UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Case No. MDL 1394-GAF(RCx) Date: November 6, 2002
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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HON. ROSALYN M. CHAPMAN, UNITED STATES MAGISTRATE JUDGE

Debra Taylor Deputy Clerk	None Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS: Juanita Madole	ATTORNEYS PRESENT FOR DEFENDANT(S): Rod D. Margo Scott Cunningham

PROCEEDINGS: DEFENDANTS' MOTION FOR PROTECTIVE ORDER RE DEPOSITION OF DR. CHEONG CHOONG KONG

On October 4, 2002, defendant SIA filed a notice of motion and motion for protective order re deposition of Dr. Cheong Choong Kong, joint stipulation, and the supporting declarations of Dr. Cheong and Scott D. Cunningham and exhibits, and plaintiffs filed the opposing declaration of Juanita M. Madole and exhibit. On October 16, 2002, defendant SIA filed a supplemental memorandum. Oral argument was held before Magistrate Judge Rosalyn M. Chapman on November 6, 2002. Juanita Madole, attorney-at-law, appeared on behalf of plaintiffs. Rod D. Margo and Scott Cunningham, attorneys with the firm Condon & Forsyth, appeared on behalf of defendant.

BACKGROUND

On July 1, 2002, plaintiffs unilaterally noticed the deposition of Dr. Cheong Choong Kong, the Deputy Chairman and Chief Executive Officer ("CEO") of Singapore Airlines, setting it on August 1, 2002, in Santa Monica, California. Cunningham Decl., ¶ ¶ 2, Exh. A. Thereafter, defendant SIA's counsel corresponded with plaintiffs' counsel regarding whether the

deposition should take place and, if so, the location of the deposition.[1] Cunningham Decl., ¶¶ 4-6, Exhs. B-D.

Defendant SIA seeks a protective order prohibiting the deposition of Dr. Cheong on the ground he "does not have unique or superior knowledge regarding the accident or the ensuing investigation." Jt. Stip. at 2:26-27. Additionally, defendant SIA argues there are alternative and less intrusive means of taking discovery on Dr. Cheong, such as written interrogatories or even a written deposition; other employees of defendant SIA are more knowledgeable; and the deposition of Dr. Cheong would be duplicative of other discovery already taken or to be taken in the future. Jt. Stip. at 4-16. Finally, defendant SIA contends that since it and Dr. Cheong are foreign litigants, whose principal place of business and residence are Singapore, a deposition in the United States would be inconvenient and burdensome to defendant SIA and personally burdensome to Dr. Cheong. Jt. Stip. at 16-21; Cheong Decl., ¶ 5.

However, plaintiffs argue that the deposition of Dr. Cheong should be allowed so he can be examined on the public statements regarding the Taiwan crash he made on March 11, 2001, Madole Decl., ¶ 2, Exh. A, and the firing of Captain Foong and First Officer Latiff. Jt. Stip. 25:5-26:3. Specifically, plaintiffs note that Dr. Cheong made public statements, albeit not under oath, that could help resolve this matter in that he acknowledged defendant SIA "accept[s] th[e] finding" that its aircraft was "on the wrong runway" and that defendant SIA "fully accept[s] our responsibility to passengers, crew and families." Madole Decl., ¶ 2, Exh. A. Plaintiffs now want these statements to be under oath. Jt. Stip. at 25:3-4. Additionally, in his declaration, Dr. Cheong states that on July 22, 2002, he was present and participated in "a meeting of a select group of [defendant SIA's] management committee," which reached "a broad consensus (within the select group of the management committee) at this meeting that the employment of the two pilots [Capt. Foong and First Officer Latiff] be terminated." Cheong Decl., ¶ 12.

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[1] This correspondence shows, among other things, that on July 12, 2002, defendant SIA offered "to forego moving the Court for a protective order if the [plaintiffs] would agree to conducting Dr. Cheong's deposition in Singapore. . . ." Cunningham Decl., ¶ 4, Exh. B.

DISCUSSION

Rule 26(c) requires the moving party establish "good cause" for the protective order and that "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).[2] Defendant SIA argues good cause exists for a protective order because Dr. Cheong has no unique knowledge about the incident or its investigation and Dr. Cheong's deposition in the United States would inconvenience and burden him, as well as burden defendant SIA.

Defendant SIA's argument, to a large extent, relies on the following proposition:

> When a high-level corporate executive lacks unique or superior knowledge of the facts in dispute, courts have found that good causes exists to prohibit [his] deposition. *See, e.g., Thomas v. Int'l Bus. Machines,* 48 F.3d 478, 482 (10th Cir. 1995); *Lewelling v. Farmers Ins. of Columbus, Inc.,* 879 F.2d 212, 218 (6th Cir. 1989); *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979); *see also* SHWARZER [sic], TASHIMA & WAGSTAFFE, CAL. PRACTICE GUIDE: FED. CIV. PRO. BEFORE TRIAL [¶] 11:345.5 (The Rutter Group 2002)("The CEO of a corporation . . . may obtain a protective order from being deposed about matters as to which he or she has no personal knowledge. This prevents use of depositions for harassment purposes and protects such persons from the interference of the discovery process.").

Jt. Stip. at 7:7-17. This is a true proposition, which plaintiffs do not dispute. Rather, plaintiffs argue that Dr. Cheong does have personal knowledge about which he should be examined, and that his deposition will enhance, and in the long-run shorten, the discovery process in this case. The Court agrees with plaintiffs.

As an initial matter, "'[w]hen a witness has personal knowledge of facts relevant to the lawsuit, even a corporate president [or CEO] is subject to deposition.'" Rolscreen Co. v. Pella Products of St. Louis, Inc., 145 F.R.D. 92, 98 (S.D. Ia.

