

**TO BE FILED  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

SUSAN R. PARKS, wife and next of kin  
of TIMOTHY GLEN PARKS, deceased,  
and Executor of the Estate of Timothy  
Glen Parks, deceased,

Plaintiff,

vs.

ARIENS COMPANY, a Wisconsin  
corporation,

Defendant.

No. C14-4005-MWB

**ORDER**

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This case is before me on a motion (Doc. No. 27) for protective order filed on February 10, 2015, by defendant Ariens Company (Ariens). Plaintiff Susan R. Parks, wife and next of kin of Timothy Glen Parks, deceased, and executor of the estate of Timothy Glen Parks, deceased (Ms. Parks), has filed a resistance (Doc. No. 28). Pursuant to Local Rules 7(c) and 7(g), I find that oral argument is not necessary<sup>1</sup> and, because of upcoming deadlines, that the motion should be resolved without awaiting a reply.

***RELEVANT BACKGROUND***

Ms. Parks filed this action on January 16, 2014. She asserts claims of strict liability and negligence against Ariens arising from an incident that occurred on June 3,

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<sup>1</sup> Neither party included a request for oral argument in their written materials. See N.D. Iowa L.R. 7(c).

2013. Ms. Parks contends that on that date, Timothy Glen Parks was operating a lawn tractor manufactured by Ariens when that tractor rolled, pinning him underneath and causing his death. Doc. No. 2 at 2-3, ¶¶ 7-9.<sup>2</sup> In general, Ms. Parks alleges that rollover is a known risk that Ariens should have addressed by including a rollover protection system (ROPS) as standard equipment rather than as an option. *Id.* at 3-4, ¶¶ 10-22. She seeks actual and punitive damages. *Id.* at 8.

On January 29, 2015, Ms. Parks issued a deposition notice (Doc. No. 27 at 3-4) (the Notice) for Daniel Ariens, the Chief Executive Officer of Ariens. Ariens objects to the Notice on grounds it would be unduly burdensome for Mr. Ariens to submit to a deposition, that his deposition testimony would be of limited relevance and that Ms. Parks has already deposed four Ariens representatives who have superior knowledge. Doc. No. 27 at 1. Ariens seeks an order prohibiting the deposition pursuant to Federal Rules of Civil Procedure 26(b)(2)(C)(i) and 26(c)(1)(A). *Id.*

### ***ANALYSIS***

Federal Rule of Civil Procedure 26 states as follows, in relevant part:

**(b) Discovery Scope and Limits.**

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**(2) Limitations on Frequency and Extent.**

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**(C) When Required.** On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

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<sup>2</sup> Ms. Parks originally sued another party, Gravely Company, along with Ariens. Doc. No. 2. However, on February 19, 2014, a stipulation (Doc. No. 9) of dismissal was filed with regard to Gravely Company. Ariens is now the sole defendant.

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

\* \* \*

**(c) Protective Orders.**

- (1) *In General.* A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;

Fed. R. Civ. P. 26(b)(2)(C)(i) and 26(c)(1)(A). Protective orders that prohibit the deposition of an individual are granted only under extraordinary circumstances. *Rolscreen Co. v. Pella Products of St. Louis, Inc.*, 145 F.R.D. 92, 96 (S.D. Iowa 1992) (citing *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979)). As the party seeking to prevent the deposition, Ariens carries a heavy burden to show why discovery should be denied. *See, e.g., Groupon, LLC v. Groupon, Inc.*, No. 11-0870 MEJ, 2012 WL 359699, \*2 (N.D. Cal. Feb. 2, 2012).

