

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MARK C. SAVIGNAC and  
JULIA SHEKETOFF,

*Plaintiffs,*

v.

JONES DAY, STEPHEN J. BROGAN,  
BETH HEIFETZ, and JOHN DOES 1-10,

*Defendants.*

Case No. 1:19-cv-02443-RDM

**MOTION FOR REMOTE DEPOSITIONS IN LIGHT OF ONGOING PANDEMIC**

Jones Day seeks to endanger Plaintiffs and their unvaccinated young children (born in 2019 and 2020) by demanding that Plaintiffs sit for in-person depositions on January 26 and 28, when scientists expect that the COVID pandemic—which has already killed over 800,000 Americans—will be surging to yet another peak. *E.g.*, New York Times, “Expecting a Surge” (Dec. 16, 2021), [www.nytimes.com/2021/12/16/briefing/omicron-update-spread-vaccines.html](http://www.nytimes.com/2021/12/16/briefing/omicron-update-spread-vaccines.html). During a far less deadly and intense period of the pandemic, another federal court excoriated a civil rights plaintiff’s motion to compel in-person depositions as “tomfoolery” and ordered that the depositions proceed remotely. *Joffe v. King & Spalding LLP*, 2020 WL 3453452, at \*1 (S.D.N.Y. 2020); *see id.* (plaintiff “is the sole litigant before this Court who has insisted on the ability to take in-person depositions, despite the health risks to all involved”). Plaintiffs respectfully request that this Court do the same here. *See* Fed. R. Civ. P. 30(b)(4) (“the court may on motion order ... that a deposition be taken by telephone or other remote means”).

On December 9, and without prior consultation, Jones Day noticed Plaintiffs' depositions for January 26 and 28. App. 2a-5a. On December 13, Plaintiffs responded:

We ask that the depositions be done remotely in light of the pandemic and also our childcare responsibilities for our two very young children (for whom there is no vaccine). We are happy to discuss arrangements. If Defendants agree to remote depositions, we would extend the same courtesy to the individuals we depose.

*Id.* at 6a. On December 17, Jones Day rejected that request:

The presumption under the rules is that depositions will take place in-person and within the jurisdiction where Plaintiffs chose to file this lawsuit. Out of consideration for your circumstances, Defendants would agree to depositions in Chicago or some other reasonable Illinois location convenient for Plaintiffs, but the depositions should proceed in-person. That is Defendants' preference. Moreover, given the potential for scope disputes at Plaintiffs' depositions—which potential is higher in this case, given Plaintiffs' choice to proceed *pro se*, Plaintiffs' inexperience with civil discovery, and the positions Plaintiffs have taken in discovery to date—an in-person deposition will be more efficient and increase the possibility that the deposition of each Plaintiff can open and close the same day notwithstanding any need for the Court's intervention. We would of course agree to follow appropriate CDC guidelines for in-person meetings and any other reasonable safety protocols that Plaintiffs may request. Please let me know if that is acceptable.

*Id.* at 8a. Jones Day's only rationale for its "preference" is the doubtful assertion that it would be "more efficient" to obtain the Court's (remote) guidance, should the need arise on the day of the deposition, if the parties (but not the Court) are in the same room. *Id.*

Jones Day's demand is baseless and irresponsible. "[T]he decision to grant or deny [a Rule 30(b)(4)] application is left to the discretion of the Court, which must balance claims of prejudice and those of hardship." *In re Terrorist Attacks*, 337 F.R.D. 575, 578 (S.D.N.Y. 2020). "Since the beginning of the pandemic, courts have considered the serious health risk posed by the coronavirus and concluded that remote depositions do not cause undue hardship and can be conducted with relative ease given current technology." *Id.* Indeed, even before the pandemic, "[a]mple case law recognize[d] that a videoconference deposition can be an adequate substitute for an in-person deposition." *United States v. One Gulfstream G-V Jet Aircraft*, 304 F.R.D. 10, 17-18 (D.D.C.

2014) (“Parties routinely conduct depositions via videoconference, and courts encourage the same”). Courts have issued detailed opinions debunking arguments that an order requiring depositions to proceed remotely unduly prejudices the deposing party. *See Terrorist Attacks*, 337 F.R.D. at 577-70; *Mosiman v. C&E Excavating, Inc.*, 2021 WL 1100597, at \*2-4 (N.D. Ind. 2021). Jones Day’s discovery lawyers have surely developed substantial experience with remote depositions during the pandemic. *See NRDC v. EPA*, 2020 WL 2849624, at \*5 n.5 (D.D.C. 2020) (“Across the country, attorneys and judges are learning to overcome ... difficulties and conduct remote proceedings with some semblance of normality.”). And the use of remote technology has not materially impeded the ability of the parties and the Court to resolve the disputes that have arisen so far. Finally, since Plaintiffs’ faces would be obscured by masks during in-person depositions, Jones Day’s ability to observe and record their demeanor while testifying would be limited at best. *See Mosiman*, 2021 WL 1100597, at \*3.

