<u>**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**</u>

Docket No. ______________________

SCA EFiled: Oct 09 2025
04:32PM EDT
Transaction ID 77278235

STATE OF WEST VIRGINIA ex rel.
PHH MORTGAGE CORPORATION,

Petitioner and Additional
Counterclaim Defendants Below,

v.

THE HONORABLE DAVID M.
HAMMER, Judge of the Circuit
Court of Jefferson County, West Virginia;
and ANTHONY and HEATHER
DELSIGNORE,

Respondents.

PHH MORTGAGE CORPORATION'S
VERIFIED PETITION FOR WRIT OF PROHIBITION

Bruce M. Jacobs (WV State Bar No. 6333)
Nicholas P. Mooney II (WV State Bar No. 7204)
Spilman Thomas & Battle, PLLC
P. O. Box 273
Charleston, WV 25321-0273
(304) 340-3800
Facsimile: (304) 340-3801
bjacobs@spilmanlaw.com
nmooney@spilmanlaw.com
Counsel for Petitioner
PHH Mortgage Corporation

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

I. QUESTION PRESENTED

1. Whether the Honorable David M. Hammer, Judge of the Circuit Court of Jefferson County, West Virginia ("Circuit Court") exceeded the legitimate powers of the Circuit Court and committed clear legal error in violation of the Hague Convention on Taking Evidence Abroad In Civil Or Commercial Matters, 23 U.S.T. 2555, 28 U.S.C. § 1781 ("Hague Evidence Convention"), and Rule 26(c) of the West Virginia Rules of Civil Procedure when the Circuit Court denied Petitioner PHH Mortgage Corporation's ("PHH") Motion for Protective Order seeking to prohibit the depositions of approximately seven individuals who live in India and the Philippines beyond the geographic jurisdictional limits of the Circuit Court and granting "Defendant/Counterclaim-Plaintiffs' Memorandum in Opposition to Motion for Protective Order and Motion to Compel Depositions" ("Motion to Compel") filed by respondents Anthony Delsignore and Heather Delsignore ("Delsignores")?

II. STATEMENT OF THE CASE

PHH brings this Petition for Writ of Prohibition to prohibit the Circuit Court from enforcing a September 11, 2025 order ("Order") denying PHH's Motion for Protective Order and granting the Delsignores' Motion to Compel, which compels the unprecedented deposition testimony of approximately seven low-level call center employees who live in India and the Philippines.

The issues raised in this Petition for Writ of Prohibition are that the Circuit Court committed clear errors of both international and state law in denying the Motion for Protective Order and requiring PHH to produce those foreign individuals who reside outside the scope of the Circuit Court's jurisdiction for depositions. In its Order, the Circuit Court denied the Motion for Protective Order, concluding: (1) the Hague Evidence Convention is not applicable to the foreign individuals who the Delsignores noticed for depositions, (2) PHH has not demonstrated the depositions of those foreign individuals are unduly burdensome or unfairly duplicitous and (3) those individuals who communicated with the Delsignores one time are "managing agents" of PHH. [Appx. AR 303-309 Order Denying PHH's Motion for Protective Order and Granting the Delsignores' Motion to Compel].

In denying PHH's Motion for Protective Order, the Circuit Court committed clear errors of law that cannot go uncorrected. Contrary to the legal principles set forth in the West Virginia Rules of Civil Procedure and the Hague Evidence Convention, the Circuit Court's Order far surpasses its legal authority to subject foreign nationals to the jurisdictional discovery limits of the Circuit Court. Pursuant to the Order, the Circuit Court has directed the parties to meet and confer to confirm the identity of the foreign witnesses within 10 days of the issuance of the order and required the parties to schedule their depositions within 30 days of the conference. *Id.*

For the reasons stated herein, the Circuit Court's September 11, 2025 Order is in error, the Order should be vacated, and the protective order sought by PHH should be granted.

a. <u>Procedural Background</u>

This case was initiated on August 8, 2023 when Plaintiff David W. Irvin ("Irvin") filed a complaint seeking to evict Anthony ("Mr. Delsignore") and Heather Delsignore (collectively the "Delsignores") from a property located at 363 Palomino Place, Charles Town, West Virginia (the "Property") after the Delsignores became delinquent on their mortgage payments and Irvin purchased the Property in a foreclosure sale. The matter was assigned to the Honorable David Hammer. On September 8, 2023, the Delsignores filed an Answer to the Complaint and a third-party complaint adding PHH and Pill & Pill, PLLC as additional defendants. On October 13, 2023, PHH filed an Answer denying the Delsignores' allegations.

