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5 Attorneys for Defendant,  
 6 **TEXTRON INC., NORTH SAFETY PRODUCTS LLC, AND SAINT-GOBAIN ABRASIVES INC.**

7  
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 9 **FOR THE COUNTY OF ALAMEDA**

11 JAMES BROCK and KAREN BROCK, 12 Plaintiffs, 13 v. 14 METROPOLITAN LIFE INSURANCE 15 COMPANY, et al. 16 Defendants. 17 18 19 20	) Case No. RG17884288 ) ) <i>Assigned for all pre-trial purposes to the Hon.</i> ) <i>Stephen Kaus, Department 19</i> ) ) <b>NOTICE OF RULING RE: DEFENDANTS</b> ) <b>TEXTRON, INC., NORTH SAFETY</b> ) <b>PRODUCTS, LLC AND SAINT-GOBAIN</b> ) <b>ABRASIVES, INC.’S MOTION FOR</b> ) <b>PROTECTIVE ORDER RE:</b> ) <b>DEPOSITION LOCATION OF PERSON</b> ) <b>MOST KNOWLEDGEABLE</b> ) ) Date: May 30, 2018 ) Time: 9:00 a.m. ) Dept: 19 ) ) Complaint Filed: November 30, 2017 ) Trial Date: July 23, 2018
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21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on May 25, 2018, the Honorable Stephen Kaus in Department  
 23 19 of the above-captioned Court issued a tentative ruling granting Defendants Textron, Inc., North  
 24 Safety Products, LLC and Saint-Gobain Abrasives, Inc.’s Motion for Protective Order Re:  
 25 Deposition Location of Person Most Knowledgeable. The Plaintiffs did not contest. A true and  
 26 correct copy of the Court’s tentative ruling is attached hereto as **Exhibit A**.

27 On May 30, 2018, at 9:00 a.m. in Department 19 of the above-captioned Court, Defendants  
 28 North Safety Products, LLC and Saint-Gobain Abrasives, Inc.’s Motion for Protective Order Re:

1 Deposition Location of Person Most Knowledgeable came on for hearing before the Honorable  
2 Stephen Kaus in Department 19 of the above titled court. After considering the moving, opposition  
3 and reply papers the Court adopted its tentative ruling and ordered as follows:

4 1. Defendants' Motion for Protective Order Re: Deposition Location of Person Most  
5 Knowledgeable is GRANTED.


6 2. The deposition(s) of Saint-Gobain Abrasives, Inc. Textron, Inc., and North Safety  
7 Products, LLC's Person(s) Most Knowledgeable is to take place in the witness' state of residence.

8 A true and correct copy of the Court's signed order is attached hereto as **Exhibit B**.

9  
10 Dated: May 31, 2018

**HAWKINS PARNELL THACKSTON & YOUNG LLP**

11  
12  
13 By:

  
Edward R. Ulloa  
Michael B. Giaquinto  
Nilofar Karbassi  
TEXTRON, INC., NORTH SAFETY  
PRODUCTS LLC, AND SAINT GOBAIN  
ABRASIVES INC.

# EXHIBIT A

THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

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**Case Details**

**Case Number:**  
**RG17884288**

**Title: Brock VS Metropolitan Life  
Insurance**

Case Summary

Register of Action

Participants

Tentative Rulings

Future Hearings

Minutes

**Date                      Action**

Date	Action
5/25/2018	This Tentative Ruling is made by Judge Stephen Kaus. The Court finds that Defendants Textron, Inc., North Safety Products, LLC, and Saint-Gobain Abrasives Inc.'s (collectively, "Defendants") are entitled to a protective order against Plaintiffs James Raymond Brock and Karen Jean Brock ("Plaintiffs") notices of depositions of Defendants' Persons Most Qualified/Knowledgeable ("PMK") which designate California locations for the depositions. Defendants are entitled to have their PMKs deposed in the PMKs' state of residence. It appears to be undisputed by the parties that Defendants are foreign corporations or limited liability companies (Corp. Code Â§Â§ 171, 171.03), and that their PMKs reside out-of-state in the state of Rhode Island, although Defendants did not submit any affirmative evidence on either of these issues. Under such circumstances, the controlling

