

EX PARTE MOTION OFFICE

APPROVED
OR THE PAYMENT
OF MOTION FEE
ONLY

At Part 39 of the Supreme Court of
the State of New York, held in and
for the County of New York, at the
Courthouse located at 60 Centre
Street, New York, NY, on the 29
of June, 2006.

016136

PRESENT: Honorable Helen Freedman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

m.s.# 6 : cf

-----X
IN RE: NEW YORK CITY ASBESTOS LITIGATION :
-----X

NYCAL
(Freedman, J.)

This Document Relates To: :

RODOLFO COLELLA and MARIA COLELLA, :

Index No. 103894-05

-against-

AMCHEM PRODUCTS, INC., et al. and :

**ORDER TO SHOW
CAUSE**

ALL CASES IN WHICH FORD MOTOR COMPANY,
GENERAL MOTORS CORPORATION, AND
DAIMLERCHRYSLER CORPORATION
ARE DEFENDANTS. :
-----X

Upon the annexed affirmation of Jerry Kristal, and commission to take the
deposition of Larry Cummings, it is,

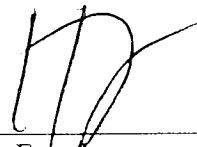
ORDERED that defendants show cause before the Honorable Helen Freedman at
IAS Part 39 of the Courthouse located at 60 Centre Street, Room 208, New York, New
York, on the 13 day of July, 2006, at 3:00 ~~AM~~ PM., or as soon thereafter as counsel can
be heard why an Order should not be entered granting plaintiff an Order pursuant to
C.P.L.R. § 3108, directing the issuance of an Open Commission to enable plaintiff to take
the deposition of Larry Cummings as a non-party witness and to request the Oakland
County Circuit Court, Pontiac, Michigan, to issue a subpoena and subpoena *duces tecum*

to Larry Cummings to appear for and submit to his deposition at a time, date, and place to be determined; together with such other and further relief as this Court may deem just and proper.

Oral argument shall/shall not be required on the return date of this motion.

Full
Sufficient reason appearing therefor, let service of a copy of this Order to Show Cause and the papers upon which it is based, upon attorneys for defendants, on or before *July 3* ~~June~~ __, 2006 by hand delivery and upon all parties who have appeared in the above captioned action (by regular mail), be deemed good and sufficient service.

ENTER:



Hon. Helen Freedman

NOTICE OF ENTRY

Index No. 103894

Year 2005

Please take notice that within is a (certified) copy of a document filed in the office of the clerk of the within named court on 19

at

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
RUDOLFO COLELLA and MARIA COLELLA,
Plaintiffs,

Yours, etc.,
WEITZ & LUXENBERG, P.C.

- against -

ARCHER PRODUCTS, INC., et al., and
ALL CASES IN WHICH FORD MOTOR COMPANY,
GENERAL MOTORS CORPORATION, and
DAIMLERCHRYSLER CORPORATION ARE,
Defendants.

Attorney(s) for

Office and Post Office Address, Telephone

180 Maiden Lane

ORDER TO SHOW CAUSE

whereof the within is a true copy will be presented

at the office of the judge of the within named Court, at

on the _____ day of _____ 19____

at _____ M.

at _____

Yours, etc.,
WEITZ & LUXENBERG, P.C.

Attorney(s) for

Office and Post Office Address, Telephone

180 Maiden Lane

Borough of Manhattan New York, NY 10038

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated, _____

Attorney(s) for

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	:	
IN RE: NEW YORK CITY ASBESTOS LITIGATION	:	NYCAL
-----X	:	(Freedman, J.)
This Document Relates To:	:	
	:	
RODOLFO COLELLA and MARIA COLELLA,	:	Index No. 103894-05
	:	
-against-	:	ORDER DIRECTING
	:	ISSUANCE OF OPEN
AMCHEM PRODUCTS, INC., et al. and	:	COMMISSION TO
	:	TAKE DEPOSITION
ALL CASES IN WHICH FORD MOTOR COMPANY,	:	OUTSIDE STATE OF
GENERAL MOTORS CORPORATION, AND	:	NON-PARTY
DAIMLERCHRYSLER CORPORATION	:	WITNESS ON ORAL
ARE DEFENDANTS.	:	QUESTIONS
-----X	:	

Present: Hon. Helen Freedman, Justice.