As everyone knows, COVID cases are rapidly rising again and are expected to do so through the winter, especially following holiday gatherings and travel. *See New York Times*, “Expecting a Surge.” By late January (if not earlier), infections in the United States will likely be dominated by the Omicron variant, which is far more infectious than prior variants of the virus and far more likely to infect vaccinated individuals (who would then go on to infect others). *See id.*; *New York Times*, “Denmark and Norway Predict Drastic Spike in Omicron Cases” (Dec. 13, 2021) (“vaccines are providing little protection from [Omicron] infection”), [www.nytimes.com/2021/12/13/health/omicron-cases-denmark-norway.html](http://www.nytimes.com/2021/12/13/health/omicron-cases-denmark-norway.html). Indeed, new Omicron cases appear to be *doubling* roughly every two days. *See New York Times*, “The Omicron variant’s rapid spread could soon lead to a wave, the CDC warns” (Dec. 14, 2021), [www.nytimes.com/2021/12/14/science/omicron-cdc.html](http://www.nytimes.com/2021/12/14/science/omicron-cdc.html). “Someone infected with the Omicron

variant ... is roughly three times as likely as a person infected by the Delta variant to pass the virus to other members of his or her household.” New York Times, “British studies warn of Omicron’s speed” (Dec. 10, 2021), [www.nytimes.com/2021/12/12/health/britain-omicron.html](http://www.nytimes.com/2021/12/12/health/britain-omicron.html).

On December 15, Britain, where Omicron arrived earlier than in the United States, had its worst day of the entire pandemic. *See* New York Times, “Britain breaks a daily record for new cases, amid worry about the possible impact of explosive growth” (Dec. 15, 2021), [www.nytimes.com/2021/12/15/world/europe/uk-covid-record-cases.html](http://www.nytimes.com/2021/12/15/world/europe/uk-covid-record-cases.html). On December 17, while Jones Day was rejecting Plaintiffs’ request for remote depositions, New York was having its worst day so far. *See* New York Times, “New York reports a record number of coronavirus cases for one day” (Dec. 17, 2021), [www.nytimes.com/2021/12/17/nyregion/covid-new-york-omicron.html](http://www.nytimes.com/2021/12/17/nyregion/covid-new-york-omicron.html). There is little doubt that other U.S. cities will have the same experience and that new records will continue to be set through the coming months.

While existing vaccines may offer protection against the worst outcomes from Omicron, even vaccinated individuals have died or become seriously ill. New York Times, “Expecting a Surge”; New York Times, “Most Covid Infections May Soon Be Breakthroughs” (Dec. 19, 2021), [www.nytimes.com/2021/12/19/opinion/omicron-breakthroughs.html](http://www.nytimes.com/2021/12/19/opinion/omicron-breakthroughs.html) (“Even cases among the vaccinated can still lead to long Covid.”). And, as Jones Day is aware, there is no vaccine available for Plaintiffs’ very young children. *See* New York Times, “In a trial, Pfizer-BioNTech’s low-dose shot fell short for children aged 2 to just under 5” (Dec. 16, 2021), [www.nytimes.com/live/2021/12/17/world/covid-omicron-vaccines/in-a-trial-pfizer-biontechs-low-dose-shot-did-not-provoke-an-adequate-immune-response-in-2-to-5-year-olds](http://www.nytimes.com/live/2021/12/17/world/covid-omicron-vaccines/in-a-trial-pfizer-biontechs-low-dose-shot-did-not-provoke-an-adequate-immune-response-in-2-to-5-year-olds). Two of the four people in Plaintiffs’ household have a blood disorder identified by the CDC as increasing the risk of severe illness from COVID-19.

Plaintiffs have made extraordinary efforts to protect themselves and their children throughout the pandemic. In March 2020, they took their family halfway across the country to reduce exposure and to secure low-risk childcare for their son. Plaintiffs have worked exclusively remotely since then. Except for medical visits in connection with Julia’s complicated second pregnancy and the birth of Plaintiffs’ daughter, they have not traveled or stayed in a hotel since March 2020. They have not entered a plane or airport. They have not eaten in a restaurant. They have not enrolled their children in daycare or preschool. They have avoided indoor gatherings of all sorts. In short, with the possible exception of the hospital visit for their daughter’s birth, the in-person depositions that Jones Day demands—two day-long indoor gatherings with numerous individuals, some of whom will have just traveled from other states by plane—would present by far the highest risk of infection for Plaintiffs and their children since the pandemic began.

