

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANCIS A. AHLBERG, et al.,

Plaintiffs,

vs.

CHRYSLER CORPORATION, et al.,

Defendants.

Case No.

Honorable

S. D. Iowa Case No. 4:04-CV-60104
Magistrate Judge Thomas J. Shields

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**BRIEF IN SUPPORT NONPARTY DEPONENT ROBERT A. LUTZ'S
MOTION PROTECTIVE ORDER QUASHING DEPOSITION SUBPOENA
PURSUANT TO FED. R. CIV. P. 26(B)(2), 26(C)(1), AND 45(C)(3)**

I. INTRODUCTION

Nonparty deponent Robert A. Lutz moves this Court for a protective Order quashing the subpoena to take his oral deposition issued by Plaintiffs Francis Ahlberg and Michael Glenn. Plaintiffs' underlying products liability action, pending in the United States District Court for the Southern District of Iowa, alleges that Defendants Chrysler Corporation and DaimlerChrysler Corporation (the "Defendants") improperly failed to install a brake transmission switch interlock ("BTSI device") in a 1999 Dodge Ram Pickup truck. Mr. Lutz was not involved in any decisions regarding the use of BTSI devices in Defendants' vehicles and has no first-hand knowledge of the issues raised in Plaintiffs' action. Because Mr. Lutz has no unique personal

knowledge relevant to the issues in the underlying lawsuit and will be unnecessarily burdened if required to testify, this Court should quash the Deposition Subpoena.

II. BACKGROUND

On June 13, 2005, Plaintiffs served a Deposition Subpoena (a copy of which is attached as Exhibit A) upon Mr. Lutz. Plaintiffs' decedent allegedly suffered fatal injuries when a 1999 Dodge Ram pickup truck inadvertently shifted from park to neutral and ran over decedent. Plaintiffs apparently seek Mr. Lutz' deposition under the erroneous belief that Mr. Lutz participated in decisions regarding the use of BTSI devices in Defendants' vehicles, including trucks. Although Mr. Lutz was employed by Chrysler in various capacities from 1986 to 1998, at no time was he involved in any decisions regarding the use of BTSI devices in Chrysler vehicles. (Lutz Affidavit, ¶ 8, a copy of which is attached as Exhibit B.) He has no first-hand knowledge regarding the decision, if any, not to install such devices in the 1999 Dodge Ram pickup trucks. (*Id.*)

Mr. Lutz is the Vice Chairman, Global Product Development of General Motors Corporation. In that capacity, he has responsibility for the GM Design Center, GM Global Engineering, GM Global Program Management and Global Product Planning. Mr. Lutz also serves as the Chairman of the Automotive Product Board and as a member of the Automotive Strategy Board, two of GM's principal management decision-making bodies. As a result of his extensive responsibilities, Mr. Lutz has a busy and demanding schedule, and an oral deposition in this case would be very burdensome. (Lutz Affidavit, ¶ 2-4, 9, Exhibit B)

III. ARGUMENT

Federal Rule of Civil Procedure 45(c)(3)(A) provides that "[o]n a timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it ... (iv) subjects a

person to undue burden.” Fed. R. Civ. P. 45(c)(3)(A)(iv). Rule 26(b)(2) also limits the scope or means of discovery:

Limitations. . . . [t]he frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Fed. R. Civ. P. 26(b)(2). Rule 26(c) further authorizes “the court in [a] district where [a] deposition is to be taken [to] make any order which justice requires to protect a party or persons from annoyance, embarrassment, oppression or undue burden or expenses, including . . . (1) that the disclosure or discovery not be had . . .” Fed. R. Civ. P. 26(c)(1). Taken together, these rules establish a trial court’s authority to prohibit pointless depositions. *See also Rolex Watch U.S.A., Inc. v Crowley*, 74 F.3d 716, 722 (6th Cir. 1996) (district court did not abuse its discretion by prohibiting deposition that would have been “unnecessary, expensive, and inefficient”).

A. This Court Should Quash the Deposition Subpoena Because Mr. Lutz Does Not Possess Superior or Uniquely Personal Knowledge of Facts Relevant to the Lawsuit.

Deposing one of the highest-ranking officials of one of the world’s largest corporations is an extreme measure that should be used as a last resort and only upon a showing that the official has unique personal knowledge of the matters at issue. *See Baine v. General Motors Corp.*, 41 F.R.D. 332, 334 (M.D. Ala. 1991) (citing *Community Federal Savings & Loan Ass’n v. FHLBB*, 96 F.R.D. 619 (D.D.C. 1983)). In *Baine*, the plaintiffs sought to depose Edward Mertz, then a vice president of General Motors and the head of its Buick Motor Division, concerning the

contents of a memorandum he had authored, which was distributed to eighteen other individuals. *Id.* at 333-334. The court precluded plaintiffs from taking Mr. Mertz's deposition, reasoning that allowing it to proceed would be oppressive, inconvenient, and burdensome because, among other things, the plaintiffs had not shown that information could not be obtained through another source. *Baine*, 41 F.R.D. at 335; *see also Lewelling v. Farmers Insurance Inc.*, 879 F.2d 212, 218 (6th Cir. 1989) (deposition of corporate officer was properly prohibited based upon corporation's representation that officer lacked knowledge pertinent to plaintiff's case).

