

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

INHALATION PLASTICS, INC.,

Plaintiff,

vs.

Civil Action 2:07-CV-116
Judge Smith
Magistrate Judge King

MEDEX CARDIO-PULMONARY, INC.,

Defendant.

OPINION AND ORDER

Counter-defendant David Levine has filed a motion requesting a telephone conference to resolve a dispute concerning the proposed depositions of Dominick Arena and Georg Landsberg. *Notice for Request for a Telephone Conference*, Doc. No. 189. In the motion and reply in support, counter-defendant Levine (1) requests leave to again depose Mr. Arena, who was originally deposed on June 3, 2011; and (2) requests leave to depose Dr. Landsberg, a resident of Germany, in Germany.

A party who seeks to depose a person who "has already been deposed in the case" must obtain leave of the court. Fed. R. Civ. P. 30(a)(2). Under Fed. R. Civ. P. 30, the court will deny leave if denial is consistent with the standard outlined in Fed. R. Civ. P. 26. A court will therefore deny leave to conduct the second deposition "if it determines that . . . the party seeking discovery has had ample opportunity to obtain the information by discovery in the action." Fed. R. Civ. P. 26(b)(2)(C). Here, it is undisputed that counter-defendant Levine was a party at the time of Mr. Arena's deposition and that both he and his counsel appeared at the deposition. *Medex CP's and Medical ASD's Joint Response to David Levine's Request for Telephone Conference*,

Ex. B., Doc. No. 193-2, pp. 1-2. Although counter-defendant Levine raises certain concerns about the production of documents in advance of Mr. Arena's original deposition, he does not identify the relevant documents with any specificity. In any case, he offers no explanation for his failure to address any such concerns in connection with the original deposition of Mr. Arena or for waiting until the final weeks of the discovery period to seek Mr. Arena's re-deposition. Counter-defendant Levine's request for leave to re-depose Mr. Arena is therefore **DENIED**.

This Court has "discretion to limit the scope of discovery where the information sought is overly broad or would prove unduly burdensome to produce." *Surles ex rel. Johnson v. Greyhound Lines, Inc.*, 474 F.3d 288, 305 (6th Cir. 2007). In particular, the Court is required to limit discovery if "the party seeking discovery has had ample opportunity to obtain the information by discovery in the action" or if "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." Fed. R. Civ. P. 26(b)(2)(C). Counter-defendant Levine proposes to depose Dr. Landsberg in Germany but fails to address any of the concerns attendant to a conducting a deposition in a foreign country or to demonstrate that he has met any of the procedural requirements of Rule 28(b) of the Federal Rules of Civil Procedure. See *Reiss v. Société Centrale du Groupe Des Assurances Nationales*, 246 F. Supp. 2d 285, 290 (S.D.N.Y. 2003); *Mitre Sports Int'l Ltd. v. Home Box Office, Inc.*, 2010 WL 1507792, *3 (S.D.N.Y. April 15, 2010); *In re Vitamin Antitrust Litig.*, No.

MISC.NO.99-197 TFH, 2001 WL 35814436 (D.D.C. Sept. 11, 2001). See also *Menovcik v. BASF Corp.*, 2010 WL 4867408, ** 4-5 (E.D. Mich. November 23, 2010) ("BASF makes no attempt to analyze whether (1) a relevant treaty or convention is applicable to this case (i.e., a treaty akin to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters); (2) a letter of request should be issued; or (3) a noticed deposition before a person who is authorized to administer oaths would be legal under Thai law. Thus, the only possible relevant circumstance is a deposition before a person who has been commissioned by the court, Rule 28(b)(1)(D)", which requires that the "person who administers the oath be in the same place" as the deponent).

In light of counter-defendant Levine's failure to address these matters, as well as the likely burden to the parties of the requested discovery, counter-defendant Levine's request for leave to depose Dr. Landsberg is **DENIED**.

WHEREUPON Counter-Defendant Levine's *Notice for Request for a Telephone Conference*, Doc. No. 189, including his motion for leave to depose Mr. Arena and his motion to for leave to depose Dr. Landsberg, is therefore **DENIED**.

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge

February 29, 2012

