.Y. 1967) (citation and footnote omitted). Rather "[t]he [final] determination of whether a particular person is a 'managing agent' will be made by the trial court when the deposition is sought to be introduced [at trial]. . . ." Dunn v. Standard Fire Ins. Co., 92 F.R.D. 31, 32 (E.D. Tenn. 1981).

Although the party seeking discovery has the burden of establishing an individual is a managing agent of a corporate party, "in pretrial proceedings courts resolve doubts [about an individual's status as a managing agent] in favor of the examining party." Afram Lines (USA) Ltd., 159 F.R.D. at 413; In re Honda American Motor Co., 168 F.R.D. at 540; Sugarhill Records, Ltd. v. Motown Records Corp., 105 F.R.D. 166, 170 (S.D. N.Y. 1985). As one court has noted:

> [I]t appears that the examining party has the burden of providing enough evidence to show that there is at least a close question whether the proposed deponent is a managing agent. [¶] The concept of resolving cases that fall into the "grey area" in favor of the examining party is most rational in two circumstances. First, if the examining party has not obtained full discovery from its adversary on the status of the proposed deponent, it is proper to defer a final determination of that status. Second, it promotes judicial economy to proceed with a deposition by notice when the only pretrial consequence of determining the deponent's status is whether he will be served with a subpoena and tendered a witness fee. For example, since a current employee of a party is within that party's practical control, it is often sensible to

> require the employee to appear pursuant to notice while deferring the question of whether his testimony will bind the employer. [¶] The case for tilting in favor of the examining party is less strong, however, where that party has had complete discovery of its opponent or where the proposed deponent is not an employee of the opponent and may, in fact, be beyond its control.

Afram Lines (USA) Ltd., 159 F.R.D. at 413-14.

"The law concerning who may properly be designated as a managing agent is sketchy. Largely because of the vast variety of factual circumstances to which the concept may be applied, the standard . . . remains a functional one to be determined . . . on a case-by-case basis." Founding Church of Scientology of Washington D.C., Inc., v. Webster, 802 F.2d 1448, 1452 (D.C. Cir. 1986) (footnote omitted), cert. denied, 484 U.S. 871 (1987); see also Wright, Miller & Marcus, Federal Practice & Procedure, Civ. 2d § 2103 (1994 ed.) ("[T]he question of whether a particular person is a 'managing agent' is to be answered pragmatically on an ad hoc basis. . . ."). Nonetheless, courts have identified several factors helpful in determining whether an individual is a managing agent of a corporate party:

> 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.

Afram Lines (USA) Ltd., 159 F.R.D. at 413 (citations omitted); In re Honda American Motor Co., 168 F.R.D. at 540; Reed Paper Co. v. Procter & Gamble Distrib. Co., 144 F.R.D. 2, 4 (D. Me. 1992); Sugarhill Records, Ltd., 105 F.R.D. at 170.

Historically, courts have determined that a ship's captain is a "managing agent" of a corporate party, but that a railroad

conductor or engineer is not. As the Fifth Circuit has explained:

> A ship[’s captain] by necessity and legal tradition is, of course, one having transcendent powers as an agent. He has a duty not to sail unless the ship is seaworthy. Once she is underway he is, and must be, the sole commander. With respect to the injuries occurring aboard, especially at sea, he is the topmost authority in the hierarchy of management. . . . These unique circumstances suggest a status for a vessel master quite different from a crew chief on a land-based activity.

June T., Inc. v. King, 290 F.2d 404, 408 n.1 (5th Cir. 1961); see also Torres v. United States Lines Co., 31 F.R.D. 209, 210 (S.D. N.Y. 1961) (vessel’s chief engineer was “managing agent” when plaintiff’s supervisor and in charge of engine room, where plaintiff was injured); Shenker v. United States, 25 F.R.D. 96, 99 (E.D. N.Y. 1960) (“[A] captain or chief officer of a vessel . . . is a managing agent. . . .”); Fay v. United States, 22 F.R.D. 28, 32 (E.D. N.Y. 1958) (“The captain or chief officer in charge of a United States naval vessel is in a position analogous to that of a managing agent of a private corporation.”); Klop v. United Fruit Co., 18 F.R.D. 310, 313 (S.D. N.Y. 1955) (holding second mate was “managing agent” when in charge of vessel at time of accident and had general supervisory authority over it).[9]

