

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED SERVICES AUTOMOBILE ASSOCIATION,	§	
	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 2:20-CV-00319-JRG
v.	§	
	§	
PNC BANK, N.A.,	§	
	§	
Defendant.	§	

ORDER RE: “HOTLINE” HEARING PURSUANT TO LOCAL RULE CV-26(e)

Participants: Jason Sheasby – Counsel for Plaintiff
Peter Gratzinger – Counsel for Defendant
Brian Mack – Counsel for Movant Mitek Systems, Inc.
Jonathan Tse – Counsel for Movant Mitek Systems, Inc.

Date: Thursday, November 11, 2021

This case is assigned to Chief United States District Judge Rodney Gilstrap.

The Parties initiated a discovery hotline call pursuant to Local Rule CV-26(e). The undersigned heard argument on the dispute. More specifically, the Court conducted a telephonic hearing on Thursday, November 11, 2021, regarding a dispute which arose prior to the start of the deposition of Mitek Systems, Inc.’s witness, Mr. Kevin Williams. The deposition pursuant to Plaintiff’s request was noticed to proceed remotely; the subpoena states the location of the deposition is “Remote Web-based means via Veritext Legal Solutions, 550 W C Street, Suite 800 San Diego, CA 92101.” At the time of deposition, Plaintiff’s counsel Mr. Sheasby appeared for deposition from a remote location. Defendant’s counsel Mr. Gratzinger appeared for deposition in-person at the location of the witness.

Plaintiff’s counsel objects to Defendant’s counsel being present in-person at the examination. Mr. Sheasby argues that remote depositions are not the same as in-person

depositions, and that he will be disadvantaged if Defendant's counsel is permitted to remain in-person during his questioning, in part because the physical presence of examining counsel in the same location as the witness can impact the deposition. Conversely, Mr. Graztinger argues there is no basis for Mr. Sheasby's objection, that there is no rule governing the conduct of remote depositions (no restriction on hybrid depositions or counsel's ability to appear in person), and further, that Plaintiff's counsel is the one who desired to proceed remotely, and other depositions in this cause have proceeded in person. In response, Plaintiff's counsel points to the Docket Control Order directing cooperation in the conduct of depositions.

The Court instructs the Parties to proceed with the deposition and sustains Plaintiff's objection in part. Defendant's counsel shall participate in the deposition via remote means during Plaintiff's counsel's examination. Defendant's counsel may appear in person and in the same room as the witness during his own questioning of the witness. The Court instructed the Parties to meet and confer in advance of additional depositions, if any, and provide notice of whether attendance will be remote, in person, or hybrid. The Court advised the Parties to contact the Hotline if any additional issues arose during the deposition. No additional contact was received from the Parties.

IT IS SO ORDERED.

SIGNED this 17th day of November, 2021.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE