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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO., INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER

I. RELIEF REQUESTED

Strider Construction Co., Inc. ("Strider"), by and through its counsel of record, hereby respectfully moves the Court for entry of a protective order requiring the 30(b)(6) deposition of Strider, as well as the personal depositions of Jim Gebhardt and Kyle Gebhardt, occur virtually through remote means, or, in the alternative, near Strider's principal place of business.

II. INTRODUCTION

Despite Strider informing the Idaho Water Resource Board (“IWRB”) of its objection to the added burden, both in time and resources, of two to three employees plus counsel traveling for three to four days, each to Boise, IWRB recently issued (a) a notice of deposition to Strider pursuant to Idaho Rule of Civil Procedure 30(b)(6) for September 20, 2023, in Boise, and (b) in addition, notices of deposition of Kyle Gebhardt and Jim Gebhardt, Strider employees, for September 21, 2023, also in Boise. Kyle Gebhardt resides in Bellingham, Washington and Jim Gebhardt resides in Wenatchee, Washington, near Strider’s respective offices. Though Strider’s counsel informed counsel for IWRB that Kyle Gebhardt and Jim Gebhardt were available either in Bellingham, Seattle (i.e., closer to the largest airport), or virtually, IWRB noted the depositions in Boise, Idaho. Counsel has since attempted to confer with IWRB to allow for the depositions to occur remotely, but IWRB has refused.

As detailed below, the general rule is that a business and its officers are to be deposed near the corporation’s principal offices. Further, witnesses are to be deposed where they reside or work. In the alternative, remote depositions have become a routine and favored option to reduce the cost and burden on witnesses and counsel. Good cause exists to justify a remote deposition or, in the alternative, that the depositions be held near Strider’s principal place of business and/or Kyle Gebhardt or Jim Gebhardt’s residence.

III. RELEVANT FACTS

IWRB solicited bids from contractors based on written plans and specifications provided by the Board for certain improvements to the Priest Lake Water Management Project Outlet Dam located in Priest Lake, Idaho (the “Project”). Declaration of Kyle Gebhardt (“Gebhardt Decl.”) at ¶ 3. Strider submitted the lowest responsive bid and was, in turn, awarded the contract by IWRB for the Project. *Id.* As such, Strider did not have the opportunity to negotiate or modify IWRB’s contract terms, including the venue or forum for resolving disputes as drafted by IWRB. *Id.*

After disputes arose on the Project, Strider terminated the Contract and commenced suit as required by the Contract for the balance due to Strider. *See* Strider Complaint. In response, IWRB asserted counterclaims against Strider. *See* IWRB Answer to Complaint and Counterclaim.

Strider is a construction company with its principal place of business in Bellingham, Washington, which is over a two-hour drive to Seattle, Washington without traffic. Gebhardt Decl. at ¶ 4. Strider also has an office in Wenatchee, Washington, which is roughly three hours to either Seattle, Washington or Spokane, Washington. *Id.* Kyle Gebhardt resides in Bellingham, Washington. *Id.* at ¶ 5. Tim Yedinak and Jim Gebhardt reside in Wenatchee, Washington. *Id.*

On August 15, 2023, Strider counsel responded to a request for deposition availability from IWRB counsel, indicating Jim Gebhardt, Kyle Gebhardt, and Tim Yedinak were available in Seattle, Washington. Declaration of Lindsay Watkins (“Watkins Decl.”) at ¶ 2. Seattle was proposed as an accommodation to counsel for IWRB due to proximity to the nearest airport and a conference room was also offered if needed. *Id.* Despite this stipulation to availability, IWRB issued a 30(b)(6) deposition notice to Strider and two personal deposition notices, one to Jim Gebhardt and one to Kyle Gebhardt, all of which provided for the depositions to take place in Boise, Idaho on September 20 and 21, 2023. *Id.* at ¶ 3.