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statutes are Code of Civil Procedure sections 1989 and 2025.250, subdivision (d). (All code sections cited herein are in the Code of Civil Procedure ["C.C.P"].) These provisions conflict. For an organization that "has not designated a principal executive or business office in California," section 2025.250, subdivision (d) provides that "the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization." Under this provision, absent section 1989, Plaintiffs were entitled to choose the first option in their notices of deposition: to depose Defendants within Alameda County at the offices of Plaintiffs' counsel in Oakland. Defendants do not represent that they have designated a principal executive or business office in California or that they have any executive or business offices in California. In contrast, section 1989 states that "[a] witness, including a witness specified in subdivision (b) of Section 1987, is not obliged to attend as a witness before any court, judge, justice or any other officer, unless the witness is a resident within the state at the time of service." Section 1989 applies to depositions as well as trials, unless overridden by other provisions. (Toyota Motor Corporation v. Superior Court ("Toyota") (2011) 197 Cal.App.4th 1107, 1116 [citing Twin Lock, Inc. v. Superior Court (1959) 52 Cal.2d 754].) The question here is whether section 1989 qualifies and circumscribes section 2025.250, subdivision (d). In other words, if a witness is not a resident of California, can he or she be forced to travel to California to be deposed "in the county where the action is pending?" Defendants rely heavily on Toyota, which held that because of section 1989, party-affiliated individuals who resided in Japan could not be noticed by name to be deposed in California. A contrary result was reached in Glass v. Superior Court (1988) 204 Cal.App.3d 1048, 1051, a case explicitly rejected in Toyota. Between the two, Toyota "is the more extensively researched and better reasoned." (Hogan & Weber, 1 Cal. Civil Discovery (2d ed. 2005) Â§ 2.13, pp. 2-29-2-30.) The Court elects to follow Toyota, which, after an extensive account of the legislative history of the location provisions of the Discovery Act, ruled that section 1989's prohibition against forcing a non-resident to come to California to testify supersedes

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section 2025.250 and the powers granted to the court in section 2025.060 to order that the "deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party" may be taken "at a place that is more distant than that permitted under Section 2025.250." A truncated account of the Toyota court's reasoning is that section 1989 historically applied to depositions, but that ended when the phrase "notwithstanding Section 1989" was added to the predecessors of sections 2025.250 and 2025.260 in 1959. (See *Twin Lock*, supra, 52 Cal.2d at pp. 760-61.) The assertion herein that the "notwithstanding" language was added to both sections is based on the statement in Toyota that in 1986, it was removed from both sections. (Toyota, supra, 197 Cal.App.44th at p. 1120 ["as with the mileage limitations themselves, the balancing provision in subdivision (e)(3) of former section 2025 no longer had the '[n]otwithstanding Section 1989' language of its immediate predecessor"].) Indeed, when the discovery sections of the C.C.P. were again revised in 1986, the words "notwithstanding Section 1989" were no longer present in either the place of deposition subdivision (now section 2025.250) or the subdivision that gave the court authority to override those provisions (now section 2025.260). Toyota held that section 1989 precludes noticing the depositions of individuals affiliated with an organizational defendant in California if they are not California residents, and moreover, precludes the trial court from ordering that such a deposition be held in California through the balancing factors in section 2025.260. The Toyota court relied on the principle that when a provision of a statute is deleted, "it is intended to effect a substantial change in the law." In Toyota, the change is the resumed application of section 1989 to depositions. (Id. at p. 1121.) In Toyota, the witnesses noticed were specific named employees of the defendant corporation, as distinguished from the organization itself. In the instant case, the witnesses are designated by the organization pursuant to section 2030.230 to represent the organization. As Plaintiffs point out, Toyota is explicitly not controlling here because, in footnote 20, Toyota specifically "express[ed] no opinion, ... as to whether our analysis or the conclusions we have reached in this opinion would or should extend or apply to a court order made pursuant

