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Lit Alerts

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Judge Takes Lawyer To Task For Obstructing Deposition Testimony

A magistrate judge issued a scathing opinion directed at attorney conduct that interferes with witness testimony at deposition. In *MAG Aerospace Industries, Inc. v. B/E Aerospace, Inc.*, No. CV 13-6089 (C.D. Cal. Aug. 28, 2014), the defendant's attorney raised numerous inappropriate objections to the supposed vagueness of the plaintiff's counsel's questions at deposition. The defendant's attorney then encouraged the witness not to answer the supposedly vague questions if he was not "100% sure" of the answer. As a result, the witness claimed he was unable to understand even the simplest of words, including "what," "does," "have," "use," "which," and others. The judge found the attorney and witness's conduct to be "essentially a filibuster of an entire day of 'testimony.'" Scolding further, the judge called out the defendant's counsel for "'cluing' the witness to ask the questions to be rephrased, and wasting everyone's time trying to engage plaintiff's counsel in banter." The judge ordered the defendant to reimburse the plaintiff's fees incurred taking the deposition and barred the defendant's counsel from making any objections on grounds of vagueness, foundation, or hearsay at the second deposition.

Forum Selection and Arbitration: Second Circuit Deepens Circuit Split On Avoiding Arbitration Rules

The Second Circuit recently ruled that a mandatory forum selection clause may supersede regulatory rules requiring arbitration of customer disputes. In *Goldman, Sachs & Co. v. Golden Empire Schools Financing Authority*, No. 13-797-cv (2d Cir. Aug. 21, 2014), a dispute arose between a school district and the underwriter of its auction rate securities. The school district commenced arbitration, relying on FINRA rules requiring the underwriter to arbitrate disputes at the request of its customers. The underwriter, however, moved for declaratory relief finding that it was not required to arbitrate based on a forum selection clause in its contract with the school district. The Second Circuit sided with the underwriter, finding that the regulatory obligation to arbitrate was a background obligation that was superseded by the later-executed forum selection clause. Because the forum selection clause specifically foreclosed arbitration, the parties were required to litigate in court. The Second Circuit noted that its holding was a departure from a recent holding of the Fourth Circuit addressing substantially similar facts.

Federal Courts: Ninth Circuit Says No "Tag Jurisdiction" Over Corporations That Are Not "Essentially At Home" In The Forum State

For natural persons, *Burnham v. Superior Court*, 495 U.S. 604 (1990) allows courts to exercise "tag jurisdiction," meaning that service of process on a defendant while he or she is in the forum state creates personal jurisdiction when the defendant is a non-resident and the plaintiff's claims are completely unrelated to the defendant's activities in the forum state. The Ninth Circuit has now held that federal due process does not allow tag jurisdiction to apply to corporate defendants. *Martinez v. Aero Caribbean*, No. 12-16043 (9th Cir. Aug. 21, 2014). Thus, service of process on a corporate officer, while that officer is in the forum state, does not create general personal jurisdiction over the corporation, according to the Ninth Circuit. Under *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014), general personal jurisdiction over a corporate defendant comports with

the Fourteenth Amendment only if "its contacts 'render it essentially at home in' the state." In addition, courts may still exercise specific personal jurisdiction over a corporation when a case "arises out of or relates to the defendant's contacts with the forum."

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