

## QUESTIONNAIRE

### 1970 Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters

#### Response of the United States of America

1. A list of 116 cases following the U.S. Supreme Court decision in *Societe Nationale Industrielle Aerospatiale v. U.S. District Court*, 482 U.S. 522 (1987) is attached at Annex A, with brief annotations. This list has been developed by the International Litigation Committee of the Section on International Law and Practice of the American Bar Association. The complete report of the Committee on the results of a survey of U.S. attorneys' experience using the Hague Evidence Convention abroad is attached as Annex B.
2. Under U.S. law, 28 United States Code 1782, foreign judicial authorities or parties to proceedings can request the assistance of U.S. courts for the taking of evidence in support of a civil action without filing a request through the Convention. No data are available to determine the number of such requests, but it may well be that most foreign requests are made in the United States without resort to the Convention. Indeed, there are no reported cases from the United Kingdom since 2000. A statistical table from the U.S. Department of Justice Civil Division (the U.S. Central Authority) is attached at Annex C covering the calendar years 2000 – 2003, showing total numbers of Hague Convention cases ranging from a high of 510 in 2000 to a low of 348 in 2002.
3. The U.S. Central Authority believes it is able to provide evidence in most circumstances in a form compatible with foreign legal systems. Evidentiary requests that are received by the Central Authority are typically referred to the United States Attorney's Office for the federal judicial district in which the evidence subject to the request is located. In most circumstances the United States Attorney's office will attempt to obtain compliance of an evidentiary request through voluntary means, without having to rely upon the compulsory mechanisms available through the domestic judicial system. In many cases, the evidence can be obtained relatively quickly and with minimal difficulty.

Not all requests, however, can be easily complied with. In particular, when the requested entity to whom the evidentiary request is directed refuses to provide voluntary compliance, it becomes necessary to go to court in order to utilize mechanisms available only through court auspices, such as the issuance of an appropriate subpoena or the like to compel compliance. At times, this can result in considerable delays in the United States' ability to respond to the evidentiary request. In addition, other difficulties can arise, and compliance delayed, when

the request seeks information that may be subject to disclosure limitations or substantive privileges. For example, requests that seek information involving company confidential information or privileged information may require significant litigation to ascertain whether it can be compelled.

Beyond that, not all requests can be complied with. A complicated evidentiary request, such as a request for detailed banking information from a United States domestic entity, may be so difficult or time consuming that it will be significantly delayed if it can be accomplished at all. Other evidentiary requests seek to have the Central Authority or the U.S. Attorney's Office to which the requests are referred do more than obtain existing documents or physical evidence or to ask specific questions of a witness. Such requests may ask the Central Authority to perform research or to hire experts to render opinions on complex matters. We believe such requests go beyond the scope of the Convention, or may put unreasonable demands on the United States Attorney's Offices, and will usually be returned to the sending state. An example of such a request that must be returned to the requesting entity as beyond the scope of the Convention or being beyond what the Central Authority can be reasonably requested to perform, might include a request that an accounting expert be retained to render an opinion as to the books and records of a corporation doing business within the United States.

4. The U.S. Supreme Court determined in the *Aerospatiale* case (see answer to question 1) that the Hague Evidence Convention is neither exclusive nor mandatory, and that evidentiary mechanisms available in the forum state may also be used on a case-by-case basis. Nevertheless, state courts in New Jersey, Oregon and New York and a few federal courts (for instance, Connecticut and New York) have required first resort to the Convention.
5. Not applicable.
6. Courts in the United States are bound by the *Aerospatiale* decision. For that reason, the 1989 recommendation of the Special Commission that priority be granted to the procedures provided for under the Convention for evidence requests has not been followed except in a few state courts (e.g., New Jersey). All U.S. courts take into account the mechanisms available under the Convention in exercising their discretion with regard to the appropriate discovery mechanism to be applied to the foreign litigants or parties, and they will often intervene to limit discovery in ways that would not have been likely in purely domestic litigation.

We believe the recommendation that Article 23 reservations be limited in scope has been useful and urge states with such reservations to consider appropriate limitations that would allow reasonably crafted and limited pretrial evidentiary requests to be executed. In some circumstances, states may have made a reservation under Article 23 as a result of confusion with the term "pretrial" when

used in conjunction with the U.S. judicial system, and have erroneously assumed that it meant prior to the initiation of a judicial proceeding. Once understood as merely referring to the obtaining of evidence prior to a formal testimonial proceeding before a judicial officer, but subsequent to the initial filing of a complaint, states may find that their Article 23 reservations can be appropriately limited.

In this regard we note that complex cases (or significant issues within such cases) pending in state and federal courts in the United States have with some frequency been finally adjudicated by the court without the need for a trial or other formal evidentiary hearing. In such cases, the court will adjudicate the case on the basis of summary judgment motions which often rely heavily upon the evidence obtained by the parties during pretrial proceedings. The U.S. Supreme Court has favorably viewed such summary dispositions. See generally, Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, 477 U.S. 242 (1986); Matsushita Electric Industrial Co. v. Zenith, 475 U.S. 574 (1986).

7. There are no U.S. court rulings regarding the application of the Convention to arbitration proceedings. This question has arisen under 28 U.S.C. 1782, however. That provision, which is independent of the Convention, allows “any interested person” to seek judicial assistance from a U.S. court in obtaining evidence. “for use in a proceeding in a foreign or international tribunal.” A few courts have had occasion to consider whether an arbitrator or arbitration tribunal may be considered a “foreign or international tribunal” within the meaning of Section 1782. The first court to consider the issue, a district court in New York, answered that question in the affirmative in 1994. That decision has been superseded, however, by a 1999 ruling of the Court of Appeals for the Second Circuit (which includes New York) that “Congress did not intend for [Section 1782] to apply to an arbitral body established by private parties.” The Fifth Circuit Court of Appeals reached the same conclusion in another 1999 decision. See, Republic of Kazakhstan v. Biedermann Int'l, 168 F.ed 880 (5<sup>th</sup> Cir. 1999)

This issue continues to be the subject of scholarly debate in the United States, and courts in other judicial circuits could conceivably reach a result that is contrary to the Second and Fifth Circuits. Nevertheless, even in that event, it is unlikely that evidentiary requests referred directly to the Central Authority by an arbitral panel would be considered subject to the Convention. In that regard, the term, “foreign or international tribunal”, as used in Section 1782, would appear to be broader than the term “judicial authority”, as used in the Convention. We are not aware of any U.S. Court rulings involving Convention letters of request that were issued by a judicial authority at the initiative of an arbitration panel.”

8. Statistics on the amount of time between when a case is received and “opened” by the Central Authority and finally “closed” range from 1 day to as many as two

years or more. However, no data exists on the reasons for closing the cases and therefore no useful conclusions can be drawn from the length of time indicated.

9. The United States generally has no objection to representatives of a requesting court taking part in proceedings pursuant to Article 8 of the Convention.
10. The Central Authority does not, at present, accept electronic requests for evidence. We are unaware whether federal or state courts accept such requests by electronic means.
11. U.S. courts allow many forms of electronic technologies, including videotaped depositions, teleconferencing, electronic filing, and electronic exchange of documents. Whether an evidence request seeking the utilization of new technologies can be fulfilled will depend upon the nature of the request, the availability and cost of the technology, whether the individual or entity with the evidence voluntarily submits to such techniques, and, to the extent such a request requires the intervention of a court, whether the procedure will be authorized by the appropriate judicial officer.
12. The United States recognizes that new technologies have an increasing role to play in the litigative process both here and in other States, and, indeed, many courts in the United States have begun to explore and implement the use of electronic technologies, for such purposes as electronic filing and serving of court documents, and the obtaining of evidence through various electronic means. In any event, we would anticipate that any new technology must be mutually compatible and acceptable to the requesting and forum States. The form for such an arrangement or understanding would have to be considered based on its content and purpose.