On September 9, 2024, the Delsignores filed a "Notice of Videotaped Rule 30(b)(1) Deposition" ("Deposition Notice") seeking the depositions of seven individuals. On September 23, 2024, PHH filed the Motion for Protective Order seeking the prohibition of the depositions on the grounds that: (1) the Delsignores have already deposed PHH on the information sought in those depositions; (2) the Delsignores intend to conduct third-party depositions regarding the same or similar issues; (3) the individuals noticed for deposition live in India and the Philippines; (4) the Delsignores ignored West Virginia Supreme Court of Appeals precedent, which requires parties to conduct the appropriate international depositions pursuant to the procedures embodied in the Hague Evidence Convention; and (5) requiring the depositions would be unduly burdensome, particularly since PHH produced the recordings of each of the purportedly at-issue telephone calls. On October 21, 2024, the Delsignores filed their Motion to Compel. On September 11, 2025, the Circuit Court issued an Order denying PHH's Motion for Protective Order and granting the Delsignores' Motion to Compel.

b. <u>Factual Background</u>

For years, Anthony Delsignore ignored the growing arrearage in his home mortgage loan payments. He likewise ignored PHH's communications when it offered him assistance to catch up on that arrearage. [Appx. AR 337 Delsignore Dep. 102:2-103:21].

Finally, when he received a notice that a foreclosure sale was imminent, he began to respond to PHH's communications. On April 12, 2023, he contacted PHH and asked what he needed to pay to catch up on his arrearage. [Appx. AR 417 Verdooren Dep. 70:14-71:17]. PHH's customer representative who spoke with Mr. Delsignore advised that he would send Mr. Delsignore a reinstatement quote that would tell him the exact amount he needed to pay. That representative advised Mr. Delsignore that the reinstatement quote would be valid through April

30, 2023. *Id*. On April 13, 2023, the reinstatement quote was generated and sent to Mr. Delsignore advising him that he must send the reinstatements funds such that they were to be received by April 30, 2023. [Appx. AR 410 Verdooren Dep. 42:6-11]. Mr. Delsignore did not believe that he received the reinstatement quote. Thus, he called PHH on April 18, 2023 and asked it to re-send that quote. During that call, PHH's representative advised that the reinstatement quote would be valid through April 30, 2023. [Appx. AR 417 Verdooren Dep. 71:17-72-11].

Despite being advised three times that the reinstatement quote would be valid through April 30, 2023, Mr. Delsignore waited until May 1, 2023 to obtain a check and attempt to make the reinstatement payment. [Appx. AR 338 Delsignore Dep. 107:5-6]. That check was not received by PHH until May 4, 2023. [Appx. AR 414-415 Verdooren Dep. 60:22-61:3].

Mr. Delsignore called PHH on May 11, 2023 and May 25, 2023 regarding his attempt to belatedly reinstate his account. [Appx. AR 343-344 Delsignore Dep. 129:3-6; 130:16-22]. The representatives during those calls advised him that the account had not been reinstated. *Id*. In fact, PHH's vendor, Repay Management Services, LLC ("Repay") had returned the check to Mr. Delsignore on May 11, 2023, because due to him sending it after the April 30, 2023 deadline, the amount of the check was no longer sufficient to catch up the arrearage and reinstate the account. [Appx. AR 343 Delsignore Dep. 126:11-18].

There was confusion about the return of the check, and Mr. Delsignore called PHH again on June 2, 2023. [Appx. AR 434 Verdooren Dep. 138:13-20]. He requested that PHH email him wiring instructions to make the reinstatement payment. [Appx. AR 346-347 Delsignore Dep. 141:22-145:7]. PHH sent him an email the same day with an updated reinstatement quote and wiring instructions. [Appx. AR 345 Delsignore Dep. 135:15-136:13].

There is no question what transpired during any of PHH's calls with Mr. Delsignore. Every one of those calls is recorded, and PHH has produced audio recordings of those calls in this action. Likewise, it has produced in discovery in this action: (1) the April 13, 2023 reinstatement quote; (2) the April 18, 2023 cover letter re-sending the April 13, 2023 reinstatement quote to Mr. Delsignore; (3) the May 11, 2023 letter returning his May 1, 2023 check; (4) the June 2, 2023 reinstatement quote and wiring instructions; (5) the email to Mr. Delsignore providing him the June 2, 2023 reinstatement quote and wiring instructions; (6) the internal emails showing PHH's representative requesting that the June 2, 2023 reinstatement quote and wiring instructions be generated, the emails regarding its creation, and the emails authorizing it to be sent to Mr. Delsignore; and (7) PHH's internal notes regarding each of these events (as well as all of the events related to the action at issue during the relevant time frame).

In fact, PHH has produced a voluminous amount of discovery responses and documents in response to the Delsignores' discovery requests and Irvin's discovery requests. More specifically, it has produced 3,207 pages of documents, answered 26 interrogatories, and responded to 51 requests for production of documents. After its initial responses were served, PHH supplemented those responses by producing another 196 pages of documents.

