

not control.<sup>16</sup> A party has been found not to control the records of a doctor who has examined him or her.<sup>17</sup> In a direct action against a liability insurer the insurer does not control, and cannot be required to produce, things held by its insured.<sup>18</sup>

A party may be required to produce documents and things that it possesses even though they belong to a third person who is not a

**16. No control**

An agency of the Executive is not required to produce documents in the possession of Congress. The fact that both the agency and Congress are parts of the United States government is not controlling. "This is not a question of a different executive agency; this is in fact an entirely separate branch of the federal government. The three branches of the United States government function as separate and distinct entities." *U.S. v. Davis*, D.C.R.I.1992, 140 F.R.D. 261, 263.

Examination reports prepared by Federal Deposit Insurance Corporation (FDIC) concerning bank holding company remained property of FDIC and were not in "custody, possession or control" of bank holding company within meaning of Federal Rules of Civil Procedure and, thus, were not discoverable by investors suing bank holding company for securities fraud. *In re One Bancorp Securities Litigation*, D.C.Me.1991, 134 F.R.D. 4.

On showing that documents sought for production were not within party's custody, control or possession, party could not be compelled to produce them. *La Chemise Lacoste v. Alligator Co., Inc.*, D.C.Del.1973, 60 F.R.D. 164.

*Schuyler v. United Air Lines, Inc.*, D.C.Pa.1950, 10 F.R.D. 111.

*Knight-Morley Corp. v. Electroline Mfg. Co.*, D.C.Ohio 1950, 10 F.R.D. 400.

Car that party had sold before order issued. *Fisher v. U.S. Fidelity & Guar. Co.*, C.A.7th, 1957, 246 F.2d 344.

When defendant claimed transfer of note to resident of Brazil over whom no personal jurisdiction existed, court was without jurisdiction to require defendant to deliver note into court. *Haase v. Chapman*, D.C.Mo.1969, 308 F.Supp. 399.

X-rays. *Reeves v. Pennsylvania R. Co.*, D.C.Del.1948, 80 F.Supp. 107.

**17. Doctors' records**

Office records of doctors who examined plaintiff were not subject to production when they were not in possession, custody or control of plaintiff. *Greene v. Sears, Roebuck & Co.*, D.C.Ohio 1966, 40 F.R.D. 14.

When X-rays of plaintiff's alleged injury were either in possession of the physician who ordered them to be taken or in possession of physician who made them, plaintiff would not be compelled to produce the X-rays. *Reeves v. Pennsylvania R. Co.*, D.C.Del.1948, 80 F.Supp. 107.

**18. Insured**

"It has been said that, under the Louisiana Direct Action Statute, the insurer stands in the shoes of the insured to the extent of its policy limits. \* \* \* But wherever the feet of the insurer may be, its hands do not hold articles which are in the possession and under the control of the insured." *Read v. Ulmer*, C.A.5th, 1962, 308 F.2d 915, 918.

party to the action.<sup>19</sup> And if a party has possession, custody, or control, it must produce documents and things even though the documents and things are themselves beyond the jurisdiction of the court.<sup>20</sup> Finally, lack of control may be considered an objection to

#### 19. Documents of third persons

*Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 1958, 78 S.Ct. 1087, 357 U.S. 197, 2 L.Ed.2d 1255.

For purposes of determining compliance with discovery orders directed at documents in the possession of the president, or the executive office of the president, which might pertain to motives for bringing antitrust action against three major television networks, court was not concerned with ownership of the documents but rather with possession, custody and control of the documents. *U.S. v. National Broadcasting Co., Inc.*, D.C.Cal. 1974, 65 F.R.D. 415, appeal dismissed 1975, 95 S.Ct. 1668, 421 U.S. 940, 44 L.Ed.2d 97.

As an executor and trustee of decedent's estate would be personally liable in individual capacity for torts occurring in course of his administration of estate, that he was sued as an individual and not in representative capacity would not permit him to resist motion for production of reports of accountants with regard to property in which estate held interest. *Goldlawr, Inc. v. Shubert*, D.C.N.Y.1960, 25 F.R.D. 276.

*Mullen v. Mullen*, D.C.Alaska 1953, 14 Alaska 294, 14 F.R.D. 142, 143.

In action against owners of pier by third party's employee for injuries sustained on pier, third party's employee was entitled to inspection of hoisting block located on the pier, over objection of owners of pier that they had leased pier to the third party and had therefore surrendered all control, when it appeared from argument that third party operated pier merely as agent for owners. *Martin v. N.V. Nederlandsche Amerikaansche Stoomvaart*

*Maatchappij*, D.C.N.Y.1948, 8 F.R.D. 363.