October 2003

**COMPENDIUM OF REPORTED POST-AEROSPATIALE CASES CITING  
THE HAGUE EVIDENCE CONVENTION  
(June 1987 – July 2003)**

**American Bar Association  
Section of International Law and Practice (SILP)  
International Litigation Committee**

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	Decision				Required Resort to Hague Convention
1.	Jul 14, 2003	In re Letter Rogatory from Nedeles District Court, Norway, 2003 WL 21673443 (S.D.N.Y. 2003)	Norway	Case involving inbound letter of request from Norwegian court pursuant to the Hague Evidence Convention. Putative father compelled to provide blood sample in connection with paternity proceeding in Norway. The U.S. court applied 28 U.S.C. § 1782.	N/A
2.	Jul 02, 2003	In re Daimler Chrysler AG Securities Litig, 2003 WL 21698358 (E.D. Mich. 2003)	Germany	Plaintiffs in securities fraud action arising out of the Daimler-Chrysler merger sought access to notes and source materials of nonparty journalists. In ruling that the movants had alternate means of obtaining the information, court noted that depositions of nonparty German witnesses could be taken pursuant to the Hague Evidence Convention. In so ruling, the court acknowledged that “[n]o doubt obtaining under the Hague Evidence Convention is more difficult and more expensive than obtaining discovery within the United States”.	Yes

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	Decision				Required Resort to Hague Convention
3.	Apr 09, 2003	American Home Assurance Co. v. Societe Commerciale Toutelectric, 128 Cal. Rptr. 2d 430 (Cal. Ct. App. Dist. 1, 2003)	France	Court upheld \$25.3 million default judgment against French defendant that failed to produce three French witnesses for depositions on various grounds, including the French blocking statute. Late in the proceedings, the defendant argued that the Hague Convention procedures should have been applied. The court held that the defendant's right to raise this issue had been waived. The court also overturned pre- <i>Aerospatiale</i> California precedent requiring first resort to the Convention procedures.	No
4.	Mar 21, 2003	Tulip Computers Int'l B.V. v. Dell Computer Corp., 254 F.Supp.2d 409 (D. Del. 2003)	Netherlands	A filed motion for issuance of Hague Convention letters of request for deposition of former employees of the Dutch plaintiff who were not subject to the jurisdiction of the U.S. court. The plaintiff opposed the motion on the ground that the evidence sought was privileged. The court granted the motion, but directed that the letters of request contain limiting language to clarify that privileged matters not be inquired into.	Yes
5.	Feb 27, 2003	Reiss v. Societe Centrale Du Groupe Des Assurances Nationales, 246 F.Supp.2d 285 (S.D.N.Y. 2003)	France	French defendants sought to delay evidentiary hearing regarding existence of jurisdiction under the FSIA in order to obtain testimony from witnesses in France. Court declined to issue letters of request due to defendants' failure to previously seek such testimony. The court noted that the plaintiff had previously spent "nearly two years" obtaining the testimony of French witnesses via the Convention.	N/A
6.	Jan 31, 2003	Ratliff v. Baan Co. N.V., 2003 WL 242892 (S.D.N.Y. 2003) (McKenna, J.)	Netherlands	Plaintiffs in action pending in Georgia attempted to enforce a subpoena duces tecum served on the New York law firm of Ernst & Young. The New York law firm evidently had possession of the documents by virtue of having represented the Ernst & Young entity in the Netherlands. The court declined to compel production and noted that the plaintiffs "have available to them, of course, the Hague Convention . . . , which it appears, they have already initiated."	In effect, yes
7.	Jan 29, 2003	Motorola Credit Corp. v. Vaan, 2003 WL 203011 (S.D.N.Y. 2003)	Switzerland	Plaintiffs served non-party New York bank (UBS) with subpoena relating to UBS accounts in Switzerland. Court denied motion to compel on ground that UBS's New York branch did not have access in the ordinary course of business to information about UBS accounts outside the U.S. The court also cited comity concerns based on letter from the Swiss Ambassador to the U.S. advising, <i>inter alia</i> , that UBS and its Swiss employees might face criminal sanctions if they responded to the subpoena without the authorization of a Swiss court. The court directed that the plaintiffs proceed under the Hague Evidence Convention even though "the delay resulting from this procedure may be extensive."	Yes

	Decision				Required Resort to Hague Convention
8.	Jan 27, 2003	Bakala v. Bakala, 576 S.E.2d 156 (S.C. 2003)	Czech Republic	Court noted that “Hague Evidence Convention is not mandatory” and that by waiting to invoke it on appeal, the party had “waived any argument concerning its application.”	No
9.	Jan 03, 2003	IDT Corp. v. Telefonica, 2003 WL 230894 (S.D.N.Y. 2003) (McKenna, J.)	Spain	Plaintiff served subpoena duces decum on U.S. office of McKinsey & Co. seeking documents located in Spain. McKinsey acknowledged that it operated “seamlessly” in all of its locations, but urged that the plaintiff obtain the documents directly from the Spanish office through the Hague Convention. The court compelled production, noting that McKinsey had control over the documents and that the plaintiff had agreed to pay copying and transportation costs.	No
10.	March 27, 2003	Adams v. Unione Mediterranea di Sicurta, 2002 U.S. Dist. LEXIS 5789 (E.D. La., March 27, 2002)	Italy	Plaintiffs and certain defendants sought jurisdictional discovery from defendant UMS Generali Marine S.p.A. (UMS) via interrogatories and requests for production. UMS objected to the discovery based on the Hague Convention. The court initially distinguished <i>Aerospatiale</i> noting that <i>Aerospatiale</i> was decided after the court’s personal jurisdiction over the foreign party defendant had already been established. Nevertheless, the court applied the <i>Aerospatiale</i> standard and granted the plaintiff’s motion to compel discovery, concluding that the request was specifically tailored to the issue of personal jurisdiction, that there were no alternative means of securing the information, and noncompliance would not undermine any important interests of Italy (the foreign defendant’s home) but would undermine important interests of the court.	No
11.	Oct 23, 2002	Flatow v. Islamic Repub. of Iran, 308 F.3d 1065 (9 <sup>th</sup> Cir. 2002)	France and Turkey	Continuation of Flatow family’s efforts to collect on a judgment against the Republic of Iran. At issue was whether certain property of the Bank Saderat Iran (BSI) was subject to execution. The Flatows filed motions for the issuance of Hague letters of request to former Iranian leaders living in France and Turkey, respectively. The court denied the motions on the ground that the witnesses were not “remotely competent to testify” regarding the limited issue before the court.	N/A
12.	Sep 25, 2002	In re: Assicurazoni Generali S.p.A. Holocaust Ins. Litig, 228 F.Supp. 2d 348 (2002)	Various European	The court noted, in connection with <i>forum non conveniens</i> motion, that the Hague Evidence Convention “is an adequate means to compel documents and witness testimony from abroad.”	N/A
13.	Aug 14, 2002	Nissan Fire & Marine Ins. Co. v. Fortress Re, Inc., 2002 WL 1870084 (S.D.N. Y. 2002)	Japan	Court noted in passing that Hague Evidence Convention not applicable to Japan.	N/A