In addition to its written discovery responses and document productions, PHH has produced a representative for deposition. That deposition involved approximately 23 topics and subtopics and lasted over six hours. That representative testified regarding, among other things: (1) the April 12, 2023 call; (2) the April 13, 2023 reinstatement quote; (3) the April 18, 2023 cover letter re-sending the April 13, 2023 reinstatement quote to Mr. Delsignore; (4) the May 11, 2023 communication returning his May 1, 2023 check; (5) the June 2, 2023 reinstatement quote and wiring instructions; (6) the email to Mr. Delsignore providing him the June 2, 2023 reinstatement quote and wiring instructions; (7) the internal emails showing PHH's representative requesting that the June 2, 2023 reinstatement quote and wiring instructions be generated, the email regarding its creation, and the emails authorizing it be sent to Mr. Delsignore; and (8) PHH's internal notes regarding these and other events. *See e.g.*[Appx. AR 410-11, 415, 417, 431, 434, 438 Verdooren Dep. 42:6-43:4; 44:17-45:16; 48:10-12; 63:2-10; 69:18-70:20; 128:13-22; 138:13-139:17; 155:21-156:13].

Despite obtaining the above discovery from PHH, the Delsignores filed and served a Deposition Notice in which they seek the deposition of approximately seven additional individuals related to the following topics:

1. Agents relating to the 6-2-23 customer call (F70), believed to be Armando Len Gaza III, as well as Depak Kukreja;

2. Agent from 5-25-23 customer call (7GV), believed to be I. Valdez;

3. Agent from 5-11-23 customer call (P2R); and

4. Agents involved with the May 9, 2023 and May 11, 2023 processing and investigation into the reinstatement check dated May 1, 2023 (22S, 2GB, BBP).

Every individual identified in the Deposition Notice resides in either India or the Philippines. More specifically, Topic 1 seeks the deposition of Deepak Kukreja. Mr. Kukreja is located in India. [Appx. AR 049 Affidavit of Verdooren]. Topic 4 seeks the deposition of an individual whose employee identification abbreviation is 22S. That individual is Siddhesh Prakash Sirsath. [Appx. AR 049]. Mr. Shirsath is located in India. *Id.* Topic 4 also seeks the individual of an individual whose employee identification abbreviation is 2GB. That individual is Gayatri Bachcha. *Id.* Mr. Bachcha is located in India. *Id.*

In addition to seeking the deponents who are located in India, the Deposition Notice also seeks the deposition of individuals in the Philippines. More specifically, Topic 1 in the Deposition Notice seeks the deposition of an individual whose employee identification abbreviation is F70.

That individual is Armando Balingasa III. [Appx. AR 048 Affidavit of Verdooren]. Mr. Balingasa is located in the Philippines. *Id.* Topic 2 seeks the deposition of Irish Grace Valdez. Ms. Valdez also is located in the Philippines. Topic 3 seeks the deposition of an individual whose employee identification abbreviation is P2R. That individual is Edgar Francisco. [Appx. AR 049 Affidavit of Verdooren]. Mr. Francisco is located in the Philippines. *Id.*

The Delsignores' Motion to Compel also requested contact information for Sharaddha Avinash Chavan to the extent that he is located in the United States. [Appx. AR 133]. Mr. Chavan is located in India.

On September 17, 2024, the Delsignores also noticed the deposition of Repay Management Services LLC and M & A Ventures, LLC regarding, among other things, the May 11, 2023 return of Mr. Delsignore's check. PHH did not oppose the Delsignores conducting those depositions. However, the Delsignores later stated that either Repay Management Services LLC or M & A Ventures, LLC advised them that the name on the subpoenas was an incorrect entity. Since that time, the Delsignores have not sought to serve subpoenas on the correctly-named entity or reschedule those depositions.

On September 23, 2024, PHH filed its Motion for Protective Order requesting the Circuit Court relieve it from any obligation to produce the above-referenced foreign individuals in response to the Deposition Notice. In response, the Delsignores filed a Memorandum in Opposition for Protective Order and Motion to Compel Depositions on October 21, 2024. [Appx. AR 119-198 Delsignores' Memorandum in Opposition]. On November 8, 2024, PHH filed a reply in support of the Motion for Protective Order. [Appx. AR 199-271 PHH Reply in Support of Motion].

The Circuit Court took the matter under advisement and on September 11, 2025 issued the Order at issue in this petition. [Appx. AR 303-310 Order of Court].

III. SUMMARY OF ARGUMENT

The Circuit Court erred and exceeded its legitimate powers by denying PHH's Motion for Protective Order and instead issuing an Order compelling the deposition testimony of approximately seven individuals residing in either India or the Philippines.

The United States ratified the Hague Evidence Convention in 1972 to establish uniform procedures for obtaining evidence abroad, respecting foreign sovereignty, and preventing litigants from violating international law. Both the United States and India are members of the Hague Convention on Evidence.