The rationale used by the *Baine* Court applies with even greater force here and good cause exists to quash the Deposition Subpoena. Mr. Lutz's affidavit not only confirms that he does not have unique or superior knowledge about the use of BTSI devices in the vehicle model at issue in the underlying action, but it also establishes that he has *no information* at all relevant to Plaintiffs' claims. Requiring Mr. Lutz to testify would be a waste of time and resources. He would either be unable to answer Plaintiffs' questions or would respond, at best, with second-hand information that is available through the Defendants or some other source.

B. This Court Should Quash the Deposition Subpoena Because Requiring Mr. Lutz to Testify Will Impose an Undue Burden upon Him.

Courts quashing depositions of high-ranking or senior corporate officers have done so for two common reasons. First, courts have acknowledged the common sense rule that discoverable materials and information should be obtained from a party to the litigation before seeking to burden a nonparty. *See Echostar Communications Corporation v. News Corp Ltd.*, 180 F.R.D. 391, 395 (D. Colo. 1998) (refusing to enforce subpoena *duces tecum* where the relevant materials "[were] as readily available from [defendant] as they were from non-parties"). As noted in a 1963 opinion issued by a California federal district court, nonparties should not be burdened with the inconvenience and expense of complying with discovery that can be obtained from opposing

counsel. See *The Bada Company v. Montgomery Ward & Co.*, 32 F.R.D. 208, 209-210 (S.D. Cal. 1963). Moreover, the parties have an economic stake in the litigation and therefore more appropriately should bear the costs and burdens of discovery.

Second, courts have recognized that depositions of senior-level officials “raise a tremendous potential for discovery abuse and harassment.” *Liberty Mutual Ins. Co. v. Superior Court*, 10 Cal. App. 4th 1282, 1287 (1992). This is especially problematic where there has been no reasonable indication that the officer has knowledge of the subject matter and less intrusive attempts to obtain the information have not been exhausted. *Id.* at 1286-1287. For example, in *Mulvey v. Chrysler Corp.*, 106 F.R.D. 364, 366 (D.R.I. 1985), the plaintiff sought to take the deposition of Lee Iacocca, then chairman of Chrysler Corporation. The Plaintiff contended that Mr. Iacocca had made statements in a book he had authored that were damaging to Chrysler Corp.’s defense and sought to depose him for that reason. *Id.* at 366. In response to plaintiff’s deposition subpoena, Mr. Iacocca executed an affidavit disavowing any knowledge of the information plaintiff sought. *Id.* Noting that high ranking corporate officials are “singularly unique and important individuals” whom the courts have a duty to protect from abusive discovery practices, the district court prohibited the deposition because the plaintiff had not resorted to less intrusive means to discover the information, such as propounding written interrogatories upon Chrysler. *Id.*

Here, the information about the use of BTSI devices in the 1999 Dodge Ram pickup truck or other Chrysler vehicles undoubtedly is proprietary information within the control of and available through a party to the lawsuit – DaimlerChrysler Corporation. Importantly, Plaintiffs do not claim that they tried to obtain this information from DaimlerChrysler and failed. In any event, as noted above, Mr. Lutz did not participate in the relevant decisions regarding BTSI

devices. Plaintiffs' desire to force a deposition that is not calculated to provide and will not produce relevant information is, as in *Baine, supra*, "oppressive, inconvenient, and burdensome."

IV. CONCLUSION

Nonparty deponent Robert Lutz does not have unique personal knowledge relevant to the issues in the Lawsuit. Further, requiring Mr. Lutz to comply with the Deposition Subpoena would impose an undue and unjustified burden upon him. Accordingly, the Deposition Subpoena should be quashed, and Mr. Lutz's deposition prohibited.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: 

Michael P. Cooney (P39405)
T. Lewis Summerville (P63445)
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Date: June 27, 2005

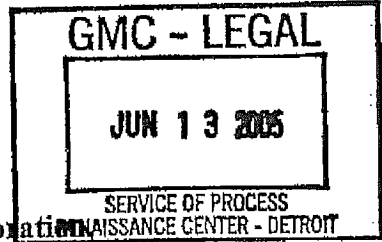
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The undersigned certifies that the foregoing instrument and this Proof of Service, was served upon the parties of record to the above cause at their respective addresses as disclosed by the pleadings of record herein on the 27th day of June, 2005. I declare under penalty of perjury that the statement above is true to the best of my knowledge, information and belief vis: Electronic Mail First Class Mail Facsimile Hand Delivery Overnight Service


Patricia Ann Ward

Exhibit A

United States District Court
Eastern District of Michigan



Subpoena in a Civil Case and Return of Service Form

Francis A. Ahlberg and Michael Glenn,
co-administrators of the Estate of
Ralph A. Ahlberg, Deceased, and
Frances A. Ahlberg, Individually,

v.

Chrysler Corporation,
a Delaware corporation,
and Daimler-Chrysler Corporation,
a Delaware corporation,

Plaintiffs,

Defendants.

To: Robert A. Lutz General Manager and Chairperson Product Development General Motors Corporation 300 Renaissance Center Detroit, MI 48263-1402	CASE NO. IA Case No. 4:04-cv-60104 JUDGE: Magistrate Judge Shields
	<input type="checkbox"/> SUBPOENA FOR ATTENDANCE AT TRIAL <input checked="" type="checkbox"/> SUBPOENA FOR ATTENDANCE AT A DEPOSITION <input type="checkbox"/> DOCUMENT PRODUCTION REQUEST ONLY <input type="checkbox"/> PROPERTY INSPECTION REQUEST ONLY

COMMAND TO APPEAR	YOU ARE HEREBY COMMANDED to appear at the place, date and time specified below to give testimony in the above case, and, if so indicated, to bring certain documents with you.
Place: General Motors Corp. 300 Renaissance Center Detroit, MI 48263-1402	Date: Thursday, June 30, 2005 or a mutually agreeable time Time: 1:00 p.m. <input type="checkbox"/> APPEARANCE WITH DOCUMENTS (SEE DESCRIPTION BELOW) <input checked="" type="checkbox"/> APPEARANCE WITHOUT DOCUMENTS

COMMAND FOR DOCUMENTS	YOU ARE HEREBY COMMANDED to have the following documents, object or things delivered to the place listed below, or allow the inspection of the below-listed property at the date and time specified.
Place:	Date:
	Time:

Description of documents/items to be produced or property to be inspected:

This subpoena is issued by (name, address and telephone number of attorney) David A. Domina, #P59800 DOMINALAWpc 2425 S. 144 th St. Omaha, NE 68144-3267 (402) 493-4100	Date of Execution 6/8/05 On behalf of the Plaintiffs	Signature of issuing attorney/court office: Attorney #BA #1043 MI P52800
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(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

RETURN OF SERVICE

Served on:		Place:
Via Certified Mail		General Motors Corporation 300 Renaissance Center Detroit, MI 48263-1402
Date of Service:	Amount of fees tendered: \$40.00	Printed name of server: David A. Domina

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in this Return of Service is true and correct.

Signature of Server:	Address of Server:
Date of Execution:	

Exhibit B

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANCIS A. AHLBERG, et al.,

Plaintiffs,

Case No. 4:04-CV-60104

vs.

Magistrate Judge Thomas J. Shields

CHRYSLER CORPORATION, et al.,

Defendants.

AFFIDAVIT OF ROBERT A. LUTZ

State of Michigan)
)
County of Wayne)

Robert A. Lutz, first being duly sworn, deposes and says:

1. The statements in this Affidavit are based on my personal knowledge except where stated to have been made upon information, and with respect to those, I believe them to be true.

2. I am the Vice Chairman, Global Product Development of General Motors Corporation ("General Motors").

3. In my capacity as Vice Chairman, Global Product Development, I have responsibility for the General Motors Design Center, General Motors Global Engineering, Global Program Management, and Global Product Planning.

4. In addition to my duties as Vice Chairman, I serve as the Chairman of the Automotive Product Board and as a member of the Automotive Strategy Board, two of General Motors' principal management decision-making bodies.

5. From 1986 to 1998, I was employed by Chrysler Corporation where I became President and Chief Operating Officer and later Vice Chairman.

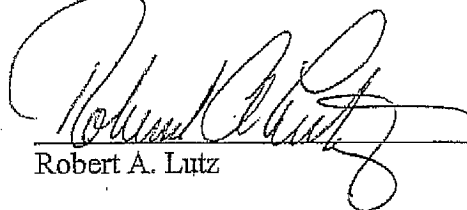
6. I have been informed that the attorneys for Francis A. Ahlberg and Michael Glenn (collectively, the "Plaintiffs") have served a subpoena to take my deposition in a products liability lawsuit filed by them against Defendants Chrysler Corporation and DaimlerChrysler Corporation (collectively, "DCC") and pending in the United States District Court for the Southern District of Iowa.

7. I have also been informed that the lawsuit involves allegations about the decision by DCC not to install a device known as brake transmission switch interlocks ("BTSI devices") in the 1999 Dodge Ram pickup truck manufactured and sold by DCC that is the subject of the underlying lawsuit.

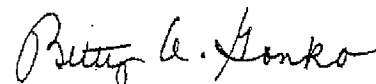
8. During the course of my employment with Chrysler Corporation, I was not involved in any decisions regarding the use of BTSIs in DCC vehicles and have no first-hand knowledge relative thereto.

9. An oral deposition in this case would be very burdensome due to my very busy schedule and extensive responsibilities with General Motors.

Further affiant sayeth not.


Robert A. Lutz

Subscribed to and sworn before me
this 27th day of June 2005.



Notary Public

BETTY A. GONKO
NOTARY PUBLIC OAKLAND CO., MI
MY COMMISSION EXPIRES Jul 2, 2005
(ACTING IN WAYNE Co., MI)