

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

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ROSALIE PEREZ,

Plaintiff,

- against -

Index No.: 104124/08

**ORDER**

CHRYSLER, LLC  
(f/k/a DAIMLERCHRYSLER CORPORATION), et al.  
Defendants.  
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Defendant Volkswagen Group of America, Inc. (“VW”) had its investigator interview non-party witness Diego Colon in advance of his deposition as a fact witness in the above-referenced case. The interview was tape recorded and then transcribed. During Mr. Colon’s testimony, counsel for VW utilized portions of the transcript of the interview to attempt to impeach the witness. When counsel for plaintiff demanded production of the transcript and recording, counsel for VW refused, stating that the material constituted work product. A subsequent request by plaintiff’s counsel for the tape and transcript was also denied. The Special Master directed production of the material and VW refused, again asserting work product doctrine.

In utilizing the transcript during the deposition to attempt to impeach the witness, VW’s counsel unequivocally waived any qualified attorney work product protection. See People v. Perez, 171 Misc.2d 75, 653 N.Y.S.2d 527, 528 n.1 (N.Y. Sup. Ct. 1996)(citing People v. Small, 631 P.2d 148, 159 (Colo. 1981)); Granite Partners, L.P. v. Bear, Stearns & Co., 184 F.R.D. 49, 54-55 (S.D.N.Y. 1999); U.S. v. Nobles, 422 U.S. 225, 239-240 (1975). Additionally, VW selectively placed the transcript “at-issue” in the case while simultaneously depriving plaintiff the ability to assess the remainder of the transcript and respond to VW’s cross-examination (see, e.g., Royal Indem. Co. v. Salomon Smith Barney, Inc., 4 Misc.3d 1006(A) (N.Y. Sup. Ct. 2004), thus impermissibly attempting to use the transcript as both a sword and a shield. VW cannot be permitted to offensively waive portions of attorney work product protection by cross-examining a witness with selective quotes from a transcript, while at the same time defensively preclude the production of the remainder of that very transcript by asserting protection under the attorney work product doctrine.

Both the tape recording and the transcript must be produced to all parties.

Dated: July 16, 2008

ORDERED:

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Laraine Pacheco  
Special Master