In *Gebr. Eickhoff Maschinenfabrik Und Eisengierberei v. Starcher*, the West Virginia Supreme Court of Appeals upheld the requirement that litigants must first use the Hague Evidence Convention procedures to obtain foreign discovery, rather than merely serving a notice of deposition. 174 W. Va. 618, 328 S.E.2d 492 (1985. Only if those procedures fail may alternative methods of obtaining discovery be considered. The Delsignores cannot compel the deposition of the individuals in the Notice who reside in India simply by serving a notice of deposition. Further, courts have been clear that the fact that virtual depositions may now technologically be feasible does not change the requirement to follow international law. Because the Delsignores failed to abide by the proper international procedures for obtaining evidence abroad, this Court should issue a Writ of Prohibition vacating the Circuit Court's erroneous Order and bar the depositions from taking place.

The Circuit Court likewise erred by not issuing a protective order regarding the depositions of the individuals who reside in the Philippines. At the time the parties briefed the Motion for Protective Order and Motion to Compel before the Circuit Court, the Philippines was not a member to the Hague Evidence Convention. Since that time, it has become a member. More specifically, on May 6, 2025, the Philippines deposited its instrument of accession with the Ministry of Foreign Affairs of the Netherlands, and the Convention went into force for the Philippines on July 5, 2025. https://www.hcch.net/en/news-archive/details/?varevent=1065 (last visited October 1, 2025). The United States has not yet accepted the Philippines' accession to the Convention. https://www.hcch.net/en/instruments/conventions/status-table/acceptances/?mid=1551 (last visited October 3, 2025). Accordingly, the Convention is not yet in place between the countries, *see* Convention Article 39, but it may arise between the countries imminently.

Regardless of whether the United States has yet accepted the Philippines' accession to the Hague Convention on Evidence, simply serving a notice of deposition is not a sufficient mechanism to subject the individuals who reside in the Philippines to a deposition in West Virginia. Foreign nationals in the Philippines cannot be compelled to testify at a deposition merely because a party serves a notice. There are two methods for obtaining the deposition of individuals located in the Philippines: (1) the individuals can voluntarily consent to the deposition; or (2) the Delsignores must serve letters rogatory. Because the individuals have not consented to depositions and the Delsignores have not served letters rogatory, the Circuit Court should have issued a protective order barring the depositions of the individuals who reside in the Philippines and a Writ of Prohibition now should issue barring their depositions.

The Circuit Court also should have issued a protective order based on Rule 26 of the West Virginia Rules of Civil Procedure. Discovery can be limited if "the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive." W.Va.R.C.P. 26(a)(1)(A); *Kahle's Kitchens, Inc. v. Shutler Cabinets, Inc.*, 240 W. Va. 209, 809 S.E.2d 520 (2018) (affirming trial court's order quashing subpoena in part because the requested discovery was obtainable from another source, one of the parties). The Delsignores already have conducted discovery on all of the topics in the Deposition Notice, including a six-hour deposition of PHH's Rule 30(b)(7) representative. PHH also produced documents regarding every topic in the Deposition Notice and the audio recordings for each of the telephone calls in the Deposition Notice. There can be no dispute as to what occurred during those telephone calls and no need for those depositions of the individuals in the Deposition Notice who, as the Court would expect, speak with a multitude of customers on a daily basis and are unlikely to remember their interaction with Mr. Delsignore.

In addition, Rule 26(b)(1)(C) of the West Virginia Rules of Civil Procedure provides that discovery should be limited if "[t]he discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation." Balancing the Delsignores' need to obtain the additional depositions in the Deposition Notice against the burden that producing those additional individuals on PHH and others shows that a protective order should be issued. That burden is heightened by the fact that the Deposition Notice includes an individual who is a former employee. Most importantly, the Delsignores do not need any of the additional depositions as the telephone calls referenced in the Deposition Notice are conclusively proved by the audio recordings of those calls and all related documents that PHH produced. Because the evidence sought by the depositions is already in the Delsignores' possession, there is no need to force PHH to attempt to coordinate these depositions across international borders.

IV. STATEMENT REGARDING ORAL ARGUMENT

Pursuant to West Virginia Rule of Appellate Procedure 18(a), Petitioner respectfully requests that the Court grant oral argument under Rule 19(a)(1), (2), and (4). This case involves "assignments of error in the application of settled law," "an unsustainable exercise of discretion" by the Circuit Court, and a "narrow issue of law."

V. ARGUMENT

a. Standard of Review

"The Writ of Prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers." W.Va. Code Ann. § 53-1-1 (West). "A writ of prohibition will not issue to prevent a simple abuse of discretion by the trial court. It will only issue where the trial court has no jurisdiction or having such jurisdiction exceeds its legitimate powers." Syl. pt. 2, *State ex rel. Peacher v. Sencindiver,* 233 S.E.2d 425 (W.Va. 1977) (quoting W.Va. Code § 53-1-1). This Court has likewise held that "'[a] writ of prohibition is available to correct a clear legal error resulting from a trial court's substantial abuse of its discretion in regard to discovery orders.'" *State ex rel. Massachusetts Mut. Life Ins. Co. v. Sanders*, 228 W. Va. 749, 754, 724 S.E.2d 353, 358 (2012).

