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I. INTRODUCTION

Scope and Relevance

Consider a case where an allegedly defective automotive component was manufactured in one country, assembled in a second, and distributed in a third. Or a case where an aviation accident investigation has witnesses, maintenance records, and data coming from five different countries. In cases like these, which are more and more frequent in product liability and aviation matters, gathering admissible evidence across national borders quickly becomes one of the defining challenges of the matter.

Cross-border discovery sits at the intersection of procedural law, international treaty obligations, domestic sovereignty concerns, and an increasingly assertive global data protection environment. American litigants in particular, accustomed to the broad, party-driven discovery model under the Federal Rules of Civil Procedure, frequently run into legal systems rooted in civil law traditions that treat pre-trial disclosure of documents and examination of witnesses as judicial prerogatives, not party ones. That collision produces delays, costs, admissibility disputes, and sometimes the permanent loss of evidence.

This paper examines the core challenges that arise when counsel must obtain depositions from witnesses abroad, secure medical records protected by local confidentiality or data protection regimes, and work through jurisdiction-specific blocking statutes and regulatory frameworks. It draws practical examples from three industrial sectors: manufacturing, automotive product liability, and aviation accident investigations. Each sector presents a distinctive set of challenges shaped by the nature of the underlying transactions, the regulatory environment governing the industry, and the geographic spread of evidence and witnesses.

The paper is organized as follows. Section II addresses the mechanics of taking depositions abroad, including how the Hague Evidence Convention works in practice and what alternatives exist. Section III examines the barriers to obtaining medical records across borders. Section IV surveys jurisdiction-specific obstacles, focusing on blocking statutes and data protection regimes. Section V presents industry-specific case studies. Section VI proposes practical strategies for counsel. Section VII concludes.

II. DEPOSITION MECHANICS IN CROSS-BORDER PROCEEDINGS

A. The Core Tension: Party-Directed vs. Court-Directed Discovery

Any cross-border discovery analysis has to start with the fundamental structural difference between common law and civil law approaches to evidence-gathering. In the United States, the Federal Rules of Civil Procedure give the parties themselves broad discovery authority, with judicial oversight stepping in only when objections arise. Depositions can be noticed unilaterally, document requests issued without court approval, and the permissible scope of inquiry is, by design, wide. That model is genuinely unusual in the world.

In the great majority of civil law jurisdictions, including France, Germany, Italy, Spain, the Netherlands, Japan, and most of Latin America, pre-trial discovery in the American sense simply does not exist. Evidence is gathered through formal judicial channels, and parties have no independent right to compel testimony or document production from persons or entities in those countries. A U.S. attorney who attempts to run an American-style deposition on foreign soil may violate the host country's sovereignty, expose the witness and counsel to criminal sanction, and produce evidence that cannot be used in U.S. proceedings.

B. The Hague Evidence Convention

The main multilateral framework for cross-border evidence-gathering is the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, known as the Hague Evidence Convention, concluded on March 18, 1970, and currently in force among more than sixty states. The Convention creates two principal mechanisms.

Letters of Request (Chapter I). Under Chapter I, a judicial authority in the requesting state sends a Letter of Request to a designated Central Authority in the country where the evidence is located. That Central Authority then takes the evidence according to its domestic law and transmits the results back to the requesting court. The process is judicial in character: the receiving state's court controls the manner and scope of examination.

In practice, Chapter I requests take a long time. Processing times of twelve to twenty-four months are not uncommon in jurisdictions with under-resourced central authorities. The executing court may narrow the permissible scope of examination under its interpretation of domestic law. Witnesses may assert privileges that the requesting court has never encountered. In manufacturing and automotive disputes where litigation timelines are already extended and evidence can be time-sensitive, those delays carry real strategic costs.

Diplomatic and Consular Channels (Chapter II). Chapter II allows evidence to be taken by diplomatic officers, consular agents, or commissioners appointed by the requesting court, but only with the host state's authorization and subject to whatever conditions it imposes. Several countries, notably Germany, France, and Switzerland, have made declarations permitting Chapter II evidence-gathering only in limited circumstances, sometimes requiring that witnesses be nationals of the requesting state, and generally prohibiting any element of compulsion. Voluntary depositions conducted this way are possible in a number of jurisdictions, but they cannot compel a reluctant witness to appear.