	Decision				Required Resort to Hague Convention
14.	Aug 08, 2002	Deman v. Terrien, 2002 WL 1824941 (Cal. App. 2 Dist. 2002) (not officially published)	France	The French defendant agreed to appear for a deposition in Paris, but on the morning of the deposition, a “French judicial official” delivered a “formal protestation and preview criminal complaint” on plaintiffs and their counsel. The defendant asserted that the complaint was essentially a formality and agreed to proceed, but the plaintiff declined due to “a perceived risk of criminal prosecution.” The U.S. court refused to compel the defendant to travel to the U.S. for a deposition, noting that the plaintiffs “would have been exempt from possible French sanctions had plaintiffs proceeded pursuant to” the Hague Evidence Convention.	In effect, yes
15.	June 14, 2002	Jacobsen v. Deutsche Bank, 206 F.Supp.2d 590 (S.D.N.Y. 2002)	Germany	Opinion notes that German non-party journalist was deposed under the Convention letter of request procedure by a German judge in October 2000. The deponent invoked the journalist privilege and refused to answer any substantive questions. The journalist was re-deposed in April 2001 and again invoked the privilege. The German district court upheld the assertion of the privilege in a May 2001 order. An appeal was unsuccessful.	N/A
16.	Feb 11, 2002	Umana v. SCM S.p.A., 291 A.2d 446 (S. Ct. App. Divi., 2 <sup>nd</sup> Dept. 2002)	Italy	Action against Italian manufacturer arising from personal injuries from table saw. Italian defendant objected to interrogatories and request for deposition on the ground that the plaintiff had not complied with the Hague Evidence Convention. In a one-page opinion, the court recited <i>Aerospatiale</i> comity factors and held, without any real analysis, that the (New York) Supreme Court had “providently exercised its discretion in requiring the plaintiff to follow the Convention procedures in the first instance.”	Yes
17.	Oct 30, 2001	Durkin v. Intervac, Inc., 782 A.2d 103 (S. Ct. Com. 2001)	Australia	Court dismissed action on <i>forum non conveniens</i> grounds, in part because crucial witnesses would be unavailable if the action remained in Connecticut, rather than in Australia. The court noted that if the case were tried in Connecticut, Australia might not execute letters of request from the U.S. seeking documents in light of Australia’s article 23 reservation. The dissent cited testimony that Australia’s article 23 reservation did not entirely preclude pretrial discovery of documents	N/A
18.	Aug 22, 2001	British Int’l Ins. Co. Ltd. V. Seguros La Republica, 2001 WL 958975 (S.D.N.Y. 2001)	Mexico	Opinion makes passing reference to the Mexican party’s request that any depositions of its principals be taken under the Hague Evidence Convention, but did not address the issue further.	N/A

	Decision				Required Resort to Hague Convention
19.	June 20, 2001	In re Vitamins Antitrust Litigation, 2001 WL 1049433 (D.D.C. 2001)	Germany; Belgium; Switzerland; France; Japan	Continuation of the litigation referenced in items 23 and 25 of this Compendium. Whereas the prior decisions dealt with jurisdictional discovery, this decision addressed the issue of merits discovery. The court rejected defendants' argument that discovery should proceed under the Hague procedures, stating: "Considering the length of time this litigation has already taken and the pretrial schedule currently in place which requires extremely timely and efficient responses to discovery, the fact that the Hague Convention procedures, including defendants' suggested alternative procedures under Hague, are unlikely to result in the timely and efficient discovery required in this case," the court finds that Hague discovery would not be effective. With regard to comity concerns, the court reacted to a law journal article that was critical of its ruling on the jurisdictional discovery issue by observing that criminal liability had already been established for most of the defendants, "discovery requests have been narrowed to make them as unburdensome as possible under the circumstances," and that defendants had attempted to destroy evidence. Thus, the "interest of the United States in effective and timely enforcement of its antitrust laws outweighs the foreign countries sovereign interests in compelling discovery under the Hague procedures." Nevertheless, the court declined to accept a Special Master's recommendation that German and Swiss privacy laws did not preclude production of certain documents. The court directed that defendants file a privacy log of the documents implicated by those laws and afforded plaintiffs the opportunity to litigate whether specific documents should be produced.	No
20.	May 31, 2001	Warburg Pincus Ventures, LP v. Schrappner, 774 A.2d 264 (Del. 2001)	Germany	U.S. defendant argued in support of <i>forum non conveniens</i> motion that the case should be litigated in Germany, in part because although "the Hague Convention ostensibly permits a limited form of deposition . . . , it would be difficult if not impossible to obtain discovery of documents that are located in Germany." Without much analysis, the court upheld the trial court's conclusion that the movant had "not demonstrated with particularity that true hardship would result if it is forced to resort to the Hague Convention procedures to obtain discovery."	N/A
21.	Mar 08, 2001	Madanes v. Madanes, 2001 WL 228122 (S.D. N.Y., 2001)	Argentina	Defendants moved for protective order to prevent issuance of letters of request for depositions in Argentina; Court granted protective order; Defendants agreed to appear for depositions in Argentina pursuant to oath administered by U.S. consular agent.	No

	Decision				Required Resort to Hague Convention
22.	Jan 19, 2001	United Kingdom v. U.S., 238 F.3d 1312 (11 <sup>th</sup> Cir. 2001)	United Kingdom	Inbound discovery; United Kingdom court issued letters of request to U.S. court seeking assistance in discovery of certain evidence for the benefit of foreign criminal defendants in criminal case; <u>Holding</u> : Hague Evidence Convention inapplicable to discovery for criminal proceedings.	N/A
23.	Nov 22, 2000	In re Vitamins Antitrust Litigation, 2000 WL 33142129 (D. D.C. 2000)	Germany; Belgium; Japan; Switzerland; France	Antitrust litigation against foreign businesses; Court previously issued Order in September 2000 (see item 25 of this Compendium) finding that no first-resort to Hague Evidence Convention was required for jurisdictional discovery; Defendants moved for certification of an interlocutory appeal on Hague Evidence Convention issues. <u>Holding</u> : Court granted interlocutory appeal certification finding that “this is an important issue and that resolution of this question would assist many courts in resolving similar disputes.” In reaching decision, Court found substantial difference of opinion on issue. NOTE: The D.C. Circuit Court of Appeals denied the petition in an order entered on January 5, 2001.	No
24.	Oct 11, 2000	Pavlov v. Bank of New York Co., Inc., 2000 WL 1508251 (S.D. N.Y. 2000)	Russian Federation	Plaintiff’s requests under Hague Evidence Convention were determined to be inappropriate.	N/A
25.	Sep 20, 2000	In re Vitamins Antitrust Litigation, 120 F. Supp.2d 45 (D. D.C. 2000)	Germany; Belgium; Japan; Switzerland; France	Antitrust litigation against foreign businesses; plaintiffs moved to compel jurisdictional discovery against foreign defendants under U.S. procedures not Hague Evidence Convention; “primary issue is whether discovery taken to establish personal jurisdiction . . . must proceed under the Hague Convention or whether the Court has discretion to order this discovery to proceed in accordance with the Federal Rules.” <u>Holding</u> : No first-resort to Hague Evidence Convention required for jurisdictional discovery; discovery permitted under U.S. rules; burden of requiring use of Hague Evidence Convention on proponents; foreign nations have significant sovereignty interests in proceeding with discovery under Hague Evidence Convention proceedings; based on a detailed Special Master’s report evaluating the effectiveness of the Hague procedures “and the Court’s own experience with the Hague procedures, the Court finds that . . . the Hague would be extremely unlikely to provide efficient and effective discovery in this case.”; <i>Aerospatiale</i> analysis should not apply to non-signatory nations; Japanese discovery conflicts with U.S.-style discovery and must yield; Belgian discovery conflicts with U.S.-style discovery and must yield.	No