The West Virginia Supreme Court of Appeals has also held:

> In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction, but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

State ex rel. Hoover v. Berger, 199 W. Va. 12, 21, 483 S.E.2d 12, 21 (1996). "In determining the third factor, the existence of clear error as a matter of law, [this Court] will employ a *de novo* standard of review, as in matters in which purely legal issues are at issue. . ." *State ex rel. Gessler v. Mazzone*, 212 W.Va. 368, 372, 572 S.E.2d 891, 895 (2002).

Without question, the Circuit Court committed clear legal error below by denying PHH's Motion for Protective Order. The Circuit Court's Order ignored West Virginia Supreme Court of Appeals precedent requiring parties to first seek to conduct the depositions of individuals residing in India pursuant to the procedures embodied in the Hague Evidence Convention, by ignoring established West Virginia Supreme Court of Appeals precedent and favoring persuasive authority from the United States District Court for the District of Idaho, and determining that the overseas call center employees sought to be deposed by the Delsignores were "managing agents" of PHH who must be produced to testify despite the Delsignores having recordings of all of the calls made by those individuals and all of PHH's internal documents related to the calls, and by determining that the discovery sought by these depositions is not duplicative of discovery that has already been provided by PHH to the Delsignores.

PHH has no other means to obtain the relief requested. The only other alternative requires PHH to subject these foreign employees to the jurisdiction of West Virginia Courts in violation of international law and litigate the matter to a final disposition. But, once the claims have been litigated to a final, appealable order entered, the relief sought will have been lost. For the reasons stated herein, clear error law has been committed and a Writ of Prohibition should issue.

b. The Circuit Court Erred by not issuing a protective order because the parties are first required to follow the procedures set forth in the Hauge Evidence Convention with regard to the depositions involving individuals in India.

On July 15, 1972, the President of the United States of America, upon the advice of the United States Senate, ratified the Hague Evidence Convention. That Convention entered into force in the United States on October 7, 1972.

Its primary purpose is "to bridge differences between the common law and civil law approaches to taking of evidence abroad." *Gebr. Eickhoff Maschinenfabrik Und Eisengierberei v. Starcher*, 174 W. Va. 618, 621-22, 328 S.E.2d 492, 495-96 (1985) (*quoting* Letter of Submittal from Secretary of State William P. Rogers to the President Regarding the Evidence Convention, S.Exec.Doc. A, at V, 92d Cong., 2d Sess. (Feb. 1, 1972), *reprinted* in 12 *Int'l Legal Materials* 324 (1973)). It also prevents litigants from interfering "with foreign sovereignty [by] obtaining evidence abroad pursuant to domestic rules of civil procedure." *Id*. at 622, 328 S.E.2d at 496. Not only does that prevention respect the nation from which discovery is sought, but it also protects the litigants in the nation requesting the discovery. "The litigant whose activities breach the judicial sovereignty of the host nation is placed in a position analogous to being in contempt of a United States court and may be subject to criminal penalties." *Id*. (cleaned up) (*quoting* Note, *Obtaining Testimony Outside the United States: Problems for the California Practitioner*, 29 Hastings L.J. 1237, 1244 (1978)).

To protect against these inadvertent breaches, promote uniformity in obtaining evidence, respect judicial sovereignty, and remedy the prior "chaotic state of affairs that existed" regarding the taking of evidence abroad, the Hague Evidence Convention establishes procedures for obtaining evidence from individuals in nations that have ratified it. *Id*. at 624, 328 S.E.2d at 498 ((*quoting* Note, *Obtaining Testimony Outside the United States: Problems for the California*

Practitioner, 29 Hastings L.J. 1237, 1251-55 (1978)). As noted above, the United States ratified the Convention, and it entered into force in our country on October 7, 1972. India also ratified the Hague Evidence Convention. https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/India.html (last visited September 23, 2025).

The Hague Evidence Convention sets forth three procedures for obtaining evidence from an individual in another signatory nation. Hague Evidence Convention, Ch. I-II. The West Virginia Supreme Court of Appeals analyzed those procedures at length in *Starcher*. In *Starcher*, an individual injured in a mining incident and his wife filed suit in the Circuit Court of Monongalia County against Consolidation Coal Company ("Consolidation") and Eickhoff Corporation. Consolidation then filed third-party claims against Eickhoff Corporation's parent company, Gebr. Eickhoff Maschinenfabrik Und Eisengierberei mbH ("Gebr. Eickhoff"), which was a German entity. 174 W. Va. at 620, 328 S.E.2d at 494.

Consolidation sought discovery from Gebr. Eickhoff by serving it with interrogatories, to which Gebr. Eickhoff objected to them as violating the Hague Evidence Convention. *Id*. Consolidation moved to compel answers, and also served a second set of interrogatories and a request for production of documents. *Id*. In addition to its request for written discovery, Consolidation filed a "motion to compel production of witnesses by Gebr. Eickhoff for deposition." *Id*. Gebr. Eickhoff objected to these requests as violating the Hague Evidence Convention. *Id*. at 620, 328 S.E.2d at 495.

