Updates

The Washington Supreme Court recently considered whether it would adopt the "apex doctrine."

This doctrine is a framework used by some courts to evaluate whether a party may take the deposition of a company's executives and officers. Under the doctrine, the party seeking to depose a company executive must show: (1) the witness has unique, firsthand knowledge; and (2) they exhausted other ways to discover the information, such as depositions of other witnesses or through interrogatories.

In *Stratford v. Umpqua Bank*, the Washington Supreme Court refused to adopt the apex doctrine, explaining that CR 26 already protects against harassing, burdensome, or otherwise improper discovery. The court explained that the apex doctrine did not comport with CR 26 because it shifted the burden to the party seeking discovery,

rather than the party seeking to avoid the deposition. The court did not foreclose relying on the apex doctrine's premises (executives often do not have firsthand knowledge; apex depositions can be used for harassment; information can be sought by other less intrusive means), but instead focused on which party should carry the burden in the discovery dispute. According to the court, that burden remains with the party seeking protection.

Takeaways for Employers

Stratford v. Umpqua Bank highlights two important employment law considerations. First, companies may consider shielding certain executives from employee matters to build up a factual record for blocking harassing and burdensome depositions. Second, the court stated that these discovery issues should be decided based on evidence of "concrete harm" rather than "broad and conclusory allegations of harm." Thus, a company seeking to protect itself against a harassing and burdensome deposition should bolster its record with affidavits and other evidentiary evidence to support its arguments.

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