	Decision				Required Resort to Hague Convention
26.	Aug 16, 2000	Deitrich v. Bauer et al., 2000 U.S. Dist. LEXIS 11729 (S.D. N.Y. 2000)	Ireland	Plaintiff's moved to compel non-party Irish bank (AIB) to produce documents. The opinion notes that "prior to issuing the subpoena to AID, Dietrich had retained local counsel in England and the Channel Islands and prepared letters rogatory to obtain production of the documents sought in the instant subpoena. Dietrich later abandoned this effort. According to Dietrich, it would have been prohibitively expensive and so time-consuming that Dietrich would not have been able to meet the December 1999 discovery deadline in this case." Nevertheless, the defendant argued that the defendant "should have continued to pursue discovery pursuant to the Hague Convention". The Court held that the Hague procedures "are neither the exclusive nor even, necessarily, the first means for obtaining discovery from a foreign entity". The court allowed discovery to proceed under the Federal Rules and granted motion to compel based on finding of personal jurisdiction over bank and bank's failure to identify comity interests mandating resort to Hague Evidence Convention.	No
27.	Aug 09, 2000	Administrators of Tulane Educational Fund v. Debio Holding S.A., 2000 WL 1131999 (E.D. La. 2000)	Switzerland	Swiss defendant withdrew consent to deposition in Switzerland upon learning that Swiss penal code does not permit voluntary depositions in Switzerland, except under provisions of Hague Evidence Convention. Court did not require plaintiff to use Hague Evidence Convention and ordered defendant to be deposed in United States because defendant would not give consent as required by Swiss government to proceed under Hague Evidence Convention.	No
28.	May 31, 2000	In re Central Gulf Lines, Inc., 2000 WL 713185 (E.D. La. 2000)	Norway	Court granted 3 <sup>rd</sup> party defendant's motion for issuance of letters of request to Norway for depositions under Hague Evidence Convention.	N/A
29.	Apr 20, 2000	Wright v. American Home Products Corp., 2000 WL 33157701 (Del. Super. 2000)	France	Case deals primarily with Hague Convention on Service of Process, not Hague Evidence Convention.	N/A
30.	Mar 03, 2000	U.S. v. Devine, 2000 WL 263282 (6 <sup>th</sup> Cir. 2000)	Germany	Inbound discovery; German Court submitted Hague Evidence Convention request for blood sample from U.S. citizen to determine paternity in German paternity action; District Court ordered that defendant provide blood sample; <u>Holding</u> : On appeal, Sixth Circuit affirmed requirement that defendant provide blood sample to German Court.	N/A
31.	Dec 17, 1999	LNP Engineering Plastics, Inc. v. Miller Waste Mills, Inc., 77 F. Supp.2d 514 (D. Del. 1999)	England	Court granted request by defendant for foreign discovery under Hague Evidence Convention; United Kingdom Court issued summons 7 days later and foreign discovery proceeded.	N/A

	Decision				Required Resort to Hague Convention
32.	Nov 12, 1999	Husa v. Laboratoires Servier SA, 326 N.J. Super. 150 (N.J. Super. A.D. 1999)	France	American plaintiffs brought personal injury action against French defendants; plaintiffs sought U.S.- style depositions of three French employees or former employees; trial court declined to follow Hague Evidence Convention procedures; appellate court reversed; “We are persuaded that the Convention should be utilized unless it is demonstrated that its use will substantially impair the search for truth, which is at the heart of all litigation”; <u>Holding</u> : New Jersey applies more liberal standard encouraging Hague Evidence Convention use.	Yes
33.	May 06, 1999	Oneida, Ltd. v. U.S., 43 FeD. C. 6111 (Fed. Cl. 1999)	n/a	Tax refund case by American company against United States; Hague Evidence Conventiuon mentioned only in passing.	N/A
34.	Apr 09, 1999	Kurzke v. Nissan Motor Corp. in U.S.A., 320 N.J. Super. 386 (N.J. Super. A.D. 1999)	Germany	Hague Evidence Convention only mentioned in passing with respect to dismissal on forum non conveniens grounds.	N/A
35.	Apr 05, 1999	Belmont Textile Machinery Co. v. Superba, S.A., 48 F. Supp.2d 521 (W.D. N.C. 1999)	France	American plaintiff moved to compel depositions of three French employees of French defendant; Court “need not be overly distracted by the obstacles and restrictions of the Hague Convention”; citing <i>Aerospatiale</i> , court held that discovery was proper under the Federal Rules, as “[w]ith respect to a weighing of national interests, the United States possesses a keen interest in its securities markets.” Court also questioned defendants’ good faith and ordered them to appear for deposition within two weeks or face an entry of default judgment against them. <u>Holding</u> : Defendant ordered to produce foreign employees for U.S. style depositions.	No
36.	Apr 02, 1999	S.E.C. v. Euro Sec. Fund, 1999 WL 182598 (S.D. N.Y. 1999)	Italy and Switzerland	U.S. S.E.C. moved to compel discovery against Italian defendant residing in Switzerland; defendant insisted on discovery under Hague Evidence Convention and depositions in Switzerland pursuant to Swiss law; <u>Holding</u> : Defendant to respond to discovery under U.S. Federal Rules.	No
37.	Mar 17, 1999	McKesson Corp. v. Islamic Republic of Iran, 185 F.R.D. 70 (D. D.C. 1999)	Iran	Hague Evidence Convention only mentioned in passing as inapplicable to Iranian discovery issues.	N/A
38.	Feb 23, 1999	K.K.D. Imports, Inc. v. Karl Heinz Dietrich GmbH & Co. Intern. Spedition, 36 F. Supp.2d 200 (S.D. N.Y. 1999)	Germany	Hague Evidence Convention only mentioned in passing with respect to forum selection clause analysis.	N/A

	Decision				Required Resort to Hague Convention
39.	Jan 28, 1999	NCA Holding Corp. v. Norddeutsche Landesbank Girozentrale, 1999 WL 39539 (S.D. N.Y. 1999)	Germany	Hague Evidence Convention only mentioned in passing as applicable in Germany in forum non conveniens analysis.	N/A
40.	Jan. 11, 1999	Hunter Douglas v. Comfortex Corp., 1999 U.S. Dist. LEXIS 101 (S.D.N.Y. 1999)	Canada	Court notes only in passing that if plaintiff wants to depose non-party's representative who resides in Canada, plaintiff may have to use Hague Evidence Convention.	N/A
41.	Jan 13, 1999	Boss Mfg. Co. v. Hugo Boss AG, 1999 WL 20828 (S.D. N.Y. 1999)	Germany	Hague Evidence Convention not considered in detail because defendant German corporation agreed to waive its applicability if plaintiff agreed to take defendant's deposition in Germany rather than United States.	N/A
42.	Jan 07, 1999	BCCI Holdings (Luxembourg), Societe Anonyme v. Khalil, 184 F.R.D. 3 (D. D.C. 1999)	Pakistan	Decision notes in passing that foreign plaintiff successfully conducted deposition of third-party witness residing in Pakistan under Hague Evidence Convention; Pakistani Court in Islamabad facilitated deposition and recorded deponent's answers (but not questions).	N/A
43.	Nov. 13, 1998	Collins v. American Home Products Corp., 1998 U.S. Dist. LEXIS 18109 (Ed. Pa. Nov. 13, 1998)	France	Hague discovery ordered to the extent that "the taking of discovery under the Hague Convention would not hinder the time schedule for discovery ordered in [the] action." Federal Rules discovery also allowed to proceed.	Yes
44.	Oct 27, 1998	In re Letters Rogatory From Local Court, 29 F. Supp.2d 776 (E.D. Mich. 1998)	Germany	Inbound discovery; German Court submitted Hague Evidence Convention request for blood sample from U.S. citizen to determine paternity in German paternity action; U.S. made motion for blood sample under 28 U.S.C. § 1782; <u>Holding</u> : U.S. Court orders U.S. citizen to provide blood sample for use in German paternity action.	N/A
45.	Aug 21, 1998	Bertrand v. McDonald's Corp., 1998 WL 777032 (D. Virgin Islands 1998)	Argentina	Hague Evidence Convention only mentioned in passing as applicable in Argentina in forum non conveniens analysis; Court notes that due to Argentina's reservation, "the parties' only compulsory access to proof arising in Argentina is through deposition, not through document discovery" but "it will not be an insurmountable problem."	N/A