Plaintiffs, having moved this Court for an Order pursuant to C.P.L.R. § 3108, directing the issuance of an Open Commission to enable Plaintiff to take the deposition of Larry Cummings as a non-party witness, and to request the Oakland County Circuit Court, Pontiac, Michigan, to issue a subpoena and subpoena *duces tecum* to Larry Cummings to appear for and submit to his deposition at a time, date, and place to be determined by the Oakland County Circuit Court, Pontiac, Michigan; and the motion having regularly come on to be heard before this Court on the ___ day of June, 2006, and the Weitz & Luxenberg, P.C., Plaintiffs, by Jerry Kristal, Esq., of Weitz & Luxenberg, P.C., having appeared in support thereof and the Defendants, having appeared in opposition thereto; and the Court having heard Oral argument and reserved decision thereon;

Now, upon reading all pleadings filed in this matter and due deliberation having been had thereon and upon reading and filing the Memorandum Decision of this Court dated _____ day of June, 2006; and

Upon motion of Weitz & Luxenberg, P.C., attorneys for Plaintiffs, it is:

ORDERED, that Plaintiffs' motion for an Open Commission to enable the Plaintiff to take the deposition of Larry Cummings as a non-party witness in the State of Michigan is GRANTED in all respects; and it is further

ORDERED, that a Commission issue to a Judge of the Oakland County Circuit Court, Pontiac, Michigan, to take the deposition on oral questions under oath of Larry Cummings as a non-party witness; and it is further

ORDERED, that Plaintiffs shall bear the costs of conducting the deposition, which costs shall be taxable disbursement in this action.

ENTER,

Hon. Helen Freedman

NOTICE OF ENTRY

Please take notice that within is a (certified) copy of a document filed in the Office of the clerk of the within court on 19

led,

Yours, etc.,
WEITZ & LUXENBERG, P.C.

Attorneys for
Office and Post Office Address, Telephone
180 Malden Lane
Borough of Manhattan **New York, NY 10038**

Attorney(s) for

NOTICE OF SETTLEMENT

Please take notice that an order

which the within is a true copy will be presented for settlement to the Hon.

name of the judges of the within named Court, at

on the _____ day of _____ 19____
at _____ M.

Yours, etc.,
WEITZ & LUXENBERG, P.C.

Attorneys for
Office and Post Office Address, Telephone
180 Malden Lane
Borough of Manhattan **New York, NY 10038**

Attorney(s) for

Index No. 103894

Year 2005

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RODRIGO CUIRELLA and MARIA CUIRELLA,

Plaintiffs,

- against -

ANCHER PRODUCTS, INC., et al., and
ALL CASES IN WHICH FORD MOTOR COMPANY,
GENERAL MOTORS CORPORATION and
DAIMLERCHRYSLER CORPORATION ARE
Defendants.

ORDER DIRECTING ISSUANCE OF OPEN
COMMISSION TO TAKE DEPOSITION
OUTSIDE STATE OF NON-PARTY

WEITZ & LUXENBERG, P.C.

Attorneys for **Plaintiffs**
Office and Post Office Address, Telephone
180 Malden Lane

Borough of Manhattan **New York, NY 10038**
(212) 558-5500

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	:	
IN RE: NEW YORK CITY ASBESTOS LITIGATION	:	NYCAL
-----X	:	(Freedman, J.)
This Document Relates To:	:	
	:	
RODOLFO COLELLA and MARIA COLELLA,	:	Index No. 103894-05
	:	
-against-	:	COMMISSION TO
	:	TAKE DEPOSITION
AMCHEM PRODUCTS, INC., et al. and	:	OUTSIDE STATE OF
	:	NON-PARTY
ALL CASES IN WHICH FORD MOTOR COMPANY,	:	WITNESS ON ORAL
GENERAL MOTORS CORPORATION, AND	:	QUESTIONS
DAIMLERCHRYSLER CORPORATION	:	
ARE DEFENDANTS.	:	
-----X	:	

THE PEOPLE OF THE STATE OF NEW YORK

TO: Judge of the Oakland County Circuit Court, Pontiac, Michigan:

KNOW YE, that we, with full faith in your prudence and competency, have appointed you by a Judge of your Court, Commission and by these presents do authorize you or any of you to examine Larry Cummings as a non-party witness in NYCAL actions pending in our Superior Court, New York County between Plaintiffs and DaimlerChrysler Corporation, Ford Motor Company, and General Motors Corporation, Defendants, on the part of the Plaintiffs, under oath, upon oral examination to be conducted under Article 31 of the Civil Practice Law and Rules.