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[9] Nonetheless, courts have consistently concluded that a ship’s officers subordinate to the captain are not “managing agents.” See e.g., McDonald v. United States, 321 F.2d 437, 441 (3d Cir. 1963) (applying Rule 30A(d)(2) of the Rules of Practice in Admiralty and Maritime Cases and concluding ship’s mate who was “an inferior officer who had no supervisory authority and acted under the supervision and direction of his superior” was not a “managing agent”), cert. denied, 375 U.S. 969 (1964); Santiago v. American Export Lines, Inc., 30 F.R.D. 372, 374 (S.D. N.Y. 1962) (although in charge of air conditioning system plaintiff claims caused his illness, ship’s chief engineer was not “managing agent”); Proseus v. Anchor Line, Ltd., 26 F.R.D. 165, 167-68 (S.D. N.Y. 1960) (plaintiff did not meet burden of proving individual who was first officer at time of plaintiff’s injury but is now second officer is “managing agent”; “[t]he mere fact that the prospective witness was a first officer would not qualify him as a managing agent.”); Porrazzo v. Royal Mail Lines, 13 F.R.D. 320, 321 (S.D. N.Y. 1944) (first mate is not “managing

On the other hand, the Seventh Circuit, for example, is one of several courts that have determined a railroad engineer was merely an employee of a corporate party, rather than a "managing agent." See Hosie v. Chicago & N.W. Railway Co., 282 F.2d 639, 641 (7th Cir. 1960) (holding individual acting as engineer on day plaintiff was injured was employee, not "managing agent" under former Fed. R. Civ. P. 43(b), but providing no analysis to support holding), cert. denied, 365 U.S. 814 (1961).

This Court has been unable to find any precedential authority discussing whether an airline pilot is a "managing agent" of an airline that is a corporate party to litigation. However, in Ness v. West Coast Airlines, Inc., 90 Idaho 111, 410 P.2d 965 (1965), the Idaho Supreme Court determined "the pilot of the plane at the time of the accident . . . was in immediate charge of the aircraft and its crew[; thus, f]or the purpose of managing the aircraft and crew in the accomplishment of its flight[,] . . . the pilot was the managing agent of defendant corporation. . . ." Id. at 118.[10] Furthermore, in Tomingas v. Douglas Aircraft Co., 45 F.R.D. 94 (S.D. N.Y. 1968), a federal court held two members of defendant's engineering department were "managing agents" for purposes of the litigation when the defendant aircraft manufacturer sent them as its representatives to help the Canadian government investigate the airplane crash that was the subject of the litigation and the engineers were in complete charge of identifying pieces of the wreckage. Id. at 96-97.

Here, plaintiffs argue that the three pilots are managing agents of SIA "for purposes of testifying about the [October 31, 2000] accident," Jt. Stip. 14:18-20, and, specifically, for the purpose of testifying regarding "their operation of the . . . aircraft at or about the date of the subject crash." Jt. Stip. at 15:22-23. Defendant SIA argues the pilots are not managing agents, and has presented the declarations of Foo Kim Boon and

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agent").

[10] In Ness, the Idaho Supreme Court interpreted former Idaho Rule of Civil Procedure 43(b), which is similar to former Fed. R. Civ. P. 43(b), see Thomas v. Thomas, 83 Idaho 86, 91, 352 P.2d 935 (1960) (stating Idaho's Rules of Civil Procedure . . . are closely patterned and numbered after the Federal Rules of Civil Procedure. . ."), which defined "managing agent" in the same manner as the cases cited above. See Newark Ins. Co. v. Sartain, 20 F.R.D. 583, 585-86 (N.D. Cal. 1957).