The Aérospatiale Problem. The U.S. Supreme Court's 1987 decision in *Société Nationale Industrielle Aérospatiale v. United States District Court* addressed the relationship between the Hague Evidence Convention and the Federal Rules of Civil Procedure. The Court held that the Convention is not the exclusive means by which U.S. courts can obtain evidence from abroad, and that courts should apply a comity analysis rather than treating resort to the Convention as the mandatory first step. That decision remains controversial and has generated significant friction with foreign states that view it as insufficiently respectful of their sovereign interests. In industrial litigation involving French, German, or Japanese corporate parties, the *Aérospatiale* framework continues to spark discovery disputes at the outset of proceedings.

C. Letters Rogatory Outside the Convention

For states that are not parties to the Hague Evidence Convention, including many countries in Southeast Asia, the Middle East, and parts of Africa and South America, the traditional mechanism is letters rogatory. These are formal requests from one court to a court of another sovereign nation, transmitted through diplomatic channels via the U.S. Department of State and the foreign ministry of the receiving state. The process is even slower than a Hague request, routinely taking one to three years, and the receiving court retains complete discretion over whether and how to act on it. In manufacturing supply-chain disputes involving non-Convention states such as Vietnam, Bangladesh, or certain Gulf states, counsel should operate with the realistic expectation that formal compelled testimony will not be available within the litigation timeline.

D. Voluntary Appearance

Where the host state permits it, the most efficient way to obtain deposition testimony is simply voluntary appearance. A witness who is willing to testify can appear before a U.S. consul, a foreign-qualified commissioner, or in some cases travel to the forum state to be deposed under U.S. procedural rules. Corporate parties often produce their own officers or employees voluntarily, particularly where it is in their strategic interest to do so or where the relevant contract includes a cooperation clause.

Even so, counsel should be alert to the fact that voluntary depositions conducted abroad may still require notification to or authorization from the host state's central authority. Conducting any examination that local law characterizes as "taking of evidence" without proper authorization can expose counsel and the witness to sanctions. France and Germany, in particular, take an expansive view of what constitutes regulated evidence-gathering activity on their soil.

III. MEDICAL RECORDS AND PRIVACY BARRIERS

A. Medical Records Matter

In product liability litigation arising from alleged manufacturing defects, automotive accidents, or aviation incidents, the medical records of injured parties are almost always central to the damages case. Establishing the nature and extent of injuries, causation, pre-existing conditions, the course of treatment, and long-term prognosis all require access to records held by hospitals, physicians, insurers, and government health systems. In cross-border cases, those records may sit in jurisdictions with fundamentally different approaches to privacy and health information disclosure.

B. The General Data Protection Regulation (GDPR)

The European Union's General Data Protection Regulation (Regulation (EU) 2016/679, the "GDPR"), in force since May 25, 2018, is the most significant international regulatory barrier to cross-border transfer of medical records in litigation. The GDPR classifies medical and health data as "special category personal data" under Article 9, imposing heightened protections that require either the data subject's explicit consent or satisfaction of one of a limited number of alternative legal bases for processing.

Transferring personal data, including medical records, to third countries outside the European Economic Area is governed by Chapter V of the GDPR. The United States does not currently have a comprehensive general adequacy decision from the European Commission, so transfers must rely on alternatives such as Standard Contractual Clauses, Binding Corporate Rules, or the derogations under Article 49. The Article 49 derogation for transfers necessary for the establishment, exercise, or defense of legal claims is potentially relevant, but its application to third-party litigation discovery remains contested and varies depending on how national supervisory authorities interpret it.

Healthcare providers subject to the GDPR are therefore understandably reluctant to produce patient records in response to requests from U.S. litigation counsel, even when those requests are accompanied by a subpoena or court order from a U.S. court. Such orders have no direct enforcement authority in EU member states, and custodians who disclose records in response to them risk regulatory action by national data protection authorities.

