

**THOMAS & BETTS CORP., Plaintiff/Counter-Defendant, v. HOSEA PROJECT  
MOVERS, LLC, Defendant/Counter-Plaintiff.**

**NO. 02-2953-Ma/An**

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
TENNESSEE, WESTERN DIVISION**

**2004 U.S. Dist. LEXIS 28657**

**September 3, 2004, Decided  
September 8, 2004, Filed**

**SUBSEQUENT HISTORY:** Costs and fees proceeding at, Magistrate's recommendation at *Thomas & Betts Corp. v. Hosea Project Movers, LLC, 2005 U.S. Dist. LEXIS 22177 (W.D. Tenn., June 15, 2005)*

**COUNSEL:** [\*1] For Thomas & Betts Corporation, Plaintiff: Oscar C. Carr, III, Patrick T. Burnett, GLANKLER BROWN, PLLC, Memphis, TN.

For Hosea Project Movers, LLC, Defendant: M. Clark Spoden, W. Judd Peak, FROST BROWN TODD LLC, Nashville, TN.

For Hosea Project Movers, LLC, Counter Claimant: M. Clark Spoden, FROST BROWN TODD LLC, Nashville, TN.

For Thomas & Betts Corporation, Counter Defendant: Oscar C. Carr, III, Patrick T. Burnett, GLANKLER BROWN, PLLC, Memphis, TN.

**JUDGES:** S. THOMAS ANDERSON, UNITED STATES MAGISTRATE JUDGE.

**OPINION BY:** S. THOMAS ANDERSON

**OPINION:**

**ORDER DENYING DEFENDANT'S MOTION  
TO QUASH NOTICES OF DEPOSITION**

Before the Court is Defendant Hosea Project Movers, LLC's Motion to Quash Notices of Deposition filed on June 21, 2004. United States District Judge Samuel H. Mays referred these matters to the Magistrate Judge for determination. For those reasons set forth below, Defendant's Motion is **DENIED**.

**BACKGROUND**

This matter involves the depositions of Mr. David Hosea, Mr. William Holmes, and Mr. Ernie Liggett, three corporate officers for the Defendant, a limited liability company with its principal place of business in northern Kentucky. At some point prior [\*2] to June 11, 2004, the parties agreed that the corporate officers would be deposed in Nashville, Tennessee on June 11, 2004 at Defendant's counsel's office. (Pl's Resp. to Def's Mot. to Quash Notices of Dep. at 4). On June 9, however, Defendant's counsel notified Plaintiff's counsel that the officers would be unable to travel to Nashville on June 11. (*Id.*). The following day Defendant's counsel notified Plaintiff's counsel that the officers would also be unable to travel to Memphis for depositions "but [could] be available in Covington KY on June 25." (Def's Mem. in Supp. of Mot. to Quash Notices of Dep. at 1, Ex. B). Nevertheless, on June 15, 2004 Plaintiff's counsel sent Defendant's counsel three Notices of Deposition for the officers stating the depositions were to occur at Plaintiff's counsel's office in Memphis, Tennessee on Friday, June 25, 2004 at 3:00 P.M. Defendant subsequently filed this Motion before the Court.

**ANALYSIS**

Generally, a court presumes the deposition of a corporate agent should occur at the corporation's principal place of business. *See, e.g., Salter v. Upjohn Co., 593 F.2d 649, 651 (5th Cir. 1979); M&C Corp v. Erwin Behr GMBH & Co., 165 F.R.D. 65, 67 (E.D. Mich. 1996);* [\*3] *Dollar Systems, Inc. v. Tomlin, 102 F.R.D. 93, 94 (M.D. Tenn. 1984)*. This presumption, however, can be rebutted by a showing of cause by the moving party. *Rapoca Energy Co. v. AMCI Export Corp., 199 F.R.D. 191, 193 (W.D. Va. 2001)*.

A court "must consider each case on its own merits" when determining whether a deposition should occur away from the corporation's principal place of business. *Turner v. Prudential Ins. Co. of Am., 119 F.R.D. 381,*

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383 (M.D.N.C. 1988). Ultimately, "the court has substantial discretion to specify the time and place of any deposition." *In re Standard Metals Corp.*, 817 F.2d 625, 628 (10th Cir. 1987). While many factors could be examined by the Court when determining where the deposition should occur, the Court will examine those factors listed in *Armsey v. Medshares Management Services, Inc.* These factors include:

[the] location of counsel for the parties in the forum district, the number of corporate representatives a party is seeking to depose, the likelihood of significant discovery disputes arising which would necessitate resolution by the forum court; whether the persons [\*4] sought to be deposed often engage in travel for business purposes; and the equities with regard to the nature of the claim and the parties' relationship.

*Armsey v. Medshares Mgmt. Servs., Inc.*, 184 F.R.D. 569, 571 (W.D. Va. 1998). The Court will also consider "whether the defendant has filed a permissive counter-claim." *Rapoca*, 199 F.R.D. at 193.

Examining each of these factors, the Court concludes Memphis is the more appropriate location for the depositions. First, Plaintiff's counsel is located in Memphis, the forum of this lawsuit. Second, Plaintiff has requested to depose only three corporate officers. To the Court, three officers does not seem overly burdensome or extreme. Third, this case has been filled with discovery disputes. As a matter of fact, five motions have already been filed in this case regarding the discovery process. Because there is a high likelihood another potential dispute could arise during the taking of these depositions, a District Judge or Magistrate Judge within the Western District of Tennessee would be better equipped to handle

a problem than a similar member of the judiciary in Kentucky or Ohio.

Fourth, Defendant, [\*5] a regional corporation, is likely to engage in travel for business purposes. Moreover, it is difficult to ignore the fact the Defendant originally agreed to travel to Nashville for the depositions. Memphis is only three hours further by car from Nashville, and a search of numerous online travel sites shows an airline ticket from Cincinnati to Nashville is similar in price, if not cheaper, than a ticket from Cincinnati to Memphis. Fifth, the parties' relationship itself promotes these depositions occurring in Memphis. The Plaintiff notes in its Response to Defendant's Motion that the Defendant "voluntarily entered into a contract [with the Plaintiff] mandating that any litigation concerning the agreement would occur in Tennessee." (Pl's Resp. to Def's Mot. to Quash Notices of Dep. at 4). Because of this contract, it would seem unfair if a portion of this litigation, including discovery, occurred outside of Tennessee. Finally, Defendant voluntarily filed a permissive counter-claim in the Western District of Tennessee.

After examining all factors, the Court concludes the depositions of the three listed agents should be held in Memphis. Defendant's Motion is therefore **DENIED**. [\*6] The Defendant is ordered to produce the three officers at Plaintiff's counsel's office for depositions at a time to be agreed upon by counsel for the parties, but no later than October 5, 2004.

Pursuant to the Order of Reference, any objections to this Order shall be made in writing within ten days after service of this Order and shall set forth with particularity those portions of the Order objected to and the reasons for those objections.

**IT IS SO ORDERED.**

S. THOMAS ANDERSON

UNITED STATES MAGISTRATE JUDGE

Date: September 03, 2004