The trial court ruled that, because it had jurisdiction over Gebr. Eickhoff, discovery would be conducted pursuant to the West Virginia Rules of Civil Procedure with some modifications. Significantly, the trial court ruled that "[a]ll depositions of officers, employees, and agents of Gebr. Eickhoff shall be taken pursuant to Notice" and could be conducted in a country other than the

Republic of West Germany. *Id*. at 621, 328 S.E.2d at 495. The trial court further ruled that, if Gebr. Eickhoff failed or refused "to make discovery as required by the West Virginia Rules of Civil Procedure," the trial court would impose sanctions by precluding Gebr. Eickhoff's evidence. *Id*.

Gebr. Eickhoff filed a petition for writ of mandamus to vacate the trial court's discovery order. *Id*. at 619, 328 S.E.2d at 494. This Court accepted the petition and addressed at length how discovery is to be conducted from individuals in other countries. More specifically, it exhaustively analyzed the Hague Evidence Convention, its procedures, its criticisms, and other courts' reviews of its provisions. Ultimately, it granted the writ of mandamus Gebr. Eickhoff sought and vacated the trial court's discovery order. *Id*. at 632, 328 S.E.2d at 506.

In granting the writ, this Court held that Consolidation would not be permitted to merely serve interrogatories and documents requests along with deposition notices. *Id*. Rather, "the principle of international comity dictates first resort to [the] procedures" set forth in the Hague Evidence Convention. *Id*. at 631, 328 S.E.2d at 506. Only after those procedures are exhausted and if it is proved that they have been "fruitless and [] further action is necessary to prevent an impasse" may other discovery methods be considered. *Id*.

The Court's *Starcher* decision and its rationale apply to the instant action. The Delsignores seek to depose individuals in India simply by serving the Deposition Notice. The *Starcher* decision makes clear the Delsignores must first resort to the procedures set forth in the Hague Evidence Convention.[1] As noted above, both the United States and India are members of that convention.

[1] In fact, many of the depositions the Delsignores request in their Deposition Notice have less of a connection to this action than those requested in *Starcher*. In the *Starcher* action, the trial court's discovery order related to the depositions of "officers, employees, and agents of Gebr. Eickhoff." *Id*. at 621, 328 S.E.2d at 495. Gebr. Eickhoff was a party to the *Starcher* action. Here, the individuals in the Deposition Notice who are located in India are not employees of a party but

Moreover, India has designated the offices to which requests for discovery are to be directed. https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/India.html (last visited September 23, 2025). Simply serving a notice of deposition, as the Delsignores did, is not sufficient to obtain the requested discovery, most if not all of which the Delsignores are already in possession of through other means of discovery[2].

Moreover, the individuals whose depositions are sought – individuals who had a single call or singular interaction with the loan – are lower-level employees who are not invested with general powers to exercise judgment and discretion in corporate matters. [Appx. AR 049 Affidavit of

---

rather are employed by a non-party, Ocwen Financial Solutions Private Limited. [Appx. AR 049 Affidavit of Verdooren]. The individuals who are located in the Philippines are employees of a separate branch of PHH.

[2] Discovery is not without limits, and can be limited if "the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive." W.Va.R.C.P. 26(a)(1)(A); *Kahle's Kitchens, Inc. v. Shutler Cabinets, Inc.*, 240 W. Va. 209, 809 S.E.2d 520 (2018) (affirming trial court's order quashing subpoena in part because the requested discovery was obtainable from another source, one of the parties). The Deposition Notice seeks depositions regarding singular telephone calls with Mr. Delsignore (Topics 1-3); the return of a check to Mr. Delsignore (Topic 4); and the June 2, 2023 reinstatement quote and wiring instructions (part of Topic 1). Not only is that discovery available from another, more convenient source, but PHH already has produced that source, its Rule 30(b)(7) representative, who appeared for a deposition in West Virginia on August 29, 2024. The Delsignores examined him under oath, and on video, for more than six hours. In addition to PHH's representative's testimony, PHH has produced the documents regarding all of the Deposition Notice topics. PHH also produced call recordings for each of the telephone calls in the Deposition Notice. There can be no dispute as to what occurred during the telephone calls in Topics 1-3 and no need for those depositions of the individuals in the Deposition Notice who, as the Court would expect, speak with a multitude of customers on a daily basis. Because the requested discovery is and was available from another, more convenient source and the discovery would be duplicative of discovery that the Delsignores already have obtained, good cause existed for the Court to enter a protective order relieving PHH of any obligation to produce the requested individuals for deposition.

Verdooren]. Accordingly, after all required procedures are followed, those depositions will ultimately serve to do nothing more than waste the parties' time and resources.