C. National Confidentiality Laws

Beyond the GDPR, many jurisdictions have their own medical confidentiality rules that operate independently and can be more restrictive. In Germany, medical confidentiality (ärztliche Schweigepflicht) is protected under both professional regulatory codes and criminal law. Breach of patient confidentiality under Section 203 of the German Criminal Code is a criminal offense. In France, the duty of medical secrecy (secret médical) is enshrined in Article L.1110-4 of the Code de la Santé Publique and treated by French courts not as a professional obligation but as an absolute principle. In Japan, the Act on the Protection of Personal Information (APPI) governs health data with cross-border transfer restrictions that are broadly analogous to, though distinct from, the GDPR framework.

D. Custodian Resistance and Practical Obstacles

Even where legal pathways theoretically exist for producing medical records, institutional custodians, including hospitals, insurers, and national health systems, are in practice deeply reluctant to cooperate with foreign litigation requests. That reluctance reflects a mixture of genuine legal uncertainty, institutional risk aversion, and in some cases, sympathy with the data subject's privacy interests. In aviation cases involving multiple nationalities among passengers and crew, counsel may need to obtain medical records from custodians across five or more jurisdictions, each with its own legal regime and institutional culture.

The practical obstacles are significant: no directly enforceable mechanism for compelling a foreign private party to produce records; cost and delay in pursuing treaty mechanisms; the need to engage local counsel in each jurisdiction; language barriers in understanding local legal obligations; and the risk that records obtained through irregular channels will be excluded from evidence or used by opposing counsel to challenge the requesting party's conduct.

E. Patient Consent as a Pathway

In many jurisdictions, the most reliable route to medical records in litigation is the informed, freely given consent of the injured party. Where the claimant is cooperative, consent-based disclosure is generally available and should be pursued in parallel with any treaty-based or court-ordered mechanisms. Counsel should ensure that consent instruments satisfy the requirements of each relevant foreign jurisdiction, as well as U.S. requirements such as HIPAA authorization where applicable to domestic records. A blanket authorization that satisfies one jurisdiction's law may not satisfy another's.

IV. JURISDICTION-SPECIFIC OBSTACLES: BLOCKING STATUTES AND DATA PROTECTION REGIMES

A. Blocking Statutes: An Overview

A number of states have enacted legislation that expressly prohibits compliance with foreign discovery orders, particularly those reflecting the broad scope of American-style discovery. These blocking statutes reflect the principle that permitting foreign courts to compel disclosure of information located within a state's territory infringes on that state's sovereignty, and that domestic economic and privacy interests must be shielded from extraterritorial assertions of foreign judicial authority.

B. France: Law No. 68-678 (as amended by Law No. 80-538)

France's blocking statute, initially enacted in 1968 and substantially strengthened in 1980, prohibits French nationals and persons physically present in France from communicating to foreign public authorities, without authorization through diplomatic channels, any documents or information of an economic, commercial, industrial, financial, or technical nature where such communication could harm French sovereignty, security, essential economic interests, or public order. French companies and courts have routinely invoked the statute to resist U.S. discovery orders, and U.S. courts conducting a comity analysis under *Aérospatiale* must weigh it as a factor. Violations carry criminal penalties, including imprisonment and fines.

In manufacturing and automotive litigation, where French corporate parties hold detailed technical documentation on component design, testing, and quality control, the blocking statute has been a consistent basis for resisting document production. The practical reality is that the statute tends to function more as a delay and cost-escalation mechanism than as an absolute bar, since U.S. courts often order production after conducting a comity analysis. Even so, the risk of criminal exposure in France for individuals who comply creates genuine tension for in-house counsel and corporate officers.

C. Germany: The Bundesdatenschutzgesetz and Sectoral Restrictions

Germany does not have a single comprehensive blocking statute in the French mold, but the combination of the GDPR as implemented through Germany's Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG), sectoral privacy rules, professional secrecy obligations, and the constitutionally recognized principle of informational self-determination (informationelle Selbstbestimmung) creates a dense network of restrictions that functions in broadly similar ways. German courts have been particularly protective of personal data in the context of U.S. litigation discovery, and German supervisory authorities have made clear that transfers of personal data to U.S. litigants must comply fully with GDPR requirements regardless of the ordering court's jurisdiction.

