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BARTKO PAVIA PARTNER OLIVER Q. DUNLAP MODERATES BASF CLE ON CROSS-BORDER DISCOVERY

Speaking Engagements
29, October 2026

On October 29, 2026, Bartko Pavia partner Oliver Q. Dunlap moderated and presented at the Bar Association of San Francisco's International Law and Practice Section CLE, "Cross-Border Discovery: Navigating International Discovery in Transnational Litigation and Arbitration." He appeared alongside Adam Goldberg of Pillsbury Winthrop Shaw Pittman, Katie Connolly of Norton Rose Fulbright, and Scott Nonaka of Sidley Austin.

The panel focused on practical problems that arise when evidence, witnesses, and legal obligations span borders:

Planning matters. Forum selection, governing law, the contracting entity, asset locations, and a designated process agent can determine how easily evidence is obtained and judgments enforced.

Treaty channels are slow, and often not mandatory. Service through Hague Convention Central Authorities can take 3 to 12 months. Under *Aérospatiale*, the Hague Evidence Convention is optional rather than exclusive, and U.S. courts frequently order discovery under the Federal Rules without requiring parties to try the treaty route first.

Discovery runs both ways. Foreign litigants can seek U.S. discovery under 28 U.S.C. § 1782 or, in state court, California Code of Civil Procedure § 2029.100. After *ZF Automotive v. Luxshare*, private commercial arbitration falls outside § 1782.

Privilege does not travel. Protections for in-house counsel and internal investigations vary widely by country, and a communication privileged in the U.S. may be discoverable abroad, as in *Wultz v. Bank of China*.

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Foreign law rarely blocks production. Blocking statutes and data privacy laws such as the GDPR seldom stop a U.S. court from ordering discovery, but they create real exposure for the producing party. Counsel should raise them at the first meet-and-confer, review and minimize data locally, and document good faith.

The takeaway: Map your data early, understand local privilege and transfer rules, and raise foreign-law constraints before they become sanctions arguments.

The discussion highlighted the importance of strategic planning and practical approaches to navigating the complexities of cross-border discovery. Bartko Pavia thanks the Bar Association of San Francisco and fellow panelists for an insightful discussion on these evolving challenges in international litigation and arbitration.

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