We, therefore, request of you that, in furtherance of justice, you will, by proper and usual process of your Court, cause witness, Larry Cummings, to appear before you or some competent person by you for that purpose to be appointed and authorized by you at a precise time, and there to answer, under oath, to the several questions and cross-

questions put to him by the attorneys for the parties hereto and that you will cause his deposition to be committed to writing and return the same to us.


Pursuant to Section 3102(e) of the New York Civil Practice Law and Rules, “[w]hen under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he may be compelled to appear and testify in this same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county shall make any appropriate order in aid of taking such a deposition.” In accordance with the foregoing statute we shall be and stand ready, willing and able to do the same for you, as we are asking you to do herein, in a similar case when required.

WITNESS, Honorable _____, Justice of the Supreme Court of the State of New York and the seal thereof, and the City of _____, County of _____ this _____ day of June, 2006.

By the Court

Clerk

(Seal of the Court)



Jerry Kristal
WEITZ & LUXENBERG, P.C.
180 Maiden Lane, 17th Floor
New York, New York 10038
(212) 558-5500

TO:

JONATHAN E. POLANSKY, ESQ.
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Facsimile: (212) 603-2001
COUNSEL FOR DAIMLERCHRYSLER CORPORATION

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AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
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New York, New York 10017
Telephone: (212) 593-6700
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COUNSEL FOR FORD MOTOR COMPANY AND GENERAL MOTORS CORPORATION

FRANCIS F. QUINN, ESQ.
LAVIN COLEMAN O'NEILL RICCI FINARELLI & GRAY
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New York, New York 10170
Telephone: (212) 319-6898
Facsimile: (212) 319-6932
COUNSEL FOR GENERAL MOTORS CORPORATION

ALL NYCAL DEFENANTS VIA POSTING ON WWW.NYCAL.NET

NOTICE OF ENTRY

Index No. 103894

Year: 2005

Notice: Please take notice that within is a (certified) true copy of a

document duly entered in the office of the clerk of the within named court on 19

dated,

Yours, etc.,
WEITZ & LUXENBERG, P.C.

Attorneys for
Office and Post Office Address, Telephone

180 Maiden Lane
Borough of Manhattan New York, NY 10038

Attorney(s) for

NOTICE OF SETBACK

Notice: Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the _____ day of _____ 19

_____ M.

Yours, etc.,
WEITZ & LUXENBERG, P.C.

Attorneys for
Office and Post Office Address, Telephone

180 Maiden Lane
Borough of Manhattan New York, NY 10038

Index No. 103894

Year: 2005

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

RODOLFO COLELLA and MARIA COLELLA,

Plaintiffs,

- against -

**ARCORA PRODUCTS, INC., et al., and
GENERAL MOTORS CORPORATION, AND
DAIMLERCHRYSLER CORPORATION ARE**

Defendants.

**COMMISSION TO TAKE DEPOSITION
OUTSIDE STATE OF NON-PARTY
WITNESS**

WEITZ & LUXENBERG, P.C.

Attorneys for Plaintiffs
Office and Post Office Address, Telephone

180 Maiden Lane
Borough of Manhattan New York, NY 10038
(212 558-5500)

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	:	
IN RE: NEW YORK CITY ASBESTOS LITIGATION	:	NYCAL
-----X	:	(Freedman, J.)
This Document Relates To:	:	
	:	
RODOLFO COLELLA and MARIA COLELLA,	:	Index No. 103894-05
	:	
-against-	:	
	:	
AMCHEM PRODUCTS, INC., et al. and	:	
	:	
ALL CASES IN WHICH FORD MOTOR COMPANY,	:	
GENERAL MOTORS CORPORATION, AND	:	
DAIMLERCHRYSLER CORPORATION	:	
ARE DEFENDANTS.	:	
-----X	:	

**AFFIRMATION IN SUPPORT OF MOTION FOR ISSUANCE
OF OPEN COMMISSION TO TAKE DEPOSITION OUTSIDE
STATE OF NON-PARTY WITNESS ON ORAL QUESTIONS**

Jerry Kristal, an attorney duly admitted to practice in the courts of the State of New York, hereby affirms the following to be true under the penalties of perjury pursuant to C.P.L.R. § 2106:

1, I am an attorney with the firm of Weitz & Luxenberg, P.C., attorneys for numerous NYCAL plaintiffs who claim exposure to asbestos from DaimlerChrysler Corporation (“DaimlerChrysler“), Ford Motor Company (“Ford”), and General Motors Corporation (“GM”)(collectively, the “Defendants”). I am familiar with all of the facts and proceedings heretofore had herein and respectfully submit this affirmation in support of plaintiffs’ motion seeking an Order pursuant to C.P.L.R. § 3108 for an Open Commission authorizing Weitz & Luxenberg, P.C. plaintiffs to take the examination before trial of Larry Cummings, as a non-party witness and requesting the Oakland County Circuit Court, Pontiac, Michigan to issue a subpoena and subpoena *duces tecum*

to Larry Cummings, to appear for and submit to deposition upon oral examination under oath at a time, date, and place to be determined.

2. Plaintiffs allege that they developed mesothelioma and other asbestos-related diseases as a result of occupational exposure to asbestos-containing products used and/or manufactured, distributed, supplied, or sold by the Defendants.

3. It is anticipated that as part of their defense in the NYCAL litigation, the Defendants will argue that exposure to asbestos containing friction products (brakes and clutches) does not increase the risk of any asbestos-related disease.

4. Larry Cummings is the President and CEO of AYES, (Automotive Youth Educational Systems), Inc. located at 100 W Big Beaver, Suite 300, Troy, Michigan 48084-5283. AYES is a “dynamic partnership among participating automotive manufacturers [including the Defendants], local dealerships and select high schools/vocational-technical schools.” See, **Exhibit A**, p. 208 from January 2006 GM Training Program Manual; back page from 2005 DaimlerChrysler Guide; page from current Ford website. GM launched AYES in 1995. *Id.* at GM page 208. GM, DaimlerChrysler and Ford are “key stakeholders” in AYES. See, **Exhibit B**, page from current AYES, Inc. website.

5. Larry Cummings possesses unique information and perspective that is relevant to these NYCAL actions in which GM, DaimlerChrysler and Ford; to wit, the information imparted to automotive mechanics-in-training, as part of their GM, DaimlerChrysler and Ford sponsored training and education, regarding the hazards of asbestos from asbestos containing friction products. Fairness dictates that all future juries in the NYCAL litigation against these Defendants should have access to Larry Cummings’ testimony.

6. The information Larry Cummings possesses, regarding the GM, DaimlerChrysler and Ford sponsored automotive mechanic training as to the hazards of asbestos in friction products, may not be obtainable from other sources.

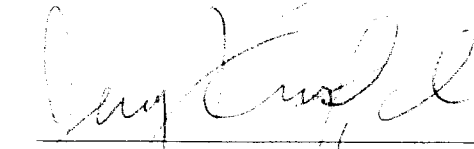
7. Plaintiff's have a "substantial need" for the testimony of Larry Cummings, and there are no practicable means available to obtain this information other than through the deposition of Mr. Cummings. Therefore, Plaintiffs respectfully request this Court grant leave to subpoena and depose Mr. Cummings.

8. Mr. Cummings, a present resident of Michigan, is not subject to the subpoena power of the Courts of this state.

9. In order to properly engage in complete and necessary discovery with respect to all of the Weitz & Luxenberg, P.C. plaintiffs who allege exposure to asbestos from GM, DaimlerChrysler and Ford products, Plaintiffs manifestly require this out-of-state witness' testimony.

WHEREFORE, it is respectfully requested that an Order enter hereon granting Plaintiffs' motion in all respects, authorizing the creation of an Open Commission to enable Plaintiff to take the examination before trial of Larry Cummings as a non-party witness and requesting the Oakland County Circuit Court for the State of Michigan to issue the necessary process to effectuate this Order.

WHEREFORE, no prior application has been made for the relief requested herein.



Jerry Kristal
Weitz & Luxenberg, P.C.
Attorneys for Plaintiffs
180 Maiden Lane, 17th Floor

New York, New York 10038
(212) 558-5500

Dated: New York, New York
June 27, 2006

At Part 39 of the Supreme Court
of the State of New York, held in
and for the County of New York, at
the Courthouse located at 60 Centre
Street, New York, New York, on the
____ day of June, 2006.



curriculum upon successful graduation.

