

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

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GEORGE GRAHAM,

Index No.: 190300/09

Plaintiffs,

- against-

**RECOMMENDATION OF
THE SPECIAL MASTER**

A.O. SMITH WATER PRODUCTS COMPANY;
et al.,

Defendants.
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This Recommendation follows numerous email communications with David Katzenstein, Robert Darish and Michelle Grady of McGivney & Kluger, counsel for Aurora Pump Company (“Aurora”), and counsel for the Plaintiff, Carmen V. St. George.

During a telephone conference held on August 31, 2010, counsel for Plaintiff sought the deposition of Aurora’s corporate representative, Leroy Franklin (“Franklin”). Ms. St. George sought to question Franklin about sales and/or shipments to certain NYC Housing Authority buildings in the Bronx, New York, where Plaintiff testified he had worked and was exposed to asbestos, namely: the Boston Secor Houses, the Edenwald Houses, the Eastchester Houses, the Baychester Houses, the Grant Houses, the Pelham Houses, the Marble Hill houses, and the Gun Hill Houses. Because Franklin had been deposed in the past, counsel for Aurora wished to limit the deposition of Franklin to non-repetitive issues and to certain buildings where Aurora pumps with serial numbers had been identified at site inspections. Counsel for Aurora claimed that document searches could only be performed once a serial number was obtained. Aurora produced documents relating to the pumps whose serial numbers were identified.

The Special Master permitted a limited non-repetitive deposition of Franklin on the issue of Aurora's methods of locating and storing corporate records in order to determine whether any other documents might exist. The Special Master invited the parties to revisit the issue of the production of additional documents upon conclusion of the Franklin deposition.

On November 5, 2010 Aurora produced Franklin for a deposition in Chicago, Illinois. Franklin testified that documents regarding products manufactured by Aurora were stored on microfiche and that the records date back to 1945; that the documents are accessible; that the documents include sales records which include details about the pumps sold and often information about where the pumps were to be installed; that although the microfiche library is quite large it is capable of being reviewed in an efficient manner. Franklin also testified that Aurora is in possession of drawings pertaining to Aurora pumps ordered by commercial customers, that the drawings are accessible and can be reviewed to obtain information relating to details on particular orders.

Counsel for Plaintiff demanded production of these documents insofar as they related to pumps installed at the relevant Housing Authority locations where Plaintiff worked. Aurora refused, stating that such a production would be burdensome to undertake and again insisting that documents can only be located based on a serial number.

On November 8, 2010 another conference was held with the Special Master. Counsel for Plaintiff reiterated her request. Aurora refused to produce the documents for the reasons set forth above.

Franklin's testimony makes clear that a thorough review of the microfiche and the drawings is likely to lead to relevant and critical evidence concerning the Aurora pumps at issue in this case. This is basic NYCAL discovery. Aurora's objections lack merit and are contradicted by the testimony of their corporate witness. To the extent that Aurora considers the search burdensome, that is easily remedied by making the documents available to Plaintiff's counsel for inspection.

This case has been transferred to Justice Marcy Friedman for trial. Time is of the essence. Aurora is directed to immediately make available for inspection by counsel for Plaintiff the Master Copy of the microfilm and the drawings maintained in the Engineering Vault at the Aurora Plant. Should counsel for Plaintiff wish copies of any of these documents, Aurora is to cooperate fully.

Dated: November 11, 2010

RESPECTFULLY SUBMITTED:

/s/

Laraine Pacheco
N.Y.C.A.L. Special Master