

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-23494-CIV-HUCK/O'SULLIVAN

OLEM SHOE CORP.,
a Florida corporation,
Plaintiff,

v.

WASHINGTON SHOE CO.,
a Washington corporation,
Defendant.

/**ORDER**

THIS MATTER comes before the Court on the Plaintiff's Motion to Commission a Person Before Whom Deposition Upon Written Questions may be Taken (DE # 88, 5/17/10). The defendant argues that the Hague Convention Agreement between the United States and China prohibits the court from commissioning a person to take a deposition in China. The defendant further argues that normally the taking of such deposition would be permitted by Chapter II, Article 17 of the Hague Convention, but China has excluded itself from Chapter II, Article 17, and the United States has accepted China's reservation. The undersigned disagrees, and finds that Hague Convention is discretionary.

The preamble of the Convention specifies its purpose 'to facilitate the transmission and execution of Letters of Request' and to 'improve mutual judicial co-operation in civil or commercial matters.' The preamble does not speak in mandatory terms which would purport to describe the procedures for all permissible transnational discovery and exclude all other existing practices. The text of the Evidence Convention itself does not modify the law of any contracting state to use the Convention procedures, either in requesting evidence or in responding to such requests, or compel any contracting state to change its own evidence-gathering procedures.

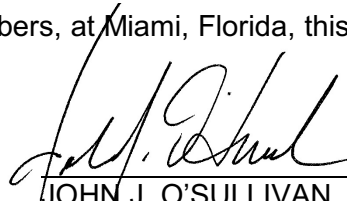
Societe Nationale v. U.S. Dist. Court, S.D. Iowa, 107 S.Ct. 2542, 2550-2551 (citations omitted).

The Hague Convention is not mandatory. Id., at 2550. Accordingly, it is

ORDERED AND ADJUDGED that the Plaintiff's Motion to Commission a Person Before Whom Deposition Upon Written Questions may be Taken (DE # 88, 5/17/10) is GRANTED. The undersigned will issue a separate Order detailing the commission of the person before whom a deposition upon written questions may be taken. It is further

ORDERED AND ADJUDGED that the defendant has the option of withdrawing its cross-examination questions and re-cross examination questions.

DONE AND ORDERED, in Chambers, at Miami, Florida, this 18th day of June, 2010.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
United States District Judge Huck
All Counsel of Record