Daniel Y.M. Song to support its contention.[11]

This Court finds, based on the circumstances of this case, that the three pilots should be considered "managing agents" of SIA for purposes of taking their depositions under Rule 30(b)(1). This Court cannot ignore that the pilots are in a unique position as key percipient witnesses to provide information relevant to this litigation; in fact, no other witnesses can provide such first-hand relevant information. Tomingas, 45 F.R.D. at 96-97. While the pilots remain employees of SIA, their depositions can be taken inexpensively by the deposition notice procedure under Rule 30(b)(1), rather than the more cumbersome and expensive procedures under the Hague Convention. Societe Nationale Industrielle Aerospatiale, 482 U.S. at 542-43, 107 S.Ct. at 2555. Rule 1 of the Federal Rules of Civil Procedure, thus, would be well-served by the use of the deposition notice procedure under Rule 30(b)(1).

Further, three of the five factors generally identified by federal courts in determining whether an individual is a managing agent weigh in favor of determining the pilots are managing agents. Although it is clear from Foo Kim Boon's declaration that the pilots had no general corporate management responsibilities or power to exercise judgment in corporate matters, Foo Kim Boon Decl. ¶ 2, nevertheless, only the pilots had the general responsibilities "respecting the matters involved in the litigation." Since the primary matter involved in this litigation is identifying who is responsible or liable for the crash, the pilots who were flying the airplane at the time of the crash have the most relevant information. Moreover, no other employee or agent of SIA's is in a position of higher authority

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[11] The declaration of Daniel Y.M. Song establishes that the government of Taiwan is investigating the crash of flight SQ006 in Taipai, and that the pilots were interrogated as part of that investigation. Song Decl. ¶ 3. The pilots were allowed to return to Singapore, following an agreement to return to Taipai in the event criminal prosecution is commenced against them. Id. In the meantime, they have surrendered their passports and cannot travel internationally. Id. No criminal charges have yet been filed against the pilots, and it is expected that the decision whether to prosecute the pilots will be made "after the issuance of the Final Accident Report by the Aviation Safety Council of Taiwan . . . before the end of this year." Song. Decl. ¶¶ 3-4. Under Taiwanese law, a criminal defendant has the right against self-incrimination. Song Decl. ¶ 5.

than the pilots regarding the information plaintiffs seek about the airplane crash and its aftermath. See Mattschei v. United States, 600 F.2d 205, 208 (9th Cir. 1979) (The "ultimate responsibility for the safe operation of aircraft rests with the pilots. . . ." (citations and internal quotation marks omitted)); Spaulding v. United States, 455 F.2d 222, 226 (9th Cir. 1972) ("The pilot is in command of his aircraft. He is directly responsible and has final authority for its operation."); Moorhead v. Mitsubishi Aircraft Int'l, Inc., 828 F.2d 278, 285 (5th Cir. 1987) ("Pilots are directly responsible for the safety of their passengers and are the final authority for the operation of their planes."); cf. 14 C.F.R. § 91.3(a) ("The pilot in command of a[][domestic] aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft."), § 121.533(d) ("Each pilot in command of a[] [domestic] aircraft is, during flight time, in command of the aircraft and crew and is responsible for the safety of the passengers, crewmembers, cargo and airplane."), § 121.533(e) ("Each pilot in command [of a domestic aircraft] has full control and authority in the operation of the aircraft, without limitation, over other crewmembers and their duties during flight time. . . ."). Additionally, the pilots and SIA have a common interest in avoiding liability for the crash; or, stated conversely, they have a common defense to this litigation, e.g., blaming others, such as the Taiwan Airport Authority, for the crash. On the other hand, in light of the pending criminal investigation into the crash in Taiwan, and the pilots' right against self-incrimination under Taiwanese law, it cannot be said that the pilots can be relied upon to give testimony at SIA's request until the threat of criminal prosecution has disappeared.

For the foregoing reasons, the Court finds that the pilots are managing agents of SIA and, as such, they may be deposed under Rule 30(b)(1) by deposition notice to defendant corporation SIA.[12] However, due to the restrictions on the pilots' international travel, it will be necessary to take their

[12] At oral argument, plaintiffs urged the Court to set a deadline by which the pilots' depositions should be taken, noting that logistical problems may be encountered setting depositions dates that are convenient for all counsel, now that several new defendants have been served and counsel for those defendants may desire to attend, or even to participate in, the pilots' depositions. Setting a deadline will facilitate scheduling the pilots' depositions, plaintiffs argued.

depositions in Singapore, as plaintiffs have offered. Jt. Stip. at 13:22-24.