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[2] This Court's Order of October 23, 2002, has a complete discussion of Rule 26(c), which need not be repeated here.

1992) (quoting Digital Equipment Corp. v. Systems Industries, Inc., 108 F.R.D. 742, 744 (D. Ma. 1986)); see also Anderson v. Air West, Inc., 542 F.2d 1090, 1092-93 (9th Cir. 1976) (plaintiffs may depose sole stockholder who "probably had some knowledge" regarding substance of plaintiffs' claims); Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975) (district court erred in granting protective order ordering plaintiff not to depose Herald-Examiner's publisher when plaintiff suggested possible information publisher might have that others did not); Six West Retail Acquisition, Inc. v. Sony Theatre Mgmt. Corp., 203 F.R.D. 98, 102-06 (S.D. N.Y. 2001) (compelling deposition of CEO of Sony Corporation when plaintiff "presented sufficient evidence to infer that [CEO] had some unique knowledge on several issues related to its claims"). "Further, the general rule provides that a claimed lack of knowledge does not provide sufficient grounds for a protective order." Digital Equip. Corp., 108 F.R.D. at 744; Amherst Leasing Corp. v. Emhart Corp., 65 F.R.D. 121, 122 (D. Conn. 1974). Moreover, "the fact that the witness has a busy schedule is simply not a basis for foreclosing otherwise proper discovery." CBS, Inc. v. Ahern, 102 F.R.D. 820, 822 (S.D. N.Y. 1984).

Here, Dr. Cheong's own declaration belies defendant SIA's claim that he lacks unique knowledge of relevant information. To the contrary, Dr. Cheong, as Deputy Chairman and CEO of SIA, participated in defendant SIA's decision to fire Capt. Foong, whom this Court found to be a managing agent of defendant SIA and whom defendant SIA was ordered to produce for deposition. Thus, this is not a situation in which a party is attempting to depose a corporate officer without any reasonable belief the officer has relevant information.[3] Rather, Dr. Cheong has unique or superior knowledge of at least one material and relevant issue that this Court addressed on October 23, 2002, and may have to address again in the future; thus, plaintiffs' may properly depose Dr. Cheong.

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[3] Our case, thus, is significantly different than the situation in Thomas, where a low-level clerical employee sought to depose IBM's chairman regarding an age discrimination claim. Thomas, 48 F.3d at 483. Here, a fatal air crash has occurred, and apart from Dr. Cheong's conclusory statements to the contrary, one could reasonably expect the CEO of the airline involved in the crash to have knowledge of it.

Moreover, when an individual 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 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 of that individual 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 Pacific R.R. Co., 750 F.2d 703, 708-09 (8th Cir. 1984). Here, Dr. Cheong made public comments wherein he accepted responsibility on behalf of defendant SIA for the Taiwan crash. Plaintiffs seek to ask questions of Dr. Cheong regarding these public comments to bind defendant SIA at trial, and this is certainly an acceptable use of discovery. See Fed. R. Civ. P. 32(a)(2) ("The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent . . . of a public or private corporation, partnership or association . . . which is a party may be used by an adverse party for any purpose."); Black v. United Parcel Service, 797 F.2d 290, 293 (6th Cir. 1986) (per curiam) (district court properly allowed defendant's managing agent's deposition to be read to jury).

Dr. Cheong's conclusory claim that he has no personal knowledge regarding the Taiwan crash, and that other SIA employees provided to him the information he included in his public comments about the crash, Cheong Decl., ¶ 10,[4] is not good cause for granting a protective order; rather, "[t]he plaintiff[s] [are] entitled to 'test' the claim of lack of knowledge . . . by deposing the witness." Travelers Rental Co., Inc., 116 F.R.D. 140, 143 (D. Mass. 1987); Amherst Leasing Corp., 65 F.R.D. at 122. Further, Dr. Cheong may also be examined regarding the sources of his information, so plaintiffs can perform follow-up discovery of those employees. This will, in the long-run, lead to faster, more

[4] This claim misses the point. Even if Dr. Cheong's public statements were based on information from other sources, Dr. Cheong, as Deputy Chairman and CEO of SIA, still had to decide what to do with the information he received. It is difficult to believe the CEO of a major international airline would make a public statement accepting responsibility for a fatal air crash without full consideration of the ramifications of such a pronouncement, and plaintiffs are certainly entitled to explore this avenue of inquiry when deposing Dr. Cheong.

effective, and cheaper litigation of this case. Fed. R. Civ. P. 1.

Finally, as a general rule:

> 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. . . . [¶] 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 81-85 (1994 rev.)(footnotes omitted). Here, the declaration of Dr. Cheong shows his absence from Singapore for a deposition in the United States might adversely affect defendant SIA's operations and personally interfere with Dr. Cheong's duties as Deputy Chairman and CEO of SIA. Thus, Dr. Cheong should be deposed in Singapore. However, since this may increase plaintiffs' expenses, the costs of travel by plaintiffs' counsel to Singapore to depose Dr. Cheong shall be evenly split between the parties. Huynh v. Werke, 90 F.R.D. 447, 449 (S.D. Oh. 1981); Connell v. Biltmore Security Life Ins. Co., 41 F.R.D. 136, 137 (D. S.C. 1966).

ORDER

Defendant SIA's motion for a protective order re deposition of Dr. Cheong Choong Kong is granted, in part, and denied, in part, as set forth herein. The parties shall agree on a date to take Dr. Cheong's deposition in Singapore within the next ninety (90) days.

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Initials of Deputy Clerk____