	Decision				Required Resort to Hague Convention
46.	Jul 14, 1998	First American Corp. v. Price Waterhouse LLP, 154 F.3d 16 (2nd Cir. (N.Y.) 1998)	United Kingdom	Action related to BCCI debacle; Plaintiff subpoenaed documents from a third-party, Price Waterhouse United Kingdom (U.K.); Price Waterhouse-UK contended that “primary resort to the Hague Convention is or should be mandatory if the demand for discovery is addressed to a non-party witness”; Plaintiff had earlier served Hague Evidence Convention letter of request but “English Court refused to enforce the letter of request, because First American was seeking pretrial discovery not provided for under the Hague Convention or British law;” “no reason to favor Hague Convention over Rule 45;” “The Hague Convention does not really offer a meaningful avenue of discovery in the present case. . . . the U.K. permits pretrial discovery only if each document is separately described. . . . Because . . . such specificity is impossible in the present case, the Hague Convention would prove an ineffective tool. . . . The actions already taken by the British Courts on . . . previous letters of request confirm that the Hague Convention procedures will not afford access to documents that would be available under the Federal Rules and that may prove important;” <u>Holding</u> : “We decline to adopt a rule mandating primary resort to the Hague Convention as the means of obtaining discovery from a foreign non-party witness.”	No
47.	Apr 30, 1998	Triple Crown America, Inc. v. Biosynth AG, 1998 WL 227886 (E.D. Pa. 1998)	Switzerland	Court determined that Hague Evidence Convention was not applicable where discovery is sought from a party to an American lawsuit; Hague Evidence Convention is an alternative to the Federal Rules of Civil Procedure where use of Hague Evidence Convention procedures would be effective in country where discovery is to take place.	No
48.	Mar 24, 1998	Greene v. Le Dorze, 1998 WL 158632 (N.D. Tex. 1998)	Germany	Resort to Hague Evidence Convention not required because defendant German corporation agreed to waive applicability of Hague Evidence Convention if plaintiff agreed to depose its representative in German.	N/A
49.	Mar 02, 1998	Tjontveit v. Den Norske Bank ASA, 997 F. Supp. 799 (S.D. Tex. 1998)	Norway	Hague Evidence Convention only mentioned in passing as applicable in Norway in forum non conveniens analysis.	N/A
50.	Feb 18, 1998	Moore v. Sutton Resources, Ltd., 1998 WL 67664 (S.D. N.Y. 1998)	United Kingdom	Court notes only in passing that United Kingdom and United States are parties to Hague Evidence Convention.	N/A
51.	Jan 15, 1998	Bank of Tokyo-Mitsubishi, Ltd., New York Branch v. Kvaerner, 175 Misc.2d 408 (N.Y. Sup. 1998)	Germany?	Court had in personam jurisdiction over party controlling a foreign subsidiary from which documents were sought in discovery; Court determined that discovering party need not resort to Hague Evidence Convention under such circumstances.	No

	Decision				Required Resort to Hague Convention
52.	Dec 17, 1997	First American Corp. v. Price Waterhouse LLP, 988 F. Supp. 353 (S.D. N.Y. 1997)	U.K. Cayman Islands	Action related to BCCI debacle; U.K. and Cayman Islands branches of U.S. company were ordered to produce documents pursuant to the Federal Rules of Civil Procedure (and not Hague Evidence Convention) because, among other things, U.S. interest in resolving the dispute outweighed preservation of English and Cayman Islands confidentiality laws relating to banks. Appeal taken and decided by 2 <sup>nd</sup> Circuit Court of Appeals in July 1998.	No
53.	Aug 19, 1997	Fishel v. BASF Group, 175 F.R.D. 525 (S.D. Iowa 1997)	Germany	Plaintiff Holocaust survivor brought action for damages based in forced labor in Nazi Germany; Plaintiff moved to compel discovery and German defendants requested that all discovery (at least on preliminary personal jurisdiction issues) be conducted under Hague Evidence Convention; <u>Holding</u> : Plaintiff not limited to Hague Evidence Convention until Court rules on personal jurisdiction issues; Hague Evidence Convention only optional; jurisdictional discovery not burdensome; “[A]s between the civil discovery rules and the Convention procedures, the former offer the surer course” for an expeditious and reliable determination of the issues; Germany does not permit pre-trial document discovery; German defendants did not show that Hague Evidence Convention was “effective or more effective” than U.S. Federal rules of civil procedure.	No
54.	Jul 23, 1997	Valois of America, Inc. v. Risdon Corp., 183 F.R.D. 344 (D. Conn. 1997)	France	Patent infringement action. French third-party defendant sought protective order requiring resort to Hague Evidence Convention; party seeking resort to Hague Evidence Convention bears burden of persuasion; French blocking statute has little weight; it would not be equitable to allow discovery against French corporation only under Hague Evidence Convention but permit discovery by French corporation to American parties under U.S. Federal Rules; <u>Holding</u> : parties required to meet and confer to narrow and limit discovery.	No
55.	Jul 18, 1997	Guidi v. Inter-Continental Hotels Corp., 1997 WL 411469 (S.D. N.Y. 1997)	Egypt	Hague Evidence Convention only mentioned in passing in connection with forum non conveniens analysis.	N/A
56.	Apr 16, 1997	Geo-Culture, Inc. v. Siam Inv. Management S.A., 147 Or. App. 536 (Or. App. 1997)	Hong Kong	Appeal of a motion to dismiss for lack of personal jurisdiction. No dispute on appeal regarding use of Hague Evidence Convention. Trial court had required plaintiff to use Hague Evidence Convention to obtain discovery of jurisdictional facts.	Yes
57.	Mar 26, 1997	Ciba-Geigy Ltd. v. Fish Peddler, Inc., 691 So. 2d 1111 (Fla. App. 4 Dist. 1997)	Ecuador; Germany; Switzerland	Hague Evidence Convention only mentioned in passing in forum non conveniens analysis.	N/A

	Decision				Required Resort to Hague Convention
58.	Mar 20, 1997	In re Meta Systems, 111 F.3d 142 (Fed. Cir. 1997)	France	American plaintiff moved to compel French defendant to produce French employees for deposition using U.S. procedures; trial court ordered U.S.-style discovery and appeals court denied mandamus; trial court determined that Hague Evidence Convention would not be timely and effective means of discovery; <u>Holding</u> : French corporation ordered to produce French employees for U.S.-style discovery; Court engaged in comity analysis.	No
59.	Feb. 20, 1997	In re Aircrash Near Roselawn, Indiana, 172 F.R.D. 295 (N.D. Ill. 1997)	France	French defendants sought application of Hague Evidence Convention to plaintiff's requests for production of documents so that discovery rules under French civil code would apply. Resort to Hague Evidence Convention not required because of expense and time.	No
60.	Nov 26, 1996	General Motors Corp. v. Ignacio Lopez de Arriortua, 948 F. Supp. 656 (E.D. Mich. 1996)	Germany	Hague Evidence Convention only mentioned in passing as applicable in Germany in personal jurisdiction analysis.	N/A
61.	Oct 16, 1996	Seewald v. IIS Intelligent Information Systems, Ltd., 1996 WL 612497 (E.D. N.Y. 1996)	Israel	Dispute over scope of discovery permitted by Court; Hague Evidence Convention mentioned only in passing as method used by plaintiff to obtain document production.	N/A
62.	Oct 15, 1996	PKF Intern. Corp. v. IBJ Schroder Leasing Corp., 1996 WL 591213 (S.D. N.Y. 1996)	Sweden	Court granted defendant's letter of request (under Hague Evidence Convention) to obtain interrogatory answers from non-party in Sweden; resisted on grounds of control and scope of discovery sought.	N/A
63.	Sep 06, 1996	Anglo American Ins. Group, P.L.C. v. CalFed Inc., 940 F. Supp. 554 (S.D. N.Y. 1996)	United Kingdom	Hague Evidence Convention mentioned in passing as applicable in United Kingdom in forum non conveniens analysis; Defendant argued that use of Hague Evidence Convention procedures against English witnesses and for English documents would render New York forum inefficient; Court notes that Hague Evidence Convention "is more time-consuming than U.S. federal rules but not oppressive or vexatious."	N/A
64.	Aug 30, 1996	In re Honda American Motor Co., Inc. Dealership Relations Litigation, 168 F.R.D. 535 (D. Md. 1996)	Japan	Dispute over venue for depositions of Japanese defendant corporation's officers; Hague Evidence Convention not applied because Japan not signatory.	N/A
65.	Apr 30, 1996	In re Letter of Request from Amtsgericht Ingolstadt, Federal Republic of Germany, 82 F.3d 590 (4 <sup>th</sup> Cir. (W. Va.) 1996)	Germany	Inbound discovery; German Court submitted Hague Evidence Convention request for blood sample from U.S. citizen to determine paternity in German paternity action; U.S. made motion for blood sample under 28 U.S.C. § 1782; <u>Holding</u> : U.S. Court orders U.S. citizen to provide blood sample for use in German paternity action.	N/A