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to section 2025.230 which provides for the circumstance where "[ ] the deponent named is not a natural person. . . ." However, the Toyota court did state that its conclusion that "the plain language of the statutory scheme and the legislative history of the language fully support the conclusion that a trial court cannot order a nonresident to appear at a California deposition" (id., at p. 1125) "is not limited to individual witnesses, but also applies to a court order directing that a party produce for deposition a specifically named nonresident witness (e.g., an employee, officer or director of a corporation)." (Id., at fn. 20.) Section 2025.230 provides that "[i]f the deponent named is not a natural person," the deponent "shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent." Thus, the "deponent" is the organization and the witness is the Person Most Knowledgeable or PMK. Section 2025.250, subdivisions (b) through (d) set the location of a deposition "of an organization." Section 2025.250, subdivision (d) provides that an organizational deponent may be deposed in the California county where the action is pending (or within 75 miles of a California executive or business office, which could be slightly outside California) if the entity has not designated a principal executive or business office in California. Thus, this section is in clear conflict with section 1989 if the deponent is not a resident of California. Plaintiff's "harmonizing" of the two statutes involves ignoring section 1989 for a PMK deposition because the entity is "already in California litigating the case." From a policy viewpoint, the differentiation between named corporate employees and PMKs, who, to coin a phrase, are people too, is form over substance. Resolving this conflict in favor of section 1989 does not render section 2025.250, subdivision (d) meaningless. (See City and County of San Francisco v. Farrell (1982) 32 Cal.3d 47, 54 [statutes should be interpreted to give significance to every word].) Section 2025.250, subdivision (d) still controls, for example, where a out-of-state corporation is sued in California for torts committed at an California branch facility. In that situation, the corporation's PMQs will usually be local executives employed at the California

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facility, and not a high-level corporate officer at a distant out-of-state headquarters. In addition, subdivision (d) would still apply to a California organization that has not designated a principal executive or business office. As to the assertion that section 2025.250 prevails because it is more specific, Toyota could have turned on that, but did not. If there is legislative history that section 2025.250 was intended to be an exception to section 1989, it has not been presented, and the discussion in Toyota very much suggests that is not the case. Whatever the merits of removing discretion from the court to order a party involved in California litigation to be deposed in California (see Toyota, supra, 197 Cal.App.4th at pp. 1126-1131 (conc. opn. of Klein, C.J.)), there is little logic in applying one rule to notices for specific individuals and another to designated PMKs. In either case, a nonresident "witness" is being required to be deposed in California although the witness is not a resident. In Amoco Chemical Co. v. Certain Underwriters at Lloyds ('Amoco") (1995) 34 Cal.App.4th 554, the court applied section 1989 to out-of-state witnesses who were sought through a notice to attend trial to an organizational party that sought to require the "attendance of [Defendant's] Custodian of records, or such other officers, directors or managing agents" responsible for maintaining certain documents. These witnesses, as here, were corporate designees. Amoco says that section 1989 "means what it says -- a witness is not obligated to appear in court in California unless he is a resident of the state at the time of service." (Id. at p. 555.) That no distinction was drawn between a named witness and a corporate designee for a trial notice suggests that the same result should prevail for a deposition notice. Moreover, if an individual out-of-state defendant would not have to be deposed in California, which appears to be generally accepted, it is not really any different when the witness is an out-of-state person designated by an out-of-state organization as a PMK. In Twin Lock, our state supreme court recognized that "[t]here can be no doubt that a witness . . . will be under considerable coercion to attend whenever his corporate employer is placed under the severe sanctions authorized by section 2034." (Twin Lock, supra, 52 Cal.2d at p. 759.) A leading treatise on California discovery shares the view that it does not and should not matter if a



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	<p>deposition notice is for specific named individuals or PMKs. "In either circumstance, the individuals involved are 'officers, directors, managing agents, or employees of a party' under Section 2025.260(a) [and] the reasoning behind [Toyota] should still apply: Section 1989 limits the court's authority to compel a non-resident deponent to travel to California. Whether compelled directly by the court, through a subpoena, or indirectly, through notice that an organizational deponent produce knowledgeable individuals, the coercive effect of forced travel on a witness is the same." (1 Hogan, supra, Discovery (2014 supp.) Â§ 2.15 at p. 23.) Defendants' Motion for a Protective Order is GRANTED. Defendants shall produce the noticed PMKs for deposition at a place within 75 miles of their principal executive or business office in Rhode Island. (Code Civ. Proc. Â§ 2025.420, subds. (b)(4), (b)(5).)</p>
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# EXHIBIT B



20676525

**FILED**  
ALAMEDA COUNTY

MAY 30 2018

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

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Michael B. Giaquinto (SBN 276229)  
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6 **TEXTRON INC., NORTH SAFETY PRODUCTS LLC, AND SAINT-GOBAIN ABRASIVES INC.**

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF ALAMEDA**

10 JAMES BROCK and KAREN BROCK,

11 Plaintiffs,

12 v.

