

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.

016281

MS#7
CD

PRESENT: Honorable Helen Freedman

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

-----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

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

EX PARTE MOTION OFF.
APPROVED
FOR THE PAYMENT
ORDER TO SHOW
CAUSE MOTION FEE
ONLY

Upon the annexed affirmation of Jerry Kristal, ^{dated June 27th 2006} and commission to take the deposition of Robert G. Stewart, 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} ~~June~~, 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 Robert G. Stewart as a non-party witness and to request the Tenth Judicial District Court of Kansas, Olathe, Kansas, to issue a subpoena and subpoena

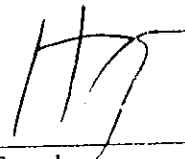
duces tecum to Robert G. Stewart to appear for and submit to his deposition at a time, date, and place to be determined; together with such other and further relief as this Court may deem just and proper.

H
S.C.

Oral argument shall/shall not be required on the return date of this motion, ^{and} ~~and~~ ^{cause being already} sufficient ~~can appear~~ therefore. 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} ~~June~~ 5, 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

Index No. 113938

Year 2004

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

ALFRED D'ULISSE and MARGARET D'ULISSE,

Plaintiffs,

- against -

ARCTIC PROPERTIES, INC., et al., and
ALL CASES IN WHICH FORD MOTOR COMPANY,
GENERAL MOTORS CORPORATION, AND
THE FINCHVILLE CORPORATION ARE,

Defendants.

ORDER TO STOP CAUSE

WEITZ & LUXEMBERG, P.C.

Attorneys for Plaintiffs
Office and Post-Office Address, Telephone
180 Maiden Lane

Borough of Manhattan New York, NY 10038
(212) 658-6600

Attorney(s) for

Plaintiff(s) of a copy of this order

to be duly returned

Attorney(s) for

WEITZ & LUXEMBERG, P.C.

WEITZ & LUXEMBERG, P.C.

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 Robert G. Stewart as a non-party witness, and to request the Tenth Judicial District Court, Olathe, Kansas, to issue a subpoena and subpoena *duces tecum* to Robert G. Stewart to appear for and submit to his deposition at a time, date, and place to be determined by the Tenth Judicial District Court, Olathe, Kansas; 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 Robert G. Stewart as a non-party witness in the State of Kansas is GRANTED in all respects; and it is further

ORDERED, that a Commission issue to a Judge of the Tenth Judicial District Court, Olathe, Kansas, to take the deposition on oral questions under oath of Robert G. Stewart 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 entered in the office of the clerk of the within court on 19

Index No. 103894

Year 12 2005

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

ROBERTO CORREIA and MARIA CORREIA,

Plaintiffs,

— against —

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

ORDER DIRECTING ISSUANCE OF OPEN COMMISSION TO TAKE DEPOSITION

WEITZ & LUXENBERG, P.C.

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

Borough of Manhattan, New York, NY 10038
(212) 558-5980

Attorneys for

Service of a copy of the within
Dated: I heretby submitted

Address(es) for

WEITZ & LUXENBERG, P.C.

Yours, etc.
Attorneys for

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

Attorney(s) for

Address for summons

Please take notice that an order

within the within is a true copy will be presented

of the judge of the within named Court, at

the day of 19
N.

WEITZ & LUXENBERG, P.C.

Yours, etc.
Attorneys for

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

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	: X

THE PEOPLE OF THE STATE OF NEW YORK

TO: Judge of the Tenth Judicial District Court, Olathe, Kansas:

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 Robert G. Stewart as a non-party witness in NYCAL actions pending in our Supreme 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, Robert G. Stewart, 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.

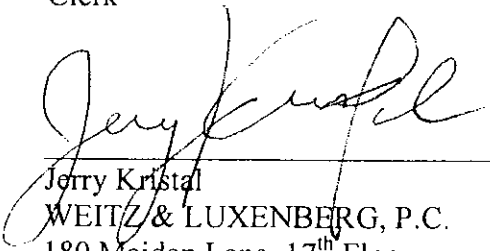
Pursuant to Section 3102(e) of the New York Civil Practice Law and Rules, “[w]hen under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness 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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COUNSEL FOR FORD MOTOR COMPANY AND GENERAL MOTORS CORPORATION

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Graybar Building
New York, New York 10170
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Facsimile: (212) 319-6932
COUNSEL FOR GENERAL MOTORS CORPORATION

ALL NYCAL DEFENDANTS VIA POSTING ON WWW.NYCAL.NET

NOICE OF HEARIN

Please take notice that within 15 days of the date of the filing of this copy of a petition entered in the office of the clerk of the within named court on

at

WEITZ & LUXENBERG, P.C.
Attorneys for

Office and Post Office Address, Telephone

180 Malden Lane
New York, NY 10038

Attorney(s) for

which the within is a true copy of the petition submitted to the Hon. _____

the day of _____ 19____
M.

WEITZ & LUXENBERG, P.C.
Attorneys for

Office and Post Office Address, Telephone

180 Malden Lane
New York, NY 10038

Attorney(s) for

Index No. **103896** Year **2005**

SUPREME COURT OF THE STATE OF NEW YORK
IN SENATE CHAMBER
RODOLFO COLELLA and NAKILA COLELLA,
Plaintiffs,

against
AMERIM PRODUCTS, INC., et al., and
ALL CASES IN WHICH FORD MOTOR COMPANY,
GENERAL MOTORS CORPORATION AND
DAEWOO MOTOR COMPANY ARE
Defendants.

COMMISSION TO TAKE DEPOSITION OUTSIDE STATE OF NEW YORK WITNESS

WEITZ & LUXENBERG, P.C.
Attorneys for

Office and Post Office Address, Telephone
180 Malden Lane
New York, NY 10038
(212) 554-2800

Attorney(s) for

Service of a copy of the within

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 Robert G. Stewart, as a non-party witness and requesting the Tenth Judicial District Court, Olathe, Kansas to issue a subpoena and subpoena *duces tecum* to Robert

G. Stewart, 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. Robert G. Stewart is the President of the Coordinating Committee For Automotive Repair (CCAR) at 12900 South Metcalf, Suite 120, Overland Park, Kansas 66225-6741. CCAR is an organization established in 1994 representing all parts of the automotive industry. An employee of GM currently sits on the CCAR Board of directors. CCAR is the sponsor of an online Safety and Pollution Program (S/P2) for the automotive industry. GM, DaimlerChrysler, and Ford all have endorsed the use of the S/P2 for the training of their service mechanics and for their service-mechanics-in-training. The GM, DaimlerChrysler, and Ford-endorsed S/P2 training program has an extensive section discussing the hazards of asbestos in brakes and the risk faced by brake mechanics of asbestos diseases.

5. Robert G. Stewart 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 and 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 Robert G. Stewart's testimony.

6. The information Robert G. Stewart 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.

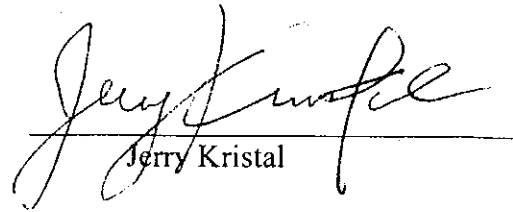
7. Plaintiff's have a "substantial need" for the testimony of Robert G. Stewart, and there are no practicable means available to obtain this information other than through the deposition of Mr. Stewart. Therefore, Plaintiffs respectfully request this Court grant leave to subpoena and depose Mr. Stewart.

8. Mr. Stewart, a present resident of Kansas, 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 Robert G. Stewart as a non-party witness and requesting the Tenth Judicial District Court of Kansas 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.