	Decision				Required Resort to Hague Convention
66.	Mar 07, 1996	Seguros Comercial Americas S.A. De C.V. v. American President Lines, Ltd., 933 F. Supp. 1301 (S.D. Tex 1996)	Mexico	Hague Evidence Convention only mentioned in passing as applicable in Mexico in forum non conveniens analysis; “This process is time consuming, and if the parties fail to cooperate, ineffective.”	N/A
67.	Nov 15, 1995	Hartz and Co., Inc. v. Production Control Information (PCI) Ltd., 70 F.3d 112 (Table, Text in WESTLAW), Unpublished Disposition, 1995 WL 678484 (4 <sup>th</sup> Cir. (Md.) 1995)	United Kingdom	Hague Evidence Convention mentioned in passing as one of defendant’s arguments made to trial court to resist discovery; Court affirmed protective order on other grounds.	N/A
68.	Nov 09, 1995	Schroeder v. Vigil-Escalera Perez, 76 Ohio Misc.2d 25 (Ohio Com. Pl. 1995)		Case deals with Hague Convention on Civil Aspects of International Child Abduction, not Hague Evidence Convention.	N/A
69.	Oct 05, 1995	Hansen v. Neumueller GmbH, 163 F.R.D. 471 (D. Del 1995)	Germany	American plaintiff brought products liability action against German manufacturer; American plaintiff moved to compel discovery on merits against German defendant; German defendant moved for protective order requiring use of Hague Evidence Convention; <u>Holding</u> : Hague Evidence Convention use and discovery on merits premature until court assesses personal jurisdiction based on U.S. evidence.	N/A
70.	Oct 04, 1995	Seguros Comercial Americas S.A. de C.V. v. American President Lines, Ltd., 910 F. Supp. 1235 (S.D. Tex. 1995)	Mexico	Hague Evidence Convention only mentioned in passing as applicable in Mexico in forum non conveniens analysis; “this procedure poses difficulties in obtaining adequate deposition testimony and is expensive and time consuming.”	N/A
71.	Nov 10, 1994	Shannon v. Taesa Airlines, 1994 WL 931216 (S.D. Ohio 1994)	Mexico	Court noted in passing that neither party addressed the issue of whether or not the Hague Evidence Convention should apply to discovery between United States and Mexican parties.	N/A
72.	Aug 23, 1994	Kultur Intern. Films Ltd. v. Covent Garden Pioneer, FSP., Ltd., 860 F. Supp. 1055 (D. N.J. 1994)	United Kingdom	Motion to dismiss on forum non conveniens grounds; Hague Evidence Convention mentioned only in passing as procedure by which plaintiff could compel a non-party witness.	N/A
73.	Jun 15, 1994	Kreimerman v. Casa Veerkamp, S.A. de C.V., 22 F.3d 634 (5 <sup>th</sup> Cir. Tex.) 1994)	Mexico	Hague Evidence Convention only mentioned in passing in service of process case.	N/A

	Decision				Required Resort to Hague Convention
74.	May 26, 1994	BAll Banking Corp. v. Northville Industries Corp., 204 A.D.2d 223 (N.Y. A.D. 1 Dept. 1994)	France	Appellate Court reversed trial court's denial of a motion for issuance of Hague Evidence Convention letters rogatory for French discovery.	N/A
75.	Apr 07, 1994	In re Letter Rogatory from Local Court of Ludwigsburg, Federal Republic of Germany in Matter of Smith, 154 F.R.D. 196 (N.D. Ill. 1994)	Germany	Inbound discovery; German Court submitted Hague Evidence Convention request for blood sample from U.S. citizen to determine paternity in German paternity action; U.S. made motion for blood sample under 28 U.S.C. § 1782; <u>Holding</u> : U.S. Court orders U.S. citizen to provide blood sample for use in German paternity action.	N/A
76.	Feb 04, 1994	Gap, Inc. v. Stone Int'l Trading, Inc., 1994 WL 38651 (S.D. N.Y. 1994)	Israel	Court defers ruling on motion to compel production of documents until ruling on motion to dismiss Israeli defendant for lack of personal jurisdiction; Court notes potential applicability of Hague Evidence Convention.	N/A
77.	Feb 04, 1994	In re Letter of Request From Boras Dist. Court, 153 F.R.D. 31 (E.D. N.Y. 1994)	Sweden	Inbound discovery; Swedish Court submitted Hague Evidence Convention request for blood sample from U.S. citizen to determine paternity in Swedish paternity action; U.S. made motion for blood sample under 28 U.S.C. § 1782; <u>Holding</u> : U.S. Court orders U.S. citizen to provide blood sample for use in Swedish paternity action.	N/A
78.	Jan 26, 1994	Simcox v. McDermott Intern., Inc., 152 F.R.D. 689 (S.D. Tex 1994)	Malaysia; Singapore; United Kingdom	Hague Evidence Convention only mentioned in passing as applicable in Singapore and United Kingdom in forum non conveniens analysis.	N/A
79.	Nov 09, 1993	Martin v. Vogler, 1993 WL 462853 (N.D. Ill. 1993)	Germany	Hague Evidence Convention only mentioned in passing as applicable in Germany in forum non conveniens analysis.	N/A
80.	Jul 29, 1993	Department of Economic Development v. Arthur Andersen & Co. (U.S.A.), 1993 WL 293719 (S.D. N.Y. 1993)	United Kingdom	Court approved (over objection) issuance of letters rotatory under Hague Evidence Convention for third-party United Kingdom witness.	N/A
81.	Jun 07, 1993	Gomez v. Banco Bilbao Vizcaya, S.A., 1993 WL 204990 (S.D. N.Y. 1993)	Spain	Hague Evidence Convention only mentioned in passing as applicable in Spain in forum non conveniens analysis.	N/A

	Decision				Required Resort to Hague Convention
82.	Apr 07, 1993	Moake v. Source Intern. Corp., 623 A.2d 263 (N.J. Super. A.D. 1993)	Germany	American plaintiff brought products liability action against German manufacturer; American plaintiff moved to compel foreign defendant to answer interrogatories; Defendant resisted; trial court held that Hague Evidence Convention procedures need not be used; <u>Holding</u> : Court of Appeals affirmed trial court determination against requiring Hague Evidence Convention procedures; “No proof in this record that plaintiffs’ discovery request generally would violate the sovereignty of Germany or that the Hague Convention procedures would be a more effective means of obtaining the information sought rather than our court rules”; “Invocation of the Hague Convention procedures might well involve considerably more time and expense than would be necessary if our court rules are employed.”	No
83.	Jan 19, 1993	Neo Sack, Ltd. v. Vinmar Impex, Inc., 810 F. Supp. 829 (S.D. Tex 1993)	India	Hague Evidence Convention only mentioned in passing as inapplicable in India in forum non conveniens analysis.	N/A
84.	Nov 02, 1992	In re Letters Rogatory Issued by Nat. Court of First Instance in Commercial Matters N. 23 of Federal Capital of Argentinean Republic, 144 F.R.D. 272 (E.D. Pa. 1992)	Argentina	Inbound discovery; Argentinian plaintiff sought discovery under 28 U.S.C. § 1782 to obtain U.S. documents for use in Argentinian securities fraud case; American third-party subject of discovery request moved to quash; <u>Holding</u> : Discovery permitted; Hague Evidence Convention only mentioned in passing.	N/A
85.	Oct 09, 1992	Knight v. Ford Motor Co., 260 N.J. Super. 110 (N.J. Super .L. 1992)	Germany	American plaintiff brought products liability claims against inter alia, German defendant; burden should be on party opposing Hague Evidence Convention use; comity factors; “no deadlines in this case are so compelling that expediency alone should preclude resort to the Convention”; <u>Holding</u> : plaintiff required to resort to Hague Evidence Convention subject to reopening if not viable.	Yes
86.	Sep 22, 1992	Torreblanca de Aguilar v. Boeing Co., 806 F. Supp. 139 (E.D. Tex. 1992)	Mexico	Hague Evidence Convention only mentioned in passing in forum non conveniens analysis; “This procedure poses difficulties in obtaining adequate deposition testimony. For example, this procedure is expensive and time-consuming.”	N/A

