

# TEXAS LAWYER

APRIL 25, 2016

An **ALM** Publication

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## APPELLATE LAWYER of the WEEK

### Attorney Uses the Fifth Circuit to Get U.S. Documents for Mexican Lawsuit

by John Council

After chasing an evasive litigation investment company all over the United States with a federal subpoena, Meredith Parenti's corporate defendant client has so far been unsuccessful in compelling documents that may be crucial to a lawsuit it faces in Mexico.

But their luck changed after Parenti recently convinced the U.S. Court of Appeals for the Fifth Circuit that a Cayman Islands chartered company which has an office in Dallas, must give up the information for use in the foreign litigation.

The reason Parenti's client Grupo Mexico needs the documents is to determine if SAS Asset Recovery has invested in the foreign litigation and whether they should be named as a necessary party to a Mexican lawsuit, she said.

The background to *Grupo Mexico v. SAS Asset Recovery* is as follows according to the decision.

Grupo Mexico, the country's largest mining company, is defending a breach of contract case in Mexico over a dispute involving the sale of 65 million shares of the business.

In 2014, Grupo Mexico sought discovery from SAS Asset Recovery and Dallas-based Highland Capital, a \$20 billion private equity fund. Highland Capital and SAS share office space and have overlapping officials and staff.

To get the discovery, Grupo Mexico filed a motion in a Dallas federal court under § 1782 of the Judiciary Act which authorizes federal judges to cooperate with foreign and international tribunals. Specifically, it allows federal judges to compel discovery on people who reside in his or her district for use in foreign litigation.

After Grupo Mexico won approval from a Dallas U.S. Magistrate to serve its motion to compel, Highland Capital successfully quashed the



Gettings Photography

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motion by arguing it didn't have the documents requested.

SAS however avoided and evaded numerous attempts at service in Dallas and New York City, prompting Grupo Mexico to finally accomplish service on SAS's registered agent in the Cayman Islands using the Hague Service Convention.

In 2015, SAS made its first appearance in the case before a Dallas U.S. Magistrate to challenge the court's personal jurisdiction over it by arguing the service of the subpoena on its registered agent was improper. However, the magistrate granted the motion by ruling that the subpoena was properly served and that SAS waived any objections by failing to respond in a timely manner.

A Dallas U.S. District judge also later upheld the motion to compel, noting that SAS did not disagree that it resides in the Northern District of Texas. The district judge also found that SAS failed to object timely to the subpoena—rulings SAS appealed to the Fifth Circuit.

In her April 21 decision, Judge Edith Jones concluded that the trial court unquestionably had jurisdiction to rule on the motion to compel.

"SAS, the subject of the discovery order, indisputably 'resides or is found' in the district, sharing office space, telephone numbers, duplicate personnel and officers with another party to the same discovery request," Jones wrote. "The company is thus well aware of the proceedings and the discovery request, yet had deliberately and repeatedly evaded subpoena service in the U.S."

Jones noted that SAS could have raised a number of interesting international law issues in the case, but squandered all of them by not raising them before the trial court. She concluded there was no fundamental unfairness or procedural violation inflicted on SAS in affirming the motion to compel.

Parenti, of Houston's Parenti Law who represents Grupo Mexico, is pleased with the decision.

"If you're doing business in the United States, you're going to be subject to these types of discovery requests," Parenti said. "There's a proper time to object to service. And if you don't do that in a timely manner, you lose your rights. And that's well known."

Scott Hershman, a partner in Dallas' Lackey Hershman who represents SAS, said his client will file a motion for rehearing in the case. He argued that his client wasn't aware of the motion to compel until the subpoena was served in the Cayman Islands.

Hershman also argues that the instances in which foreign defendants can use U.S. courts to compel discovery should be limited in scope.

"We think the service was defective and we should be able to raise our objections in the trial or the appellate court," Hershman said.