Strider again objected based on the burden to Strider and Kyle and Jim Gebhardt, and proposed that the depositions proceed virtually as the most efficient, cost effective manner. *Id.* at ¶ 4. IWRB again refused and attempts to confer were unsuccessful. *Id.* IWRB’s objection to a remote deposition is that there would be numerous exhibits. *Id.*

As Strider anticipates that two or three individuals will be designated for the 30(b)(6) deposition of Strider on September 20, 2023, and the personal depositions of Jim and Kyle Gebhardt (neither Jim Gebhardt nor Kyle Gebhardt have been named as parties to this lawsuit) have been noted for September 21, 2023, it is anticipated that Strider and four individuals (Mr. Yedinak, Kyle Gebhard, Jim Gebhardt, and counsel for Strider) will need to travel for three to four days depending on flight availability. Gebhardt Decl. at ¶5. In solely driving and flight time, it is

anticipated that Jim and Kyle Gebhardt and Tim Yedinak will each require 12 to 14 hours of travel (i.e., travel to the closest airports and flight times). *Id.* In addition, all individuals will have to travel the day prior (i.e., September 19, 2023), secure lodging and meals for two to three nights, and return on September 22, 2023 (either in the early hours of September 22 or incur the expense of an additional hotel stay), requiring absence from their families and business obligations for the better part of four days (September 19, 20, 21, and 22) and at an expense estimated to exceed \$9,000.00. *Id.* This is an unnecessary burden that will cause disruption to Strider’s business activities and the personal obligations of Tim Yedinak, and Jim and Kyle Gebhardt. *Id.* In contrast, Strider has offered to meet counsel for IWRB in Seattle, which can be reached the same day as the depositions or, in the alternative, proceed via virtual deposition, which would avoid travel for all parties. *Id.* Finally, a virtual deposition would not require travel for any party.

IV. LEGAL AUTHORITY AND ARGUMENT

The Idaho Rules of Civil Procedure grant this court authority on motion to order “that a deposition be taken by telephone or other remote means.” I.R.C.P. 30(b)(4). The Court may also, on motion or its own prerogative, limit the extent of discovery if the discovery sought can be obtained from some other source that is less burdensome or less expensive. I.R.C.P. 26(b)(1)(C). The Court also has the discretion to weigh the burden of a proposed discovery against its likely benefit and tailor the proposed discovery accordingly. *Crawford-El v. Britton*, 523 U.S. 574, 598, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998).

A. The Rules of Discovery Presume Strider and Its Officers Should be Deposed Near Strider’s Principal Place of Business.

The Idaho Rules of Civil Procedure governing litigation seek to limit the cost of discovery and the burden faced by all parties in litigation. *See e.g.*, I.R.C.P. 26(b)(1)(C)(i). Further, the Idaho Rules of Civil Procedure mirror the Federal Rules of Civil Procedure¹ and Federal Courts have

¹ The Idaho Supreme Court has expressed its “preference for interpreting the Idaho Rules of Civil Procedure in conformance with the interpretation placed upon the same language in the federal rules.” *See Obendorf v. Terra Hug*

long held that the general rule is that the deposition of a corporation should be taken at the corporation's principal place of business. *See Zuckert v. Berkliff Corp.*, 96 F.R.D. 161, 162 (N.D.Ill.1982); *see also* Federal Practice and Procedure (Wright & Miller) § 2112 (“The deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business.”).

When a corporation objects to a deposition being taken at a place other than its principal place of business, “the objection should be sustained unless there are unusual circumstances which justify such an inconvenience to the corporation.” *See Sears v. American Entertainment Group, Inc.*, No. 94 C 165, 1995 WL 66411, at *1 (N.D.Ill. Feb. 13, 1995). Further, where a deposition is noticed to be taken at a location other than the corporation's principal place of business, “[t]he purposes underlying the general rule that the depositions should proceed at the corporation's principal place of business create a presumption that the corporation has good cause for a protective order.” *Chris-Craft Indus. Prods., Inc. v. Kuraray Co.*, 184 F.R.D. 605, 607 (N.D. Ill. 1999).