If Plaintiffs were infected, they would likely infect their children before becoming aware of their own infections. And even assuming that they learned of their infections before infecting their children and did not become severely ill, CDC guidance would call for them to isolate from their children for 10 days following their positive tests. The immense burden on Plaintiffs’ very young children of such a long period without contact with their parents (on top of the days for the depositions themselves) would be grossly disproportionate to the illusory “efficiency” interest that Jones Day points to as the justification for its demand.

According to the New York Times, the U.S. daily new case count when Judge Caproni issued the ruling cited above in June 2020 was “only” 36,989. *See* New York Times, “Coronavirus in the U.S.” (updated Dec. 19, 2021), [www.nytimes.com/interactive/2021/us/covid-cases.html](http://www.nytimes.com/interactive/2021/us/covid-cases.html). By contrast, the daily count when Jones Day rejected Plaintiffs’ request was *nearly five times as high* (170,035). *See id.* The daily death count is also far higher now than it was back then. *See*

*id.* Indeed, it is higher now than it has been during most of the 21 months since the pandemic hit the United States, *even though most Americans are now vaccinated*—which, again, appears to offer little protection against Omicron infection and would offer no protection for Plaintiffs’ unvaccinated children. *See id.* And deaths will almost surely be far higher by late January.

No one else is discounting the risks. Plaintiffs’ employers, like most employers that can do so, continue to allow remote work—even though they surely share Jones Day’s “preference” for in-person interactions. *See* New York Times, “The End of a Return-to-Office Date” (Dec. 11, 2021), [www.nytimes.com/2021/12/11/business/return-to-office-2022.html](http://www.nytimes.com/2021/12/11/business/return-to-office-2022.html). The D.C. Circuit recently granted Julia leave to argue a criminal appeal set for January 11 remotely. Indeed, the D.C. Circuit’s current protocol, implemented on December 1, provides that requests to argue appeals by Zoom will be granted as a matter of course. *See* [www.cadc.uscourts.gov/intranet/home.nsf/Content/Announcement+-+Protocols+For+In-Person+And+Hybrid+Oral+Arguments/\\$FILE/COVIDprotocolsEffective12-01-2021.pdf](http://www.cadc.uscourts.gov/intranet/home.nsf/Content/Announcement+-+Protocols+For+In-Person+And+Hybrid+Oral+Arguments/$FILE/COVIDprotocolsEffective12-01-2021.pdf). This is so even though the risks from a 20-minute argument in a spacious courtroom are far less than from a day-long deposition in a conference room, and even though the D.C. Circuit did not countenance remote appearances before the pandemic—whereas the Federal Rules have long allowed judges to order that depositions be done remotely.

This motion should not have been necessary. There is no justification for Jones Day to demand that Plaintiffs and their children incur such a risk as cases continue to mount, hospitals to fill, and death tolls to rise. *See* New York Times, “Doctors and Nurses Are ‘Living in a Constant Crisis’ as Covid Fills Hospitals” (Dec. 17, 2021), [www.nytimes.com/2021/12/17/us/covid-hospitals-omicron.html](http://www.nytimes.com/2021/12/17/us/covid-hospitals-omicron.html). Plaintiffs’ “position is in harmony with the literally scores of cases reported in Westlaw that have refused to allow attorneys to take in-person depositions as opposed

to video depositions during the worldwide pandemic.” *Berkeley v. Teradata Operations, Inc.*, 2021 WL 3566596, at \*2 (N.D. Ill. Aug. 12, 2021) (requiring plaintiff to depose Rule 30(b)(6) witness remotely). Plaintiffs respectfully request that the Court order that deponents in this action may elect to be deposed remotely.

/s/ Julia Sheketoff

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/s/ Mark C. Savignac

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December 20, 2021

# APPENDIX

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MARK C. SAVIGNAC and  
JULIA SHEKETOFF,

*Plaintiffs,*

v.

