



Is A Director An “Official At The Highest Level Of Corporate Management”?

By Keith Paul Bishop on February 14, 2012

Liberty Mutual Ins. Co. v. Superior Court, 10 Cal. App. 4th 1282 (1992) involved an attempt by a plaintiff to depose the president of an insurance company. In response, the First District Court of Appeal adopted what is known as the “apex doctrine” – holding:

When a plaintiff seeks to depose a corporate president or other official at the highest level of corporate management, and that official moves for a protective order to prohibit the deposition, the trial court should first determine whether the plaintiff has shown good cause that the official has unique or superior personal knowledge of discoverable information. If not, as will presumably often be the case in the instance of a large national or international corporation, the trial court should issue the protective order and first require the plaintiff to obtain the necessary discovery through less intrusive methods. These would include interrogatories directed to the high-level official to explore the state of his or her knowledge or involvement in plaintiff’s case; the deposition of lower level employees with appropriate knowledge and involvement in the subject matter of the litigation; and the organizational deposition of the corporation itself, which will require the corporation to produce for deposition the most qualified officer or employee to testify on its behalf as to the specified matters to be raised at the deposition. ([Cal.Code Civ. Proc.] § 2025, subd. (d)(6).) Should these avenues be exhausted, and the plaintiff make a colorable showing of good cause that the high-level official possesses necessary information to the case, the trial court may then lift the protective order and allow the deposition to proceed.

Recently, a bank has filed a petition for review with the California Supreme Court that raises the question of whether a director is “an official at the highest level of corporate management” within the meaning of the *Liberty Mutual* holding. The [California Bankers Association](#) has submitted this *amicus curiae* [letter](#) in support of the petition. Although this petition involves a bank, the question should be of interest to directors of all corporations.

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com