

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

**RICHARD F. MILLER,
Plaintiff,**

v.

**PHILIPP HOLZMANN *et al.*,
Defendant.**

Civil Action No. 95-1231 (RCL/JMF)

ORDER

Harbert Corporation and Harbert International, Inc. seek, pursuant to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, opened for signature, Mar. 18, 1970, 23 U.S.T. 2555, letters of request to the Federal Republic of Germany to take the oral examination of two German nationals.

The government and relator resist doing so and insist that it will be impossible to complete the process until after the close of discovery. They rely on a case and two law review articles that are more than twenty years old for the proposition that the German judicial system of responding to letters of request is long and arduous. But, I am not in the prophesy business. Like them, I have no idea how long the process will take and it would be an abuse of discretion to refuse to grant the defendants' request because of a wild guess as to how long something in a foreign country will take. Furthermore, plaintiffs are getting ahead of themselves. Judge Lamberth has indicated in no uncertain terms that this case will be tried in January, 2007. If the process is not completed by then, defendants are going to have to convince him to postpone the trial so that they can get the information they seek to go to trial. There is no reason, however, to

anticipate that now. Speculation as to how long something will take does not provide a reason for not starting now.

Plaintiffs counter that if the letters of request are granted they should have the right to ask questions of the two gentlemen in Germany. I agree and will require them to submit the questions they wish to ask to defendants' counsel within seven days of the date of this decision. Defendants' counsel will then prepare all that is needed for me to sign and transmit to Germany and deliver it to my chambers for my signature and whatever other processing is necessary.

It is therefore, hereby,

ORDERED that Defendants' Motion for Issuance of Letter of Request Under Hague Convention for Oral Examination of Ludwig Wendorff [#379] is **GRANTED**. It is further, hereby,

ORDERED that Defendants' Motion for Issuance of Letter of Request Under Hague Convention for Oral Examination of Jurgen Brinkmann [# 370] is **GRANTED**.

SO ORDERED.

Dated:

JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE