



## ALERTS

### C-Suite Deposition Season Is Open In Georgia

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#### Highlights

Georgia Supreme Court determines federal law governing depositions of executives inapplicable in Georgia due to broader discovery rules

The ruling noted that high-ranking corporate executives are not immune from discovery

Good cause to obtain a protective order is not necessarily satisfied simply because the executive lacks knowledge of the details at issue in the case

The responsibility of a chief executive officer and the rest of the C-suite is to direct the workings of a business entity at the top levels. For this reason, a C-suite executive is rarely intimately familiar with the specific issues within a corporation. Requiring executives to obtain specific knowledge causes the executive to be unnecessarily bogged down in the minutia of the business, rather than relying on the corporate hierarchy working together to move the business forward.

Despite recognizing executives often lack probative knowledge, litigants seeking to recover against a corporation employ a common tactic: seeking to depose the company's high-powered officials. The objective is

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to either capitalize on the executive's lack of knowledge regarding the corporate actions at issue in the case or incentivize resolution to shield the corporation from such statements.

However, the Supreme Court of Georgia's recent decision in *General Motors, LLC v. Buchanan* escorted in a new season – C-suite deposition season. *Buchanan* regrettably involved the death of the driver of a Chevrolet Trailblazer and the plaintiffs asserted a defective “steering wheel angle sensor” caused the accident. In discovery, the plaintiffs sought the deposition of General Motors' CEO. General Motors sought a protective order against the deposition on the grounds that its CEO possessed no direct information regarding the steering wheel angle sensor of the vehicle at issue; the design of the steering wheel angle sensor; or any related investigations, marketing, or manufacturing details.

Knowing that executives are often unfamiliar with the intimate details at the heart of a particular case, many federal courts have adopted the apex doctrine. Although courts apply different burdens to the analysis, the apex doctrine's general principle is to weed out executive depositions offering no probative value to the case.

The trial court in *Buchanan* denied the protective order. It found the apex doctrine inapplicable because the Georgia discovery rules are broader than the federal ones. The Court of Appeals of Georgia affirmed because General Motors failed to establish that the absence of unique knowledge of the relevant facts constituted good cause to protect against the deposition.

The Supreme Court of Georgia held the party seeking to protect against the deposition bears the burden of asserting good cause. It additionally concluded that it is largely left with the trial court to determine whether good cause exists to protect against the deposition and that “[h]igh-ranking corporate executives are not immune from discovery and are not automatically given special treatment excusing them from being deposed simply by virtue of the positions they hold or the size of the organizations they lead.”

In doing so, the court concluded, and additionally highlighted, that lack of knowledge surrounding the specifics of the litigation is insufficient to protect the executive from a noticed deposition, saying, “It is possible for a court to act within its discretion to conclude, based on the facts of the case before it, that a protective order prohibiting the deposition of an executive need not be issued even where the executive is high-ranking, has no unique personal knowledge, and the discoverable information is available through other means.” The court effectively concluded the lack of knowledge by a top-ranking executive might be, in and of itself, compelling.

*Buchanan* generates several interesting questions for Georgia companies. How many executives lacking knowledge of the facts at issue can be deposed before it reaches the level of harassment? If there is no special treatment given to executives, are they treated the same as all of the other corporation's employees? If so, does *Buchanan* open the door to depositions of employees without substantive knowledge of the facts at issue? These issues may be raised in the courts.

Parties contemplating litigation in Georgia against corporations of all sizes are now more likely to seek depositions against executives, and

businesses need to prepare to combat the increased number of depositions. Georgia companies and their counsel are tasked with solving a new conundrum: Educate executives on the intricate details of particular litigation in an attempt to avoid the potential downsides of an executive ignorant to the most convoluted issues of a case or keep the executive at arm's length and risk a compelled deposition potentially resulting in a misstatement to be capitalized upon by litigation opponents.

It would be a best practice to analyze these issues before the deposition is sought and likely even before the case is filed. For example, educating anyone on the intricate details of the steering wheel angle sensor design, investigations, marketing, manufacturing, etc. from scratch would likely take significant time.

This carries enormous consequences for a corporation because juries tend to give considerable weight to executives' statements –and misstatements – under the assumption they must know everything about the company.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Christopher Daniels at 404-264-4053 or [CDaniels@btlaw.com](mailto:CDaniels@btlaw.com).

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