13 METROPOLITAN LIFE INSURANCE  
14 COMPANY, et al.

15 Defendants.

Case No. RG17884288

*Assigned for all pre-trial purposes to the Hon. Stephen Kaus, Department 19*

16 **[PROPOSED] ORDER GRANTING**  
17 **DEFENDANTS TEXTRON INC., NORTH**  
18 **SAFETY PRODUCTS, LLC AND SAINT**  
19 **GOBAIN ABRASIVES, INC.'S MOTION**  
20 **FOR PROTECTIVE ORDER RE:**  
21 **DEPOSITION LOCATION OF PERSON**  
22 **MOST KNOWLEDGEABLE**

Date: May 30, 2018  
Time: 9:00 a.m.  
Dept: 19

Complaint Filed: November 30, 2017  
Trial Date: July 23, 2018

23 **[PROPOSED] ORDER GRANTING DEFENDANT TEXTRON INC., NORTH SAFETY PRODUCTS, LLC AND**  
24 **SAINT GOBAIN ABRASIVES, INC.'S MOTION FOR PROTECTIVE ORDER RE: DEPOSITION LOCATION**  
25 **OF PERSON MOST KNOWLEDGEABLE**

ORIGINAL  
Received  
y. Singh  
5/14/18  
By Fax

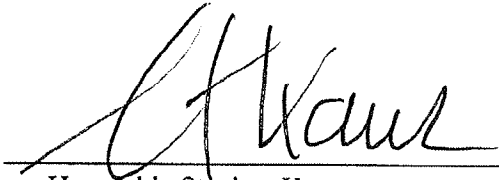
1 Defendants Saint-Gobain Abrasives, Inc., Textron, Inc., and North Safety Products, LLC.'s  
2 ("Defendants") Motion for Protective Order Re: Deposition Location of Person Most  
3 Knowledgeable came on regularly for hearing on May 30, 2018 at 9:00 am before the honorable  
4 Stephen Kaus in Department 19 of the above titled court. After considering the moving, opposition  
5 and reply papers, and after hearing oral argument from counsel, the Court rules and orders as  
6 follows:

7 1. Defendants' Motion for Protective Order Re: Deposition Location of Person Most  
8 Knowledgeable is GRANTED.

9 2. The deposition(s) of Saint-Gobain Abrasives, Inc., Textron, Inc., and North Safety  
10 Products, LLC.'s Person(s) Most Knowledgeable is to take place in the witness' state of residence.

11  
12 **IT IS SO ORDERED.**

13  
14 Dated: 5-30-18

  
15 Honorable Stephen Kaus  
16 Judge of the Superior Court of California  
17  
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28

2  
3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 I declare that I am employed by Hawkins Parnell Thackston & Young LLP. I am over the  
6 age of eighteen years and not a party to the within cause. My business address is 445 South Figueroa  
7 Street, Suite 3200, Los Angeles, California 90071.

8 On the date set forth below, I served the foregoing document(s) described as:

9 **NOTICE OF RULING RE: DEFENDANTS TEXTRON, INC., NORTH SAFETY  
10 PRODUCTS, LLC AND SAINT-GOBAIN ABRASIVES, INC.'S MOTION FOR  
11 PROTECTIVE ORDER RE: DEPOSITION LOCATION OF PERSON MOST  
12 KNOWLEDGEABLE**

13 On the parties in said cause:

14 **VIA FILE & SERVE XPRESS**

15 John Langdoc, Esq.  
16 Mark A. Swanson, Esq.  
17 Arcelia L. Hurtado, Esq.  
18 **KAZAN, MCCLAIN, SATTERLEY &  
19 GREENWOOD**  
20 Jack London Market  
21 55 Harrison Street, Suite 400  
22 Oakland, California 94607

23 **VIA FILE & SERVE XPRESS**

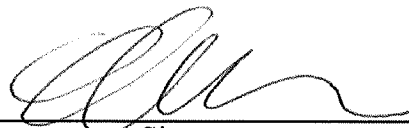
24 All Defense Counsel of Record

25 Attorneys for Plaintiffs

26  **BY FILE & SERVE XPRESS:** by electronically serving the document(s) via File &  
27 Serve Xpress on the recipients designated on the Transaction Receipt located on the File &  
28 Serve Xpress website.

**VIA FACSIMILE:** by facsimile to the facsimile number(s) of the offices of the addressee(s)  
as indicated on the attached list.

I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct, and that this declaration was executed on May 31, 2018, at Los Angeles, CA.



Signature

**Erica Miller**

Print Name