D. China: The Data Security Law and Cybersecurity Law

China's blocking regime has become substantially more assertive in recent years. The Cybersecurity Law (2017), the Data Security Law (2021), and the Personal Information Protection Law (2021) together create a comprehensive framework restricting cross-border transfer of data generated within China, requiring government approval for the export of data classified as "important data," and prohibiting the provision of data to foreign judicial or law enforcement authorities without authorization from competent Chinese authorities. The State Secrets Law, interpreted broadly, imposes further restrictions on what information may be transferred abroad.

For manufacturing and automotive litigation involving Chinese suppliers or component manufacturers, which is an increasingly common scenario given China's centrality to global supply chains, these restrictions create severe obstacles to obtaining technical documentation, communications, and supplier records through U.S. discovery. There is a real risk of criminal liability under Chinese law for individuals who comply with foreign discovery orders without authorization, and Chinese corporate parties have invoked these restrictions with growing frequency before U.S. courts.

E. The United Kingdom Post-Brexit

Following the UK's departure from the European Union, the GDPR's domestic implementation through the UK GDPR and the Data Protection Act 2018 continues to apply the same basic framework for cross-border data transfers. The UK has granted adequacy decisions for certain countries, but transfers to the United States remain subject to domestic regulatory restrictions. The UK's approach to blocking statutes as such is less assertive than France's, but confidentiality obligations across financial services, healthcare, and professional contexts create meaningful practical constraints on U.S. discovery.

V. INDUSTRY CASE STUDIES

A. Manufacturing Supply-Chain Disputes

Global manufacturing supply chains routinely span multiple tiers of suppliers operating across dozens of jurisdictions. A product defect claim might implicate a raw material supplier in Brazil, a component manufacturer in Malaysia, a subassembly facility in Poland, and a final assembly plant in Mexico. Each link in that chain may hold relevant technical specifications, quality control records, communications, and inspection reports. Obtaining that evidence across four or more jurisdictions, each with different discovery laws, data protection rules, and blocking statute exposure, is one of the most complex challenges in international product liability practice.

A representative scenario involves a failure in industrial safety equipment used at a U.S. facility, where the failed component was manufactured by a subsidiary of a German parent company. Discovery in that litigation implicates the German blocking regime and the GDPR, requiring either Hague Convention procedures or voluntary cooperation from the German party. Technical documentation relating to material specifications and testing may be classified as trade secrets subject to additional protection. Depositions of German engineers require Hague procedures or voluntary appearance, and the scope of examination may be constrained by German civil procedure norms.

Supply-chain disputes also frequently require obtaining records from non-party witnesses, such as tier-two or tier-three suppliers, who have no incentive to cooperate and no contractual obligation to do so. In jurisdictions where no effective mechanism exists to compel non-party discovery, counsel may be limited to contractual indemnification and contribution claims against the direct counterparty, hoping that litigation pressure produces voluntary disclosure of upstream supplier records.

B. Automotive Product Liability

Automotive product liability litigation presents cross-border discovery challenges of particular intensity. The multinational structure of major automotive manufacturers, the geographic dispersion of engineering, testing, and manufacturing functions, and the high-stakes, mass-tort character of many component-defect cases all contribute to this complexity. Recall litigation involving major European and Japanese automotive manufacturers illustrates the full range of challenges. Technical specifications, crash test results, engineering change orders, and internal communications regarding known defects may all be held in jurisdictions with strong blocking or data protection frameworks. Depositions of key engineers and executives in Germany, Japan, or France require Hague Convention procedures, and the scope of available examination is often considerably narrower than U.S. counsel would prefer.

Japanese automotive manufacturers present a distinctive variant of these challenges. Japan is a party to the Hague Evidence Convention but has made declarations substantially limiting Chapter II depositions by foreign diplomatic officials. Voluntary depositions by Japanese company employees may require specific corporate authorization and are subject to Japanese privacy rules protecting employee personal data. The culture of corporate confidentiality in Japanese automotive companies creates additional institutional resistance to broad discovery requests.