Moreover, the fact that the Deposition Notice advises that the depositions may be taken remotely by videoconference does not permit the Delsignores to avoid the requirements of the Hague Evidence Convention. In *In re Kirkland*, , a bankruptcy court issued trial subpoenas for a married couple, one of whom was the trustee for a defendant in an adversary proceeding and the other a non-party witness. 75 F.4th 1030, 1037 (9th Cir. 2023). The two individuals lived abroad. *Id*. The bankruptcy court determined that the testimony of both individuals was necessary for the trial. *Id*. It therefore authorized the bankruptcy trustee to serve them with trial subpoenas by certified mail and publication. *Id*. It commanded them to testify remotely by videoconference. *Id*.

Both individuals moved to quash the subpoenas on the ground that they lived beyond the geographic limitations on the court's subpoena power. *Id.* The bankruptcy court denied those motions, finding that because they were to testify by videoconference, they could be commanded to testify. *Id*. at 1037-38. The individuals moved the district court for relief, and the district court denied their motion. *Id*.

They then petitioned the United States Court of Appeals for the Ninth Circuit to quash the subpoenas. *Id*. at 1039. After analyzing the bankruptcy court's subpoena power, the geographic limitations on that power, and the relevant Federal Rules of Civil Procedure, the Ninth Circuit held that the individuals could not have been compelled to testify in person. *Id*. 1042.

It next addressed whether they could be compelled to testify remotely. *Id*. The Ninth Circuit exhaustively analyzed the Rules and advisory committee notes. *Id* at 1042-1044. It held that "the fact remains that all witnesses—even those appearing remotely—must be compelled to appear, and a court can only compel witnesses who are within the scope of its subpoena power." *Id* at 1044. The introduction of remote attendance into court proceedings does **<u>not</u>** change a court's authority. *Id*. at 1046. The court ultimately granted the individuals' petition and quashed the subpoenas, stating that "despite changes in technology and professional norms, the rule governing court's subpoena power has not changed and does not except remote appearances" from the limitations on that power. *Id* at 1051-52.

The same result was ordered in *Coblin v. DePuy Orthopaedics, Inc*., No. 3:22-CV-00075-GFVT-MAS, 2024 WL 1357571 (E.D. Ky. Mar. 29, 2024). There, the plaintiff subpoenaed several individuals to testify remotely, and some of those individuals moved to quash the subpoenas because they were beyond the geographic limitations of the court's jurisdiction. *Id*. at *1. In granting the motions to quash, the United States District Court for the Eastern District of Kentucky noted that it understood the "practical sentiment" of remote testimony but could not "ignore the plain edicts" of the analysis on the geographic limitations of court's subpoena power. *Id*. at *3. Moreover, "[t]he Court cannot issue a subpoena that compels actions by a witness well beyond its jurisdictional limits simply because technology has eased the practical burdens." *Id*.

Similarly, in this action, the Hague Evidence Convention places limitations on the ability to depose the individuals in the Deposition Notice. Its procedures must be followed. The fact that videoconference capabilities exist for the parties in this action does not abrogate those procedures.

For the above reasons, a Writ of Prohibition should issue and the Delsignores should be barred from taking the depositions of the individuals in the Deposition Notice who reside in India, including the individual requested in their Motion to Compel. The Delsignores must first resort to the procedures of the Hague Evidence Convention if they wish to obtain discovery from those individuals.

c. The Circuit Court Erred by not issuing a protective order regarding the three individuals in the Deposition Notice located in the Philippines and who are not subject to deposition by the Delsignores' merely filing the Deposition Notice.

The Deposition Notice also seeks the depositions of three individuals who are located in the Philippines: Mr. Balingasa, Ms. Valdez, and Mr. Francisco. [Appx. AR 049 Affidavit of Verdooren]. As noted above, the Philippines recently acceded to the Hague Evidence Convention, although the United States has not yet accepted that accession.

https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Philippines.html (last visited September 23, 2025). Nonetheless, the individuals located in the Philippines are not subject to deposition by the Delsignores merely filing the Depostion Notice, and the Delsignores are required to start the process of obtaining discovery from them by serving letters rogatory. The taking of a deposition of an individual in the Philippines only is permitted if the individual voluntarily submits to the deposition. *United States v. Reczko*, 818 Fed.Appx. 701, 705 (9th Cir. 2020) (affirming the denial of a request to depose individuals in the Philippines and holding "the district court had no authority to compel them to comply with the deposition request, because they were in the Philippines").

In *Reczko*, a defendant appealed a criminal conviction. He argued on appeal that the district court erred by denying his request to depose two individuals who were located in the Philippines. *Id*. at 705. The United States Court of Appeals for the Ninth Circuit affirmed the district court's denial. *Id*. In so doing, it noted that the district court "had no authority to compel [the individuals in the Philippines] to comply with the deposition request, because they were in the Philippines." *Id*.