- ACDelco TSS Service Center and students will also receive ACDelco training credit

Chevrolet, Pontiac, GMC, Buick, Cadillac, Hummer, Saturn and Saab dealers as well as ACDelco TSS Service Centers are encouraged to participate!

General Contact Information

Call 1-800-828-6860 to find a school nearest you or visit www.gmasepbsep.com for locations and additional program information.



Automotive Youth Educational Systems (AYES) is a dynamic partnership among participating automotive manufacturers, local dealerships, and select local high schools/vocational-technical schools.

Manufacturers include General Motors, DaimlerChrysler, Mitsubishi Motors, Ford, Hyundai, Nissan, Toyota, Volkswagen, Audi, Mercedes Benz, Honda, BMW, and Subaru. Other major partners include NADA, Snap-On Tools, ASE, and SPX Corporation.

The goal: To encourage bright high school students with a good mechanical aptitude to pursue careers in the ever changing field of automotive technology, and to prepare them for entry level positions or challenging academic options. The program is designed to encourage young people to consider satisfying careers in retail automotive service.

GM launched AYES in 1995 as the first large scale school-to-career effort to address the needs of retail automotive dealerships.

The high schools and vocational/technical schools selected for AYES have ASE-certified automotive curriculum and are active in the Skills USA. Qualified high school juniors are invited to participate in AYES. In addition to taking the required academic courses toward a high school diploma, students will take challenging classroom courses in basic automotive technology, strengthen solid "employability" skills (such as dependability, positive attitude, the spirit of teamwork), and work in paid trainee positions at participating dealerships. Dealership mentors are trained to help ensure that the experience is successful for the student and for the dealership. Upon high school graduation and AYES Certification, the participating students are prepared to begin full time employment as entry level technicians. Graduates are encouraged to advance their technician education through the GM Automotive Service Educational Program (GM ASEP).

To learn more about AYES, contact your GM Regional ASEP/AYES Manager. Or visit us on the web at: www.ayes.org.

EXHIBIT "A"

WE ENCOURAGE
PROFESSIONALISM



THROUGH TECHNICIAN
CERTIFICATION



Stick with the Specialists[®]

**TRAINING PROGRAM
DEVELOPMENT DEPARTMENT**

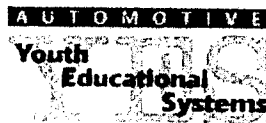
DaimlerChrysler Corporation

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AYES KEY STAKEHOLDERS



EXHIBIT "B"

NOTICE OF ENTRY

Please take notice that within is a (certified) copy of a [unclear] entered in the office of the clerk of the within [unclear] court on [unclear] 19 [unclear]

ed.

Yours, etc.,
WEITZ & LUXENBERG, P.C.

Attorneys for

Office and Post Office Address, Telephone

180 Malden Lane

Borough of Manhattan **New York, NY 10038**

Attorney(s) for

which the within is a true copy will be presented
settlement to the Hon.

of the Judge of the within named Court, in

the day of [unclear] 19 [unclear]

M.

led.

Yours, etc.,
WEITZ & LUXENBERG, P.C.

Attorneys for

Office and Post Office Address, Telephone

180 Malden Lane

Borough of Manhattan **New York, NY 10038**

Attorney(s) for

Index No. **103894**

~~Year~~ **2005**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

RUDOLFO COIKILIA and MARIA COIKILIA,

Plaintiffs,

- against -

**ANCHER PRODUCTS, INC., et al., and
ALL CASES IN WHICH FORD MOTOR COMPANY,
GENERAL MOTORS CORPORATION, and
DAIMLERCHRYSLER CORPORATION ARE,**

Defendants.

**AFFIRMATION IN SUPPORT OF MOTION
FOR ISSUANCE OF OPEN COMMISSION
TO TAKE DEPOSITION OUTSIDE OF STATE**

WEITZ & LUXENBERG, P.C.

Attorneys for Plaintiffs

Office and Post Office Address, Telephone

180 Malden Lane

Borough of Manhattan **New York, NY 10038**

(212) 558-5500

To

Attorney(s) for

Services of a copy of the within

is hereby admitted.

Dated

Attorney(s) for