2. Location of Rule 30(b)(6) depositions:

Rule 30(b)(6) provides that:

> A party may in the party's [deposition] notice . . . name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. . . . The persons so designated shall testify as to matters known or reasonably available to the organization.

Fed. R. Civ. P. 30(b)(6). "Once served with a Rule 30(b)(6) notice, the corporation is compelled to comply, and it may be ordered to designate witnesses if it fails to do so." United States v. J.M. Taylor, 166 F.R.D. 356, 360 (M.D. N.C. 1996).

Here, plaintiffs seek information regarding three broad matters in their Rule 30(b)(6) deposition notice:

> a) the aftermath, events, facts, and circumstances regarding the experience of person[s] on board Flight SQ006 following the crash of Singapore Airlines Flight 006 on October 31, 2000;
> b) the survivability of the crash sequence, including, but not limited to, evacuation from the aircraft, efforts to obtain rescue and medical assistance, and/or the availability or non-availability of rescue assistance and medical attention; and
> c) any investigation by Singapore Airlines LTD regarding these matters.

Jt. Stip. at 6:22-7:2.[13] Defendant SIA argues that these

[13] The plaintiffs aptly argue that, in the event they are not permitted to depose the three pilots under Rule 30(b)(1), the pilots may, nevertheless, be the "persons most knowledgeable"

depositions, and apparently **all** Rule 30(b)(6) depositions noticed in the future, should be taken in Singapore; thus, a protective order should issue.

As a well-known treatise on federal practice notes:

> The deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business. This is subject to modification, however, when justice requires. [¶] An important question in determining where to hold the examination is the matter of expense. An early case stated that in exercising its discretion on an application for a protective order the court might consider the relative burden placed upon the parties and that undue expense to the adverse party would justify a denial of, or terms or conditions on, oral examination by deposition. The protective order rule, now Rule 26(c), was amended in 1970 to include protection from "undue burden or expense" as a ground for a protective order. . . . [¶] In each case in which a motion [for a protective order] is made the court considers the facts, selects the place of examination, and determines what justice requires with regard to payment of expenses and attorneys' fees. . . .

Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2112 at 84-85 (1994 rev.)(footnotes omitted).

It is true, of course, that many trial courts in considering Rule 30(b)(6) depositions have granted a party's motion for a protective order prohibiting the depositions at a location other than the corporation's principal place of business, or denied a motion to compel the taking of depositions at a location other than the corporation's principal place of business, when the corporate party presented competent evidence of either undue expense or burden. See, e.g., Thomas v. Int'l Bus. Machines, 48 F.3d 478, 482-84 (10th Cir. 1995)(upholding trial court's granting of protective order to chairman of board of directors when deposing party gave untimely deposition notice, had not taken depositions of any other corporate personnel, chairman filed affidavit showing lack of personal knowledge and burden to

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under Rule 30(b)(6) regarding the matters noticed in categories a) and b). Jt. Stip. at 16 n.3.

appear at deposition, and deposing party failed to explain why deposition could not have been conducted at corporation's principal place of business); J. Salter v. Upjohn Co., 593 F.2d 649, 651-52 (5th Cir. 1979)(upholding trial court's denial of motion to compel corporate president to appear at place other than corporation's principal place of business, and finding moving party did not establish any peculiar circumstances justifying request). However, "[c]orporate defendants are frequently deposed in places other than the location of the principal place of business, especially in the forum [where the action is pending], for the convenience of all parties and in the general interests of judicial economy." Sugarhill Records Ltd., 105 F.R.D. at 171; Custom Form Mfg., Inc. v. Omron Corp., 196 F.R.D. 333, 338 (N.D. Ind. 2000); Buzzeo v. Board of Educ., Hempstead, 178 F.R.D. 390, 392 (E.D. N.Y. 1998); Sonitrol Distrib. Corp. v. Security Controls, Inc., 113 F.R.D. 160, 161 (E.D. Mich. 1986); see also Leist v. Union Oil Company of California, 82 F.R.D. 203, 204 (E.D. Wis. 1979)("[It] is proper to consider the financial position of the deponent and that of the corporate party for which he works in designating the place for his deposition."); Baker v. Standard Indus., Inc., 55 F.R.D. 178, 179 (D. P.R. 1972)(denying protective order of defendant corporation to require corporate officer's deposition at corporation's principal place of business because no showing corporation is "being put to unnecessary trouble and expense by being required to travel a great distance to give [its Rule 30(b)(6)] deposition").