Ariens relies on what is sometimes called the “apex doctrine,” which “protects high-level corporate officials from deposition unless (1) the executive has unique or special knowledge of the facts at issue and (2) other less burdensome avenues for obtaining the information sought have been exhausted.” *Bank of the Ozarks v. Capital Mortg. Corp.*, No. 4:12-mc-00021 KGB, 2012 WL 2930479, \*1 (E.D. Ark. July 18,

2012); (quoting *Wal-Mart Stores, Inc. v. Vidalakis*, 2007 WL 4591569, at \*1–2 (W.D. Ark., Dec. 28, 2007)); *see also Groupon*, 2012 WL 359699 at \*2. The court must balance the competing interests of allowing discovery and protecting the parties and deponents from undue burden. *Bank of the Ozarks*, 2012 WL 2930479 at \*1.

Here, Ariens relies primarily on Mr. Ariens’ lack of participation in decisions concerning ROPS. It notes that other witnesses, already deposed, have confirmed that Mr. Ariens was not involved. Doc. No. 27 at 7-8. Ariens thus argues that the requested deposition is duplicative and is not likely to result in the discovery of relevant information. *Id.*

Ms. Parks argues that even if Mr. Ariens had no personal involvement, she is entitled to inquire into such topics as (a) whether he had knowledge of what she calls “the history of the lawn tractor rollover problem” and (b) why Ariens allowed a sales and marketing group, rather than its engineering group, to decide whether ROPS should be standard or optional equipment. Doc. No. 28 at 4-5. She also argues that Ariens has not made the showing necessary to prevent the deposition from occurring. *Id.* at 5.

While Ariens may turn out to be correct that Mr. Ariens has little relevant information, I agree with Ms. Parks that Ariens has failed to meet its “heavy burden” of showing that the deposition should not occur. Indeed, in balancing the need for discovery against the need to protect a deponent from undue burden, I find that Ariens has provided virtually no support for a finding of undue burden. It has not, for example, argued that it is party to dozens or hundreds of product-related lawsuits such that it would be unrealistic for Mr. Ariens to be deposed in each case. Indeed, Ariens makes no reference to *any* other lawsuits. Instead, in describing the alleged burden, Ariens refers to “normal scheduling issues” and also notes, unfortunately, that Mr. Ariens’ father is in the advanced stages of bone cancer. Doc. No. 27 at 11. While I am sympathetic to the plight of having a seriously-ill parent, that situation does not justify preventing Ms.

Parks from conducting discovery in this case. Nor do “normal scheduling issues” constitute an undue burden. Every deposition causes some inconvenience to the witness.

By contrast, Ms. Parks has provided a sufficient explanation as to why the deposition might result in the discovery of relevant information. Testimony concerning Mr. Ariens’ knowledge of other rollover incidents and the manner in which Ariens makes decisions concerning safety equipment could, if nothing else, bear on Ms. Parks’ claim for punitive damages in this case. While I am not entirely convinced that the deposition will actually generate relevant testimony, the potential that it might do so far outweighs Ariens’ failure to show that the deposition would amount to an undue burden.

Ms. Parks, through counsel, has represented that Mr. Ariens deposition will be short. Doc. No. 27 at 24. I will hold Ms. Parks to that representation. However, I will not prohibit the deposition, as Ariens has not demonstrated that such relief is justified.

### ***CONCLUSION***

For the reasons set forth herein, defendant’s motion (Doc. No. 27) for protective order is **granted in part** and **denied in part**, as follows:

a. The motion is **denied** to the extent that it seeks entry of an order prohibiting the deposition of Daniel T. Ariens.

b. The motion is **granted** in that the deposition of Mr. Ariens shall be scheduled at a time and place reasonably convenient to Mr. Ariens and shall be limited to a duration of three (3) hours.

c. Although discovery is scheduled to close on February 27, 2015, Mr. Ariens’ deposition may occur after that date, on a date agreeable to the parties, but in no event later than **March 20, 2015**. Unless otherwise agreed by the parties or ordered by the court, no other discovery shall occur after the close of discovery.

**IT IS SO ORDERED.**

**DATED** this 25th day of February, 2015.



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**LEONARD T. STRAND**  
**UNITED STATES MAGISTRATE JUDGE**