JONES DAY, STEPHEN J. BROGAN,  
BETH HEIFETZ, and JOHN DOES 1-10,

*Defendants.*

Case No. 1:19-cv-02443-RDM

TO: Mark Savignac  
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Urbana, IL 61801  
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marksavignac@gmail.com

**PLEASE TAKE NOTICE** that pursuant to Rule 30(a)(1) of the Federal Rules of Civil Procedure, Defendants Jones Day, Stephen J. Brogan, and Beth Heifetz (the “Defendants”) will take the deposition upon oral examination of Plaintiff Mark C. Savignac. The deposition will commence at 9:00 a.m. on January 26, 2022 at the offices of Jones Day, 51 Louisiana Ave NW, Washington, DC 20001, or at such other date, time and location as the parties may agree or may be ordered by the Court, and will continue as necessary from day to day until completed.

**PLEASE TAKE NOTICE** that the deposition will be recorded by stenographic and/or videographic means before a person authorized to administer oaths and record testimony pursuant to Rule 28 of the Federal Rules of Civil Procedure.

December 9, 2021

/s/ Terri L. Chase  
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*Attorneys for Defendants*

**IN THE UNITED STATES DISTRICT COURT  
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MARK C. SAVIGNAC and  
JULIA SHEKETOFF,

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JONES DAY, STEPHEN J. BROGAN,  
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*Defendants.*

Case No. 1:19-cv-02443-RDM

TO: Julia Sheketoff  
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**PLEASE TAKE NOTICE** that pursuant to Rule 30(a)(1) of the Federal Rules of Civil Procedure, Defendants Jones Day, Stephen J. Brogan, and Beth Heifetz (the “Defendants”) will take the deposition upon oral examination of Plaintiff Julia Sheketoff. The deposition will commence at 9:00 a.m. on January 28, 2022 at the offices of Jones Day, 51 Louisiana Ave NW, Washington, DC 20001, or at such other date, time and location as the parties may agree or may be ordered by the Court, and will continue as necessary from day to day until completed.

**PLEASE TAKE NOTICE** that the deposition will be recorded by stenographic and/or videographic means before a person authorized to administer oaths and record testimony pursuant to Rule 28 of the Federal Rules of Civil Procedure.

December 9, 2021

/s/ Terri L. Chase  
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*Attorneys for Defendants*

December 13, 2021

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***Via Email***

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RE: *Savignac v. Jones Day*, No. 19-cv-2443-RDM

Terri and Anderson,

We write in response to your deposition notices and cover email of December 9. Please respond by December 17. If you prefer to discuss anything by phone, we are available this week.

We ask that the depositions be done remotely in light of the pandemic and also our childcare responsibilities for our two very young children (for whom there is no vaccine). We are happy to discuss arrangements. If Defendants agree to remote depositions, we would extend the same courtesy to the individuals we depose.

Both sides have outstanding document requests and motions relating to claims of privilege. It is not clear when those disputes about documents and privilege claims will be resolved (or when any corresponding documents will be produced). It is our understanding that a party that chooses to schedule depositions while those matters remain pending with the Court would not be able to reopen the deposition following a ruling and therefore proceeds at its own risk. Please let us know if you disagree, in which case we would commence depositions expeditiously, on the understanding that they would be reopened if we receive a favorable ruling on any outstanding matter. If that is the case, please provide Defendant Brogan's availability through the end of January.

The Court granted Defendants' request for an order suspending damages discovery at least until summary judgment motions are filed. We therefore understand that damages issues would not be part of depositions during liability discovery. Please let us know if you disagree.

It is also our understanding that depositions of a given party or witness are limited to seven hours by default, which means a total of seven hours for the liability and damages depositions of any party or witness who will be deposed twice (as opposed to two seven-hour depositions). Please let us know if you disagree.

You asked us to let you know whom we anticipate deposing. For the reason given above, we do not currently anticipate seeking to schedule depositions until the Court resolves the pending disputes. We currently anticipate deposing parties and witnesses from this list (which, of course, is subject to change):

- Jones Day (30(b)(6) witness)
- Stephen Brogan
- Terri Chase
- [REDACTED]
- Timothy Finn
- Beth Heifetz
- Traci Lovitt
- [REDACTED]
- Sarah McClure
- [REDACTED]
- Kevyn Orr
- Partner A
- Mar Ellen Powers
- [REDACTED]
- Michael Shumaker
- Adrian Wager-Zito
- Hugh Whiting

Sincerely,

/s/ Julia Sheketoff

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## JONES DAY

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December 17, 2021

### VIA E-MAIL

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Re: *Savignac et al. v. Jones Day et al.*, No. 1:19-cv-2443 (D.D.C.)

Counselors,

I write in response to your letter dated December 13, 2021 regarding depositions.