This policy has been confirmed by many Courts, such that in the absence of special circumstances, “a party seeking discovery must go where the desired witnesses are normally located.” *See Work v. Bier*, 107 F.R.D. 789 (D.D.C. 1985); *see also Metrex Research Corp. v. United States*, 151 F.R.D. 122, 125 (D. Colo. 1993) (“[I]n the absence of exceptional or unusual circumstances, when a deponent resides at a substantial distance from the deposing party's residence, the deposing party should be required to take the deposition at a location in the vicinity in which the deponent resides, **even if the deponent is a party.**” (emphasis added)).

This rule is even more stringent when the witness the deposing party seeks to depose is not a party, such as the personal depositions sought of Jim Gebhardt and Kyle Gebhardt. As a general rule, the location of a deposition is determined by the residence or place of business of the

Spray Co., 145 Idaho 892, 897, 188 P.3d 834, 839 (2008); *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 796, 41 P.3d 220, 224 (2001).

deponent, not the location of the court in which the case is pending, and a protective order may be granted to change the proposed location for a deposition when hardship is shown. *See McArthur v. Rock Woodfired Pizza & Spirits*, 318 F.R.D. 136 (W.D. Wash. 2016). In addition, similar to corporations, the general rule is that depositions of corporate agents and officers should be taken at the corporation's principal place of business absent exceptional circumstances. *Lewis v. Ford Motor Co.*, 685 F. Supp. 2d 557 (W.D. Pa. 2010).

Here, there is no dispute that (a) Strider is a corporation with its principal place of business in Bellingham, Washington, (b) Jim Gebhardt and Kyle Gebhardt are not parties to this lawsuit, and (c) travel of two to three witnesses to Boise, Idaho from the witnesses' residences will require significant expense and time (requiring the better part of four days) solely for the convenience and preference of IWRB's counsel. IWRB's demands and refusal to proceed remotely or consistent with the presumptions for depositions of corporations and non-party witnesses is unduly burdensome and costly. There are no exceptional circumstances that require travel and good cause exists to justify a protective order requiring the depositions proceed remotely or, if counsel for IWRB prefers, at a mutually agreeable location near Strider's personal place of business and/or the individuals' residences.

IWRB asserts that Strider is obligated to bear the expense and travel for multiple representatives to travel to Boise for three days, solely because Strider is the Plaintiff. IWRB ignores, however, that (a) Strider had no choice or ability to negotiate the venue clause of the Contract, and (b) IWRB has asserted significant counterclaims against Strider, meaning regardless of who filed first and deemed the "Plaintiff," Strider is defending against claims asserted by IWRB, the Counterplaintiff, and such claims will be explored as part of the 30(b)(6) deposition. Thus, the designation of Plaintiff here is immaterial as it is neither by choice nor is the deposition aimed solely at defending against claims asserted by Strider.

Courts under these circumstances have rejected IWRB's arguments. *See Continental Federal Sav. and Loan Ass'n v. Delta Corp. of America*, 71 F.R.D. 697 (W.D. Okla. 1976) (holding

that, because the defendant asserted counterclaims against the plaintiff, the defendant was to be considered in the same position as the party plaintiff for purposes of ruling on defendant's motion for protective order); *Kovalsky v. Avis Rent-A-Car, Inc.*, 48 F.R.D. 453, 454 (D.F.R. 1969)(holding that a plaintiff that filed in Puerto Rico was not required to be deposed in Puerto Rico when she had no choice but to bring the action in Puerto Rico); *Ellis Air Lines v. Bellance Aircraft Corp.*, 17 F.R.D. 395 (D. Del. 1955) (holding that the principle that a plaintiff should be prepared to answer a notice of deposition in the locale in which he filed suit loses weight when the plaintiff had no choice with respect to forum). Accordingly, Strider's commencement of the action before IWRB does not justify departing from the general rule that corporations and its officers should be deposed near their principal place of business and protective orders should be granted to avoid unnecessary burden or costs.