Plaintiff's motion for order directing defendant to produce for inspection and copying a statement made to defendant by driver of truck involved in accident showed "good cause" for granting of motion, and defendant's contention that motion should be denied because such document was not defendant's but belonged to driver, who was not a party, could not be sustained, when it did not appear that document was not in possession of defendant. *Rockett v. John J. Casale, Inc.*, D.C.N.Y.1947, 7 F.R.D. 575.

*Orange County Theatres, Inc. v. Levy*, D.C.N.Y.1938, 26 F.Supp. 416.

#### 20. Beyond jurisdiction

*SEC v. Minas De Artemisa*, C.C.A.9th, 1945, 150 F.2d 215.

Documents in possession of defendant's British affiliate were in defendant's custody and fact that the documents were situated in a foreign country did not bar their discovery. *Cooper Industries, Inc. v. British Aerospace, Inc.*, D.C.N.Y.1984, 102 F.R.D. 918.

In suit seeking to impose liability on defendant company for asbestos-related diseases contracted by plaintiff's decedent as a result of his residency near defendant's asbestos-using plant, and also seeking to impose liability on codefendant Canadian company for distributing asbestos to defendant, plaintiff was entitled to have the codefendant produce copies of Quebec Asbestos Mining Association records in its possession, since, despite defendants' argument that said records could be secured directly from the association, plaintiff might have difficulty obtaining records from a foreign

not be ordered to produce corporate documents in a suit brought against him personally, absent evidence that he was the alter ego of the corporation. The proper vehicle for plaintiff to obtain corporate documents is a subpoena to the corporation. *American Maplan Corp. v. Heilmayr*, D.C.Kan.2001, 203 F.R.D. 499.

**n. 19. Documents of third persons**

Documents prepared by Federal Reserve Board during bank examination were subject to discovery even though the Board retained ownership of them. The bank possessed these documents, and it was a party to the litigation. Although regulations issued by the Board directed the bank not to produce the documents, the Board had no authority to override the Federal Rules of Civil Procedure. To allow a federal regulation issued by an agency to effectively overrule the

Federal Rules of Civil Procedure would, in essence, divest the court of jurisdiction. Rule 34 only requires that a party have possession of documents. Since the bank clearly did, production could be ordered. In *re Bankers Trust Co.*, C.A.6th, 1995, 61 F.3d 465, certiorari denied 116 S.Ct. 1711, 517 U.S. 1205, 134 L.Ed.2d 808.

Bank examination reports furnished to depository banks by the Federal Deposit Insurance Corp. were within the possession, custody or control of the banks within the meaning of Rule 34. This was not changed by the fact that FDIC regulations stated that its reports and documents remained the property of the FDIC and could be released only with its consent. The banks' ability to obtain the documents on demand was not affected by the FDIC retention of ownership or its unilaterally imposed regulations on disclosure. *National Union Fire Ins. Co. v. Midland Bancor, Inc.*, D.C.Kan.1994, 159 F.R.D. 562.

**§ 2211. Designation of Documents**

**n. 14. Description of category**

The request was not overly broad on its face even though it used omnibus terms such as "relating to" and "pertaining to." Such terms modified a specific event, the manufacturer's consideration of whether the safety seat should or could meet European standards, and the terms did not modify a large number of general category of things or events. *Cardenas v. Dorel Juvenile Group, Inc.*, D.C.Kan.2005,

230 F.R.D. 611.

**n. 16. Request too broad**

Developmentally disabled residents' request for "all documents which reflect in any manner that the State of Illinois is not in compliance with the Medicaid waiver program and/or Medicaid with respect to persons with mental disabilities" was not sufficiently particular about what should be produced. *Bruggeman ex rel. Bruggeman v. Blagojevich*, D.C.Ill.2004, 219 F.R.D. 430.

**§ 2212. Request for Inspection**

**n. 1. Serve all parties  
Compare**

The court would not compel plaintiff to produce his employment compensation records where defense counsel had merely requested the records informally in a letter to plaintiff's counsel, without a formal request for production. *James v. Wash Depot Holdings, Inc.*, D.C.Fla.

2006, 240 F.R.D. 693.

An informal request for production of documents made during a deposition is not recognized as an appropriate discovery request under the rules. Accordingly, the court would not order production of documents so requested. *Roberts v. Americable Int'l, Inc.*, D.C.Cal. 1995, 883 F.Supp. 499, 501 n.2.

**§ 2213. Response to Request**

The simplest response is one saying that the discovery sought by the request will be allowed at the time and place