	Decision				Required Resort to Hague Convention
87.	Aug 07, 1992	In re Asbestos Litigation, 623 A.2d 546 (Del. Super. 1992)	Finland	American plaintiffs brought asbestos personal injury action against multiple defendants including Finnish company; Plaintiffs moved to compel discovery; Finnish defendant contended that document production should only proceed under Hague Evidence Convention with respect to documents in Finland; <u>Holding</u> : Plaintiff not required to follow Hague Evidence Convention; “fact that a foreign government might regard discovery outside the Hague Convention procedures as an affront is not, however, dispositive”; U.S. procedures “more expedient and more thorough.”	No
88.	Aug 03, 1992	Taylor v. Costa Cruises, Inc., 1992 WL 196793 (S.D. N.Y. 1992)	Honduras; Costa Rica	Hague Evidence Convention only mentioned in passing as inapplicable in Honduras and Costa Rica.	N/A
89.	Dec 19, 1991	Doster v. Schenk, 141 F.R.D. 50 (M.D. N.C. 1991)	Germany	American plaintiffs brought products liability action against German contractor; German defendant moved for protective order requiring resort to Hague Evidence Convention for discovery against German defendant; “proponent of using the Hague Convention has the burden of demonstrating the necessity of those procedures”; “Defendant fails to show the protective devices of the Federal Rules of Civil procedure are inadequate or that the Hague Convention procedures would be better suited for this case”; “it has been recognized that use of the Convention procedures in Germany can involve considerable time and expense”; “West Germany . . . likely will not execute letters of request for documents”; <u>Holding</u> : Plaintiffs not required to use Hague Evidence Convention for discovery from German defendant.	No
90.	Jul 11, 1991	In re Perrier Bottled Water Litigation, 138 F.R.D. 348 (D. Conn. 1991)	France	American plaintiffs brought products liability action against French company; French defendant requested protective order requiring discovery under Hague Evidence Convention; “a foreign state’s sovereign interests are implicated, if at all, in seeking discovery from citizens of the foreign state, within the boundaries of that state”; “The major obstacle to the effective use of the Convention procedures, if one there be, is litigant’s lack of familiarity with them”; <u>Holding</u> : Court required use of Hague Evidence Convention.	Yes
91.	Jul 05, 1991	McKesson Corp. v. Islamic Republic of Iran, 138 F.R.D. 1 (D. D.C. 1991)	Iran	American plaintiffs sought discovery against Iran; Hague Evidence Convention only mentioned in passing; Iran not a signatory; some discovery permitted.	N/A

	Decision				Required Resort to Hague Convention
92.	Jun 11, 1991	Intercontinental Credit Corp., Div. of Pan American Trade Development Corp. v. Roth, 595 N.Y.S.2d 602 (N.Y. Sup. 1991)	Israel	American judgment creditor and plaintiff sought bank account discovery concerning Israeli assets of judgment debtor; Discovery was propounded on American branch of Israeli bank; Israeli bank and American branch resisted on basis of Israeli bank secrecy laws and Hague Evidence Convention; <u>Holding</u> : “when discovery is sought from a nonparty in a foreign jurisdiction, application of the Hague Convention . . . which encompasses principles of international comity, is virtually compulsory.”; Court noted recent example of U.S. SEC successfully obtaining evidence under Hague Evidence Convention.	Yes
93.	Nov 13, 1990	Banque Paribas v. Dana, 755 F. Supp. 523 (D. Conn. 1990)	France	Hague Evidence Convention only mentioned in passing as applicable in France; Defendant obtained authorization to depose French plaintiff’s representative in France under Hague Evidence Convention but then elected not to proceed with deposition.	N/A
94.	Sep 25, 1990	Great Lakes Dredge & Dock Co. v. Harnischfeger Corp., 1990 WL 147066 (N.D. Ill. 1990)	Germany	German third-party defendant moved for protective order requiring use of Hague Evidence Convention for German discovery; <u>Holding</u> : motion requiring use of Hague Evidence Convention procedures denied; discovery to proceed under U.S.-style rules.	No
95.	Aug 16, 1990	Orlich v. Helm Bros., Inc., 560 N.Y.S.2d (N.Y. A.D. 1 Dept. 1990)	Germany	American plaintiff brought personal injury action against American subsidiary of German car manufacturer; Trial court ordered American subsidiary to produce discovery from German non-party parent; Court of Appeals <u>reversed</u> ; <u>Holding</u> : Discovery with respect to German manufacturer (non-party) must proceed according to Hague Evidence Convention; Trial court could not force American subsidiary to produce documents from German parent outside of Hague Evidence Convention process.	Yes
96.	Aug 15, 1990	Lyman Steel Corp. v. Ferrostaal Metals Corp., 747 F. Supp. 389 (N.D. Ohio 1990)	Germany	Hague Evidence Convention only mentioned in passing as applicable in Germany.	N/A
97.	Aug 10, 1990	Mercier v. Sheraton Intern., Inc., 744 F. Supp. 380 (D. Mass. 1990)	Turkey	Hague Evidence Convention only mentioned in passing as inapplicable in Turkey in forum non conveniens analysis.	N/A

	Decision				Required Resort to Hague Convention
98.	Mar 08, 1990	Roberts v. Heim, 130 F.R.D. 430 (N.D. Cal. 1990)	Switzerland	American plaintiffs brought securities fraud class action against defendants including Swiss citizen; plaintiff moved to compel Swiss national to appear for deposition in U.S. and produce documents (held in Switzerland) under U.S.-style procedures; earlier in case, Swiss national had been examined by written interrogatories under letter rogatory issued pursuant to F.R.C.P. 28(b); Letters rogatory issued March 28, 1989 and examination was conducted by Swiss authorities on June 2, 1989; plaintiffs sought full U.S.-style deposition rather than examination on written interrogatories; Swiss parliament had not ratified Hague Evidence Convention in 1990 (subsequently, in 1994, Switzerland ratified); <u>Holding</u> : Swiss defendant required to appear for U.S.-style deposition in U.S. and produce documents (case had other special circumstances).	No
99.	Feb 15, 1990	In re Bedford Computer Corp., 114 B.R. 2 (Bankr. D. N.H. 1990)	Israel	American Chapter 11 bankruptcy debtor moved to compel discovery of personal jurisdiction documents from Israeli company wholly-owned by Israeli government; Israeli company contended that any discovery must be conducted under Hague Evidence Convention; “the only effect of using the Hague Convention rules would be to further delay this adversary proceeding;” Court endorses <u>Rich v. KIS California</u> decision; <u>Holding</u> : Use of Hague Evidence Convention not required. However, the court did narrow the Federal Rules discovery to make it “as unintrusive and pertinent as is possible under the circumstances.”	No
100.	Jan 12, 1990	Orlich v. Helm Bros., Inc., 550 N.Y.S.2d 795 (N.Y. Sup. 1990)	Germany	American plaintiff brought personal injury action against American subsidiary of German car manufacturer and others; <u>Holding</u> : Court directed U.S. subsidiary to provide discovery from German parent based upon disputed stipulation between parties; Hague Evidence Convention noted in passing as “cumbersome.” <u>Reversed on appeal</u> .	N/A
101.	Dec 15, 1989	Wilson v. Famatex GmbH Fabrik Fuer Textilausruestungsmaschinen, 726 F. Supp. 950 (S.D. N.Y. 1989)	Germany	Federal court notes that state court should rule on Hague Evidence Convention discovery issues since case remanded to state court.	N/A
102.	Oct 02, 1989	Lony v. E.I. Du Pont de Nemours & Co., 886 F.2d 628 (2d Cir. (Del.) 1989)	Germany	Decision on forum non conveniens discusses applicability of Hague Evidence Convention in Germany; Court finds application of Hague Evidence Convention in Germany, using German procedural interpretations, would result in less evidence being available; Court determines that if trial proceeded in Germany, German Court could not compel production of certain German documents and witnesses; Under Hague Evidence Convention German Courts would produce witnesses but not documents.	N/A

