

## Nonresidents Can't Be Compelled to Give Depos in California, Appeal Court Rules

Written by Lucky  
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New news concerning depositions of out of state witnesses. Mr. Jesrani is an experienced litigator who has conducted numerous depositions for individuals, corporations, and other entities. Please see this article from law.com concerning a recent ruling by the California Supreme Court.

Trial courts do not have the power to compel witnesses who live in other states or countries to attend depositions in California, a state appeal court decided today in a products liability suit against Toyota Motor Corp.

A lawyer for manufacturers said that's a positive outcome for corporations, but a split in the courts of appeal indicates the issue might be teed up for review by the California Supreme Court.

In the Los Angeles litigation, the family of Michael Levi Stewart, a teenager who was killed in a 2007 crash in Idaho, alleges that a defective steering rod in his Toyota pickup caused the accident. They also accuse Toyota of moving too slowly in recalling other defective vehicles.

Los Angeles County Superior Court Judge Conrad Aragon ordered Toyota to produce five Japanese employees for depositions in California, with airfare and lodging paid for by the plaintiffs.

But a Second District Court of Appeal panel granted Toyota's petition for a writ of mandate, finding in Toyota v. Superior Court that Aragon didn't have the authority to do that.

"Neither the legislative history nor the meager case authority on this issue persuasively provide otherwise," wrote Justice H. Walter Croskey.

In a concurring opinion, Justice Joan Dempsey Klein urged the California Legislature to revisit the statutory scheme upon which the panel based its decision.

"If foreign corporations doing business here are able to shield their personnel from effective discovery, they would have an unfair advantage over domestic automakers and other competitors, who are subject to extensive discovery in this country," Klein wrote.

Almost immediately after oral argument in the case, the Second District panel took the unusual step of inviting input from a variety of amici curiae, said appellate attorney Gary Simms, who represented amicus Consumer Attorneys of California.

The decision could have negative consequences, Simms said. Domestic corporations, he said, could lodge employees across state lines temporarily to avoid being deposed in California.

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The concurring opinion and the court's direct disagreement with a Fourth District decision, *Glass v. Superior Court*, 204 Cal.App.3d 1048, "point toward Supreme Court review," said Simms, a former staff attorney for California Supreme Court Justice Marvin Baxter.

"We're weighing the decision to appeal on our assessment of whether or not a higher court would take a broader view of the intent of the statute," said plaintiff attorney Matthew O'Reilly, of San Francisco-based O'Reilly Collins.

Snell & Wilmer partner Mary-Christine Sungaila, who represented amici curiae the National Association of Manufacturers and the International Association of Defense Counsel, said Klein's concurring opinion — leaving it to the Legislature to address — would weigh against the high court taking up the case.

Sungaila said the broader impact was good for corporations. "I think that, for businesses, it's somewhat of a relief not having such a disruption and not having to import your employees from wherever they might be around the world," Sungaila said.

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