Airbag inflator litigation, which has involved automotive manufacturers and parts suppliers from Japan, the United States, Germany, and South Korea, offers a real-world illustration of multi-jurisdictional complexity. Obtaining evidence simultaneously from facilities in multiple countries while managing inconsistent discovery orders from multiple courts and regulators requires a level of global coordination that is both logistically and legally demanding.

C. Aviation Accident Investigations

Aviation accident investigations present perhaps the most complex cross-border discovery environment in any industrial sector, for several reasons. First, aviation accidents are subject to mandatory investigation by national accident investigation authorities under the standards established by the Convention on International Civil Aviation (the Chicago Convention, 1944) and the associated Annex 13. These frameworks produce a body of evidence, including cockpit voice recorder transcripts, flight data recorder information, witness statements, and preliminary and final investigation reports, that carries special confidentiality protections designed to encourage open reporting and honest disclosure in safety investigations.

Annex 13, Standard 5.12, provides that records used in an accident investigation shall not be made available for purposes other than the investigation unless the appropriate authority determines that disclosure outweighs the adverse domestic and international impact it may have on future investigations. This creates a direct conflict between the legitimate discovery needs of civil litigants and the safety-system rationale for protecting investigation evidence. U.S. courts have developed case law addressing the discoverability of NTSB investigation materials under the Federal Aviation Act, establishing that factual portions of investigation reports may be admissible while the Board's analysis and probable cause findings are not. Reports from foreign accident investigation bodies such as the Bureau d'Enquêtes et d'Analyses in France, the Air Accidents Investigation Branch in the UK, or the German Federal Bureau of Aircraft Accident Investigation may not be subject to the same U.S. statutory protection, though domestic laws of the producing country may still restrict their use in civil proceedings.

Second, aviation accidents routinely involve airlines, aircraft manufacturers, maintenance organizations, air traffic control authorities, and airport operators from multiple countries. An accident involving a European-manufactured aircraft operated by an Asian airline on a flight between two cities in different jurisdictions, with maintenance performed by a third-country contractor, will generate relevant evidence in five or more countries and may implicate the domestic law of each.

Third, personal injury and wrongful death claims arising from aviation accidents involve medical records for victims of many different nationalities, presenting all the GDPR, national confidentiality law, and custodian resistance issues discussed in Section III in their most acute form. Where a single accident produces casualties of ten nationalities, the medical records discovery effort alone spans an equal number of legal regimes.

VI. PRACTICAL STRATEGIES FOR COUNSEL

A. Early Assessment and Discovery Planning

The most important strategic step in cross-border industrial litigation is early, systematic assessment of the discovery landscape. At the outset of litigation, counsel should identify all jurisdictions in which potentially relevant evidence is located; the applicable legal regime in each, including Hague Convention status, blocking statutes, and data protection laws; the category of evidence at issue, such as documents, electronic records, deposition testimony, medical records, and investigation materials; and the realistic timeframe and cost of obtaining each category through available mechanisms.

This assessment should form the basis of a written discovery plan shared with the client and, where appropriate, disclosed to the court during discovery scheduling. Courts are increasingly receptive to early conversations about the challenges of international discovery, and proactive engagement with the court about realistic timelines, before disputes arise, generally produces better case management outcomes than reactive disclosure of foreign law obstacles after deadlines have passed.

B. Local Counsel Engagement

Effective cross-border discovery requires early engagement of qualified local counsel in each relevant jurisdiction. Local counsel serve multiple functions: advising on the scope of discovery obligations under local law; negotiating with local parties and custodians; supervising execution of Hague requests; advising on data protection compliance in connection with document production; and providing opinions on the enforceability of U.S. court orders locally.

Selection should be based not only on substantive expertise but on genuine practical experience with cross-border litigation. In many jurisdictions, relatively few practitioners have real experience assisting U.S. counsel with Hague Convention mechanics, international deposition procedures, and GDPR-compliant document production workflows. Investing in identifying and retaining such counsel early pays significant dividends.

C. Treaty Mechanisms: Calibrating Expectations

Counsel should approach treaty-based discovery mechanisms with realistic expectations about scope and timeline, and plan litigation schedules accordingly. Where Hague Convention requests are anticipated, they should be submitted as early as possible, ideally within the first six months of formal discovery, to allow for the processing time that many jurisdictions require. Letters of request should be drafted with the help of local counsel in the receiving state to maximize the likelihood of full execution.