Similarly, in *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1181 (9th Cir. 2006), the court held that evidence in the Philippines "may be obtained through voluntary deposition or compelled by letters rogatory." *Id*. at 1181. In *Tuazon*, a citizen of the Philippines brought suit against R.J. Reynolds Tobacco Co. in the United States for alleged personal injuries. R.J. Reynolds moved to dismiss for lack of personal jurisdiction and under the doctrine of *forum non conveniens*. *Id*. 1167. The district court denied that motion, which was affirmed by the appeals court. *Id*. at 1182. When discussing R.J. Reynolds' *forum non conveniens* arguments, the court noted that evidence relevant to the action was located in both the United States and the Philippines. *Id*. at 1181. The court then noted that evidence in the Philippines could be obtained "through voluntary deposition or compelled by letters rogatory." *Id*.; see also 22 C.F.R. § 92.54 ("letters rogatory denotes a formal request from a court in which an action is pending, to a foreign court to perform some judicial act").

In this action, the Delsignores merely filed their Deposition Notice seeking to compel the depositions of Mr. Balingasa, Ms. Valdez, and Mr. Francisco. Neither Mr. Balingasa, Ms. Valdez, nor Mr. Francisco have appeared and agreed to voluntarily submit to a deposition. They are not subject to being deposed, and the Deposition Notice is insufficient to require their attendance. Further, all of the facts and information these individuals may testify to during their depositions, to the extent that they remember their interactions with Mr. Delsignore at all, is already in the

Delsignores' possession.[3] Accordingly, a Writ of Prohibition should issue and the Delsignores should be barred from taking the depositions of the individuals who reside in the Philippines.

VI. CONCLUSION

Based upon the foregoing, Petitioner PHH Mortgage Corporation respectfully requests that this Court:

1. Stay the matter in the Circuit Court and Order Respondents to show cause why the Writ should not be granted;

2. Issue a Writ of Prohibition enjoining the Respondent Circuit Court from enforcing the September 11, 2025 Order denying PHH's Motion for Protective Order; and

---

[3] Rule 26(b)(1)(C) of the West Virginia Rules of Civil Procedure provides that discovery should be limited if "[t]he discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation." W. Va.R.C.P. 26(b)(1)(C). The Supreme Court of Appeals has explained

> Where a claim is made that a discovery request is unduly burdensome under Rule 26(b)(1)(iii) of the West Virginia Rules of Civil Procedure, the trial court should consider several factors. First, a court should weigh the requesting party's need to obtain the information against the burden that producing the information places on the opposing party. This requires an analysis of the issues in the case, the amount in controversy, and the resources of the parties. Secondly, the opposing party has the obligation to show why the discovery is burdensome unless, in light of the issues, the discovery request is oppressive on its face. Finally, the court must consider the relevancy and materiality of the information sought.

Syl. pt. 3, *State ex rel. West Virginia Fire & Cas. Co. v. Karl*, 202 W. Va. 471, 505 S.E.2d 210 (1998) (*quoting syl. pt*. 3, *State Farm Mut. Auto. Inc. Co. v. Stephens*, 188 W. Va. 622, 425 S.E.2d 577 (1992)). Balancing the Delsignores' need to obtain the additional depositions in the Deposition Notice against the burden that producing those additional individuals on PHH and others shows that a protective order should be issued. Most importantly, the Delsignores do not need any of the additional depositions as the telephone calls referenced in the Deposition Notice are conclusively proved by the audio recordings of those calls and all related documents that PHH produced. Because the evidence sought by the depositions is already in the Delsignores' possession, there is no need to force PHH to attempt to coordinate these depositions across international borders.

3. Grant such other and further relief as the Court deems appropriate under the circumstances.

VERIFICATION

In accordance with the requirements of West Virginia Code § 53-1-3, the undersigned hereby verifies that the foregoing Petition and attached exhibits constitute a fair and correct statement of the proceedings in the civil action identified in this Petition, based upon his information and belief.

/s/ Nicholas P. Mooney II
Bruce M. Jacobs (WV State Bar No. 6333)
Nicholas P. Mooney II (WV State Bar No. 7204)
Counsel for Petitioner PHH Mortgage Corporation

CERTIFICATE OF SERVICE

I, Nicholas P. Mooney II, counsel for Petitioner PHH Mortgage Corporation, do hereby certify that the foregoing ***Petition for Writ of Prohibition*** was filed using the Court's electronic filing system and that we have mailed a copy of the ***Petition for Writ of Prohibition*** at the following address:

The Honorable David M. Hammer
Jefferson County Courthouse
100 E. Washington Street
Charles Town, WV 25414
304-728-3201

And that we have sent a copy of the ***Petition for Writ of Prohibition*** by email to the following:

Jason E. Causey
Katz, Kantor, Stonestreet & Buckner, PLLC
206 South Walker Street
Princeton, WV 24740
304-898-8499

Dated: October 9, 2025

/s/ Nicholas P. Mooney II
Bruce M. Jacobs (WV State Bar No. 6333)
Nicholas P. Mooney II (WV State Bar No. 7204)
Counsel for Petitioner PHH Mortgage Corporation