The presumption under the rules is that depositions will take place in-person and within the jurisdiction where Plaintiffs chose to file this lawsuit. Out of consideration for your circumstances, Defendants would agree to depositions in Chicago or some other reasonable Illinois location convenient for Plaintiffs, but the depositions should proceed in-person. That is Defendants' preference. Moreover, given the potential for scope disputes at Plaintiffs' depositions—which potential is higher in this case, given Plaintiffs' choice to proceed *pro se*, Plaintiffs' inexperience with civil discovery, and the positions Plaintiffs have taken in discovery to date—an in-person deposition will be more efficient and increase the possibility that the deposition of each Plaintiff can open and close the same day notwithstanding any need for the Court's intervention. We would of course agree to follow appropriate CDC guidelines for in-person meetings and any other reasonable safety protocols that Plaintiffs may request. Please let me know if that is acceptable. Defendants will make witnesses available by remote means if Plaintiffs prefer that format for any depositions they notice.

With respect to the date of the depositions, Defendants' notices presume that the Court will have resolved all outstanding privilege and scope issues sufficiently in advance of January 26 that the depositions can go forward without any material outstanding document discovery. If that is not the case, Defendants will re-notice the depositions for a later date. We agree that a party who chooses to schedule a deposition while discovery disputes are pending proceeds at his or her own

Julia Sheketoff  
Mark Savignac  
December 17, 2021  
Page 2

risk and has no right to reopen the deposition following resolution of those disputes. Accordingly, we have not inquired at this time about Mr. Brogan's availability in January.

Judge Moss suspended damages discovery in response to a dispute regarding Plaintiffs' overbroad requests for discovery into partner compensation at Jones Day and the Firm's financial information. The transcript and the Court's minute entry speak for themselves. They do not, however, limit Defendants' ability to investigate whether Plaintiffs can meet the requirements of a *prima facie* case of discrimination or retaliation, including allegations of adverse action and purported reputational harm and emotional distress. Please let me know if Plaintiffs intend to take a contrary position.

We agree that depositions are limited to seven hours by default and that the rules do not provide for additional time as of right in the event a deposition is divided to separately address liability and damages. Given the plethora of allegations Plaintiffs make and the nature of their claim for lifetime earnings, Defendants reserve the right to seek more than seven hours of deposition time for Plaintiffs in the event that damages discovery proceeds at a later stage in the case.

With respect to the depositions that Plaintiffs anticipate taking, Rule 30 limits Plaintiffs collectively to ten depositions absent leave of Court. The list of names you provided indicates Plaintiffs may be seeking to exceed that limit with depositions that are irrelevant, duplicative, targeted solely at non-discoverable information protected by the attorney-client privilege and attorney work product doctrine, and intended solely to harass defendants and increase the burden and delay of litigation. Moreover, between the documents, interrogatory responses, and privilege logs that Defendants have produced, Plaintiffs are able to identify the ten depositions they are most likely to seek and the topics they are likely to include in any Rule 30(b)(6) notice. Please do so. Because designees are likely to include individuals who will be deposed as fact witnesses, this information will help us schedule depositions and ensure properly prepared designees. And, in the event deposition topics are as broad as Plaintiffs' other written discovery, we are likely going to need time to meet-and-confer on those topics as the rules require, and to raise any disputes with Judge Moss. There is no reason why the parties cannot begin that process while we wait for resolution of the outstanding discovery disputes. With respect to any former Jones Day partners or employees, Plaintiffs should direct any communication to those individuals through counsel for Defendants unless and until such time as we advise that those individuals are represented by other counsel for purposes of any deposition in this action.

Sincerely,

*/s/ Anderson Bailey*  
Anderson Bailey

cc: Terri L. Chase

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FOR THE DISTRICT OF COLUMBIA**

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JULIA SHEKETOFF,

*Plaintiffs,*

v.

JONES DAY, STEPHEN J. BROGAN,  
BETH HEIFETZ, and JOHN DOES 1-10,

*Defendants.*

Case No. 1:19-cv-02443-RDM

**[PROPOSED] ORDER GRANTING MOTION FOR REMOTE DEPOSITIONS**

Upon consideration of Plaintiffs' Motion for Remote Depositions, the motion is GRANTED. Any person whose deposition is noticed in this action may elect to be deposed remotely.

So ordered on this day, \_\_\_\_\_.

\_\_\_\_\_  
Hon. Randolph D. Moss  
United States District Judge

**LIST OF NAMES AND ADDRESSES OF ALL PERSONS  
ENTITLED TO BE NOTIFIED OF THE ORDER'S ENTRY**

Pursuant to Local Civil Rule 7(k), the following is a list of the names and addresses of all persons entitled to be notified of this order's entry:

MARK C. SAVIGNAC  
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*Plaintiffs.*

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