	Decision				Required Resort to Hague Convention
103.	Aug 02, 1988	Gould, Inc. v. Pechiney Ugine Kuhlmann, 853 F.2d 445 (6 <sup>th</sup> Cir. (Ohio) 1988)	France	Hague Evidence Convention only mentioned in passing as applicable in France.	N/A
104.	Jun 22, 1988	Scarminach v. Goldwell GmbH, 140 Misc.2d 103 (N.Y. Sup. 1988)	Germany	American plaintiff brought products liability action against German manufacturer; American plaintiff served discovery (interrogatories and document products on requests) on German defendant and moved to compel; German defendant resisted on grounds that Hague Evidence Convention procedures should be used; <b>Holding</b> : “the burden should be upon the party seeking to impose the Convention procedures”; foreign defendant failed to meet burden defendant made only generalized allegations regarding the sovereign interests of Germany (based on an affidavit by an American lawyer describing the German civil law system); Resort to Hague Evidence Convention not required.	No
105.	Jun 22, 1988	Rich v. KIS California, Inc., 121 F.R.D. 254 (M.D. N.C. 1988)	France	American plaintiff moved to compel jurisdictional discovery from French corporation and French individual under U.S. Federal Rules; Defendant insisted on resort to Hague Evidence Convention, at least until personal jurisdiction was established; Court stated Hague Evidence Convention “tends to be more cumbersome than the direct party-to-party discovery under the Federal Rules”; proponent of Hague Evidence Convention bears burden; Federal Rules need not yield to the French Blocking Statute, as that statute is overly broad, vague and need not be given the same deference as a substantive rule of law; “defendants do not show that they will be more effective than use of the Federal Rules”; court noted that the discovery involved only ten interrogatories that were limited to the issue <sup>4</sup> of personal jurisdiction and thus were not intrusive. <b>Holding</b> : Court allowed no discovery against French individual because “fishing” expedition; Court permitted discovery against French corporation under U.S. Federal Rules; Court engaged in comity analysis.	No
106.	May 19, 1988	Jenco v. Martech Intern., Inc., 1988 WL 54733 (E.D. La. 1988)	Norway	Defendant contended that depositions of Norwegian representatives of defendant should be conducted in Norway under Hague Evidence Convention procedures rather than Federal U.S.-rules, especially because jurisdiction was contested; <b>Holding</b> : Hague Evidence Convention procedures required; “While judicial economy may dictate that the Federal Rules of Civil Procedure be used, the interests of protecting a foreign litigant in light of jurisdiction problems are paramount.”	Yes
107.	May 06, 1988	Suzuki Motor Co. v. Superior Court, 200 Cal. App.3d 1476 (Cal. App. 4 Dist. 1988)	Japan	Hague Service Convention case notes in passing that Hague Evidence Convention inapplicable.	N/A

	Decision				Required Resort to Hague Convention
108.	Apr 29, 1988	Jenco v. Martech Intern., Inc., 1988 WL 44442 (E.D. La. 1988)	Norway	Defendant contended that depositions of Norwegian representatives of defendant should be conducted in Norway under Hague Evidence Convention procedures rather than Federal U.S.-rules, especially because jurisdiction was contested; <u>Holding</u> : Magistrate Judge permits depositions under U.S.-style procedures; Hague Evidence Convention procedures not required; <u>Reversed</u> on appeal to district court.	No
109.	Mar 07, 1988	In re Anschuetz & Co., GmbH, 838 F.2d 1362 (5 <sup>th</sup> Cir. (La.) 1988)	Germany	Appeal on remand by Supreme Court after <u>Aerospatiale</u> ; German defendant moved for protective order requiring discovery under Hague Evidence Convention; <u>Holding</u> : Appeals Court remanded to trial court for consideration under <u>Aerospatiale</u> .	No
110.	Feb 25, 1988	Haynes v. Kleinwefers, 119 F.R.D. 335 (E.D. N.Y. 1988)	Germany	American plaintiff sued German defendant in products liability action; German defendant moved for order requiring that German discovery be conducted under Hague Evidence Convention. Court held that to force all parties to the action to use the Hague Convention procedures in their discovery requests directed to the defendant, while the defendant could utilize the Federal Rules, would contravene the United States' interest in seeing that all litigants are treated fairly and equally in its courts.	No
111.	Jan 07, 1988	Sandsend Financial Consultants, Ltd. v. Wood, 743 S.W.2d 364 (Tex. App.-Hous. (1 Dist. 1988)	United Kingdom (Jersey Channel Islands)	American plaintiff sought discovery from United Kingdom defendant (Jersey Channel Islands), including deposition and document production; foreign defendant resisted on grounds that discovery should proceed under Hague Evidence Convention; trial court denied such position; <u>Holding</u> : trial court properly exercised discretion to determine that discovery should proceed under U.S.-style rules.	No
112.	Dec 09, 1987	Broadcasting Rights Intern. Corp. v. Societe du Tour de France, S.A.R.L., 675 F. Supp. 1439 (S.D. N.Y. 1987)	France	Hague Evidence Convention only mentioned in passing as applicable in France in forum non conveniens analysis.	N/A

	Decision				Required Resort to Hague Convention
113.	Nov 30, 1987	Benton Graphics v. Uddeholm Corp., 118 F.R.D. 386 (D. N.J. 1987)	Sweden	American steel buyer brought fraud, misrepresentation and breach of contract action against Swedish sellers; Swedish companies opposed motion to compel responses to discovery (interrogatories and document production) on ground that discovery could proceed only under Hague Evidence Convention, “Hague Convention is an optional procedure”; “party seeking to utilize Convention procedures” bears the burden; <u>Holding</u> : Plaintiff need not conduct discovery under Hague Evidence Convention procedures; Hague Evidence Convention discovery in Sweden would not be effective; Swedish Foreign Ministry affidavit states that the letter rogatory “should be processed by the Swedish authorities in approximately two months;” Court downplays and states: “that is an approximation based on past history, there are certainly no guarantees; Swedish process may” bring discovery to standstill.	No
114.	Sep 09, 1987	Hudson v. Hermann Pfauter GmbH & Co., 117 F.R.D. 33 (N.D. N.Y. 1987)	West Germany	West German defendant manufacturer sought protective order requiring interrogatories to be served in compliance with Hague Evidence Convention rather than Fed. R. Civ. P. 33; burden should be on party opposing use of Hague Evidence Convention; major obstacle is unfamiliarity of U.S. Courts and litigants with Hague Evidence Convention procedures; “quite possible that its procedures will prove just as effective and cost-efficient as those of the Federal Rules”; non-use would be “parochial”; Court engaged in comity analysis; West German interests strong with respect to discovery in West Germany; Use of the Hague Convention procedures fostered the mutual interest of all nations in a “smoothly functioning international legal regime,” as the discovery requested could be attained without violating the laws of another sovereign nation; <u>Holding</u> : Court required use of Hague Evidence Convention procedures.	Yes
115.	Jun 22, 1987	Panara v. Hertz Penske Truck Leasing, Inc., 1987 WL 12782 (E.D. Pa. 1987)	France	American plaintiff brought personal injury action against French manufacturer and others; Plaintiff moved to compel discovery and French defendant resisted arguing that Hague Evidence Convention procedures should be followed; Arguments in favor of use of Hague Evidence Convention “look persuasive”; <u>Holding</u> : Because plaintiff “failed to challenge French defendant’s interpretation of discovery obligations under French and international law” motion denied; Resort to Hague Evidence Convention required.	Yes
116.	Jun 15, 1987	Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for Southern Dist. of Iowa, 482 U.S. 522 (U.S. Iowa 1987)			