This Court finds that SIA has not met its burden under Rule 26(c) to show good cause for the issuance of a protective order requiring the noticed Rule 30(b)(6) depositions, and any Rule 30(b)(6) depositions noticed in the future, be held in Singapore since it has presented **absolutely no evidence** showing a specific and particular need for such protective order. See Afram Export Corp. v. Metallurgiki Halyps, S.A., 772 F.2d 1358, 1365 (7th Cir. 1985) (affirming district court's decision to depose Greek corporation's president in United States where corporation made no showing of hardship); South Seas Catamaran, Inc. v. Motor Vessel "Leeway", 120 F.R.D. 17, 21 n.5 (D. N.J. 1988) ("[C]ourts have often required corporate defendants to produce their officers or agents for depositions at locations other than the corporation's principal place of business where there has been no showing that the defendant will suffer any resulting financial hardship."), affirmed by, 993 F.2d 878 (3d Cir. 1993) (Table); Tomingas, 45 F.R.D. at 97 (declining to vacate notice of

deposition where "there has been no showing that any harm would result to defendant's business by virtue of the deponents' brief absence from their jobs").

Here, defendant SIA has **not even identified** the corporate officers, employees or agents whom it would designate to appear for the noticed Rule 30(b)(6) depositions, and thus, has presented no evidence regarding the work or travel schedules of those persons to determine when, if at all, they would be in the United States or Los Angeles or only in Singapore. Without knowing the matters or topics for future Rule 30(b)(6) depositions, it is, of course, impossible for defendant SIA to identify the persons it will designate to appear on behalf of the corporation and to show a specific and particular need for those depositions to be held in Singapore.

Finally, defendant SIA is an international air carrier with contacts and business worldwide; thus, it is the party best able to bear and minimize the expenses associated with the Rule 30(b)(6) depositions. Tomingas, 45 F.R.D. at 97; Schultz v. Koniklijke Luchtvaart Maatschappij N.V. KLM Royal Dutch Airlines Holland, 21 F.R.D. 20, 22 (E.D. N.Y. 1957); see also Sugarhill Records Ltd., 105 F.R.D. at 171 ("Motown is a large corporation and cannot seriously contend that travel on behalf of the corporation by one of its managing agents is unexpected or that such travel . . . for deposition imposes a severe burden on it."); Supine v. Compagnie Nationale Air France, 21 F.R.D. 42, 44 (E.D. N.Y. 1955) ("In view of the fact that defendant is an airline, and can carry its employees at no charge, [a deposition notice scheduling defendant's managing agents' testimony in New York rather than France] is not unreasonable.").

For all these reasons, SIA has not met its burden under Rule 26(c) to show good cause for the issuance of a protective order requiring that the noticed Rule 30(b)(6) depositions, and any Rule 30(b)(6) depositions noticed in the future, take place **only** in Singapore.

ORDER

1. Attorney Stephen R. Ginger is personally sanctioned $2,000.00 for violating the spirit and letter of Local Rule 37, and he shall pay said sanctions to the Clerk of Court within ten (10) days of the date of this Order.

2. Defendant Singapore Airlines, Ltd.'s motion for a protective order to prevent the taking of the depositions of its pilots under Federal Rule of Civil Procedure 30(b)(1), and, instead, to require that the Hague Convention be followed, is denied; however, pursuant to Rule 26(c)(2), the depositions of the pilots shall be taken in Singapore, due to limitations on the

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pilots' ability to travel internationally. The plaintiffs shall renotice these depositions within the next twenty (20) days, setting them in Singapore, to commence no later than January 18, 2002.

3. Defendant Singapore Airlines, Ltd.'s motion for a protective order to require that the noticed Rule 30(b)(6) depositions, and any Rule 30(b)(6) depositions noticed in the future, be taken only in Singapore is denied.

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Initials of Deputy Clerk____