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BROOKMAN • ROSENBERG • BROWN • SANDLER

ATTORNEYS AT LAW

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LEONARD F. FELDMAN**
RIKI R. REDENTE**
**Also member of New Jersey Bar.

April 7, 2008

Honorable Allan L. Tereshko
Supervising Judge, Complex Litigation Center
622 City Hall
Philadelphia, PA 19107
Attn: Donna Candelora, Esquire

Re: **IN RE ASBESTOS LITIGATION**
PCCP NO. 0001, OCTOBER TERM 1986

ALL ASBESTOS FRICTION CASES INVOLVING CHRYSLER LLC

**RESPONSE OF PLAINTIFFS REPRESENTED BY BROOKMAN, ROSENBERG,
BROWN AND SANDLER TO GLOBAL MOTION TO STAY FRICTION ACTIONS
AGAINST CHRYSLER PENDING RESOLUTION OF CHRYSLER LLC'S
CONSOLIDATED FRYE MOTION**

CONTROL NO. 030890

DEFENSE COUNSEL: ALICE S. JOHNSTON, ESQUIRE

Dear Judge Tereshko:

Chrysler LLC has filed a motion with this court to stay all actions in this court's asbestos program in which Chrysler "... is or will be a defendant ..." until this court issues a ruling on Chrysler's pending *Frye* Motion. Simply to state Chrysler's request is to demonstrate is spectacular overbreadth. Chrysler's Motion seeks not only to avoid new *Frye* hearings and/or trials in cases which are coming up on the trial list, but also to grind to a halt all litigation on cases filed in 2007 and 2008, that have not yet been scheduled for trial, simply because Chrysler is named as a defendant. The relief Chrysler requests is wholly unwarranted and risks great prejudice to a large number of asbestos victims.

As Chrysler points out in its motion, and as the court is aware, on February 20, 2008, this court granted Chrysler's request to stay twelve cases pending the outcome of the *Frye* hearing. Each of those cases was filed in 2006 and had been scheduled for trial this spring. Thus, pretrial discovery either had

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been concluded or was about to be concluded and the effect of the court's stay order was essentially to continue the trial dates until after the court issues a ruling on the *Frye* Motion. The court's interest in judicial economy in granting that stay is obvious, as each case would have required litigation of Chrysler's *Frye* Motion either before trial or as part of the trial itself.

Chrysler's instant motion does not implicate the same sort of considerations of judicial economy. It does not confine itself to averting new *Frye* hearings in cases that are about to be called to trial. Instead, Chrysler seeks a stay that would halt all activity in cases that are not even yet on a trial list. As Chrysler does not even quantify the asbestos cases in which it is a defendant that are not yet on a trial list, plaintiffs do not know how many plaintiffs may be affected. However, the issuance of a stay in cases that are still undergoing discovery may severely prejudice plaintiffs. For example, in a case involving a plaintiff with mesothelioma, given the short life expectancy of anyone diagnosed with that disease, it is imperative for counsel to preserve his client's testimony with a deposition