
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**UNISHIPPERS GLOBAL LOGISTICS,
LLC, a Delaware limited liability
company,**

Plaintiff,

v.

**DHL EXPRESS (USA), INC., an Ohio
corporation,**

Defendant.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:08cv894

District Judge Dale A. Kimball

Magistrate Judge Paul M. Warner

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Dale A. Kimball pursuant to 28 U.S.C. § 636(b)(1)(A).¹ Before the court is DHL Express (USA), Inc.’s (“DHL”) motion for a protective order precluding the deposition of DHL’s previous Chief Financial Officer (“CFO”) and current Chief Executive Officer, Ian Clough.² The court has carefully reviewed the memoranda submitted by the parties. Pursuant to civil rule 7-1(f) of the United States District Court for the District of Utah Rules of Practice, the court elects to determine the motion on the basis of the written memoranda and finds that oral argument would not be helpful or necessary. *See* DUCivR 7-1(f).

¹ *See* docket no. 98.

² *See* docket no. 115.

While the court acknowledges the apex doctrine as set forth in DHL's motion, it concludes that Unishippers should be allowed to depose Mr. Clough. He is obviously a high-level executive but it appears that he may have unique personal knowledge of the matter in dispute, especially as DHL's previous CFO. Furthermore, because the deposition will be taken at DHL's Florida headquarters, there is little hardship, if any, to Mr. Clough. Accordingly, for the reasons set forth in Unishippers Global Logistics, LLC's ("Unishippers") memorandum in opposition to DHL's motion, the court **DENIES** DHL's motion for a protective order.

Unishippers also seeks its attorney fees and costs associated with defending this motion. However, because DHL's motion was "substantially justified," the court has determined that each party shall bear its own costs and attorney fees. Fed. R. Civ. P. 37(a)(5)(ii).

IT IS SO ORDERED.

DATED this 12th day of January, 2010.

BY THE COURT:



PAUL M. WARNER

United States Magistrate Judge