B. Remote Depositions Provide The Most Cost Effective Solution.

The court and parties must consider the cost incurred by a party to comply with the proposed discovery process and limit any unnecessary burdens or costs. I.R.C.P. 26(b)(1)(C). Idaho Rule of Civil Procedure 26(b)(2)(B) requires that the court “*must* limit the frequency or extent of discovery...[if] the discovery sought is unreasonably duplicative, or *can be obtained from other source that is more convenient, less burdensome, or less expensive.*” I.R.C.P. 26(b)(2)(B) (emphasis added). In this case, the costs of an in person deposition can be almost entirely avoided if a deposition is held through remote means.

The Federal Rules advisory committee further notes the discovery rules “encourage attorneys to be sensitive to the comparative costs of different methods of securing information.” F.R.C.P. 26. This is consistent with Courts across the County urging parties use of remote means to lower the burden on parties, witnesses, the Courts, and counsel. In fact, the Washington Supreme Court revised its rules in October of 2022 to provide for the following presumption *in favor of* remote depositions: “Presumption of Remote Depositions: With respect to discovery, **depositions shall be performed remotely** absent agreement of the parties or a finding of good cause by the

Court to require the depositions be performed in person.” *See* Supreme Court of Washington Order # No. 25700-B-697 (Oct. 27, 2022) (emphasis added).

In determining whether to enter a protective order regarding the location of a deposition, the court should consider the convenience of the parties and relative hardships in attending at the location designated. *New Medium Technologies, LLC v. Barco N. V.*, 242 F.R.D. 460, 467 (N.D. II 2007). Here, the IWRB can achieve the full scope and purpose of discovery through a remote deposition all while avoiding imposing significant time and cost upon Strider and the individual deponents. The IWRB will be able to achieve the discovery goals outlined in the I.R.C.P. if the deposition is held virtually, including asking the same questions, assessing credibility, and receiving the same answers whether the deposition is remote, in Seattle, Bellingham, Wenatchee, or in Boise. In no way will the IWRB’s rights and abilities under Idaho’s broad discovery rules be limited.

IWRB’s sole objection to a remote deposition was that it intends to use numerous exhibits, which in fact lends itself to a virtual deposition. Nevertheless, no reasoning has been provided that outweighs or justifies the time commitment, travel and lodging burden requires of traveling over four days to Boise for two business days of depositions. In this case, the discovery sought can be obtained from a less burdensome and less expensive method if a protective order requiring deposition through remote means is granted. Thus, good cause exists and Strider’s Motion should be granted.

C. Request for Expenses.

Pursuant to I.R.C.P. 37(a)(5), Strider requests the Court award Strider its expenses for bringing this Motion. I.R.C.P. 37(a)(5) states that “the court must, after giving an opportunity to be heard, require the party ... whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.” IWRB’s continued resistance to taking the depositions (a) remotely, which would significantly reduce costs for all parties, or (b) near Strider’s principal place of

business, or (c) at another mutually convenient location necessitated this motion. Strider requests its expenses and attorneys' fees for having to bring this motion.

V. **CONCLUSION**

To reduce the unnecessary costs and burden IWRB seeks to impose on Strider and its representatives (who are not named in this litigation), Strider requests a protective order requiring deposition of Strider occur remotely or, in the alternative, near Strider's principal place of business. Good cause exists, and, therefore, Strider's Motion should be granted.

DATED: This 5th day of September, 2023.

AHLERS CRESSMAN & SLEIGHT PLLC

By: /s/ Lindsay Watkins
 Lindsay Watkins
 Attorneys for Strider Construction Co., Inc.

MEULEMAN LAW GROUP PLLC

By: /s/ Joe Meuleman
 Joe Meuleman
 Attorneys for Strider Construction Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2023, a true and correct copy of the within and foregoing instrument was served upon:

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*Attorney for Defendant Idaho Water
Resource Board*

*Attorney for Defendant Idaho Water
Resource Board*

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

DATED: This 5th day of September, 2023.

/s/ Joe Meuleman