For jurisdictions outside the Hague Convention, the even longer timelines of letters rogatory must be factored into case strategy. In some cases, the practical unavailability of compelled foreign discovery may counsel in favor of settlement, arbitration, or other dispute resolution mechanisms that offer greater procedural flexibility.

D. Negotiated and Voluntary Discovery

In complex industrial litigation, a significant proportion of ultimately obtainable evidence is secured through negotiated arrangements rather than compelled legal process. Corporate parties with ongoing commercial relationships have incentives to cooperate in resolving disputes. Contractual provisions, including indemnification agreements, cooperation clauses, and governing-law and forum-selection clauses, shape the landscape of voluntary disclosure.

Counsel should explore early in litigation whether opposing parties and key third parties will cooperate voluntarily in the taking of depositions, particularly for witnesses in jurisdictions where compelled deposition is difficult. A corporate employer's willingness to produce its own employees voluntarily often resolves the deposition problem more efficiently than formal treaty process. Voluntary document production under appropriate protective orders can similarly avoid the friction of blocking statute disputes.

E. Data Protection Compliance Frameworks

Document production in cross-border industrial litigation must be structured to comply with applicable data protection law, both to minimize regulatory risk and to preserve the admissibility of produced materials. Counsel should establish, in consultation with local counsel in each relevant jurisdiction, a compliance framework that addresses the legal basis for processing and transferring personal data; the mechanism for cross-border transfer, such as Standard Contractual Clauses; the categories of data involved and applicable special-category protections; and the retention and security arrangements for produced materials.

Protective orders agreed between parties and entered by the court should include provisions specifically addressing cross-border data transfer compliance and should identify the legal mechanisms under which transfers are made. Courts in cross-border industrial litigation are increasingly familiar with the need for such provisions and will generally accommodate reasonable requests.

F. Anticipating and Managing Blocking Statute Risk

Where blocking statutes are in play, particularly in French-law jurisdictions, counsel for U.S. parties need to develop a strategy that acknowledges both the risk to foreign-based witnesses and the likelihood that U.S. courts will ultimately order production following the *Aérospatiale* comity analysis. Key steps include obtaining a full legal opinion from local counsel on the scope and application of the blocking statute to the specific evidence sought; presenting that analysis to the U.S. court in the context of the comity analysis; exploring whether diplomatic authorization can be obtained to permit disclosure; and, where production is ultimately ordered notwithstanding the blocking statute, ensuring that individual witnesses and employees understand their options and the limits of counsel's ability to protect them from foreign criminal liability.

VII. CONCLUSION

Cross-border discovery in manufacturing, automotive, and aviation litigation is one of the most technically demanding areas of international commercial practice. The structural divergence between the U.S. discovery model and the judicial evidence-gathering traditions of most other legal systems, compounded by the global spread of data protection regulation under the GDPR, the proliferation of blocking statutes, and the sector-specific confidentiality protections in aviation investigation and healthcare contexts, means that U.S. practitioners cannot bring domestic discovery assumptions to cross-border industrial litigation.

Success in this environment requires early and systematic planning, genuine investment in qualified local counsel across all relevant jurisdictions, calibrated use of treaty mechanisms with realistic expectations, and creative use of negotiated and voluntary discovery arrangements where formal compelled process is unavailable or impractical. It also requires intellectual honesty with clients about what evidence is and is not obtainable within the litigation timeline and budget, and a willingness to build legal strategy, including settlement decisions and claims selection, around the practical limits of the obtainable evidentiary record.

The frameworks examined in this paper, from the Hague Evidence Convention to blocking statutes to the GDPR to Annex 13 investigation protections, are not merely procedural technicalities. They reflect deliberate choices by sovereign states about the appropriate limits of foreign judicial authority, the protection of individual privacy, the preservation of safety-incentive systems, and the assertion of economic sovereignty. Effective advocacy in this space means understanding those choices on their own terms, not simply treating them as obstacles to be overcome by procedural force.