

# COVID-19 “Not a Golden Ticket” to Avoid Discovery Obligations

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The COVID-19 pandemic has unquestionably had a massive effect on nearly all aspects of American life. However, now that COVID-19 is and continues to be a known risk, parties should carefully consider when and to what extent it can be invoked to obtain an extension or continuance with respect to discovery obligations.

This was recently demonstrated by [Sunstate Equipment Co., LLC v. EquipmentShare](#), in which the District of Utah held that the defendant, EquipmentShare, could not stay already noticed, in-person depositions by simply pointing to the COVID-19 pandemic. In late November 2020, the plaintiff, Sunstate Equipment Co., LLC, sent deposition notices to EquipmentShare seeking in-person testimony of EquipmentShare’s witnesses at Sunstate’s counsel’s office. In response, EquipmentShare moved for a protective order seeking to delay the in-person depositions as-noticed and requesting certain depositions, in the meanwhile, to be conducted remotely from its counsel’s office with its counsel either physically present in the same room as the deponent or a nearby room. Notably, prior to moving for a protective order, EquipmentShare had rejected Sunstate’s proposal for entirely remote depositions in lieu of the depositions as-noticed.

While the court “acknowledge[d] the magnitude of the COVID-19 pandemic and the serious health challenges it presents,” it observed that the “pandemic is not a golden ticket to get out of discovery obligations.” The court noted that other courts had been “creative during the current health crisis” but that such creativity did not include “creating advantages for one party over another” in conducting depositions.

Accordingly, the court concluded that both parties’ counsel had to be present for any in-person depositions, and that any remote depositions had to be conducted with “everyone using remote technology.”

This decision signals that courts are anxious to keep cases moving forward, despite continuing outbreaks of the virus. As such, litigants in the midst of discovery should, among other things, attempt to reach stipulations with opposing counsel as to any delays or extensions, or be prepared to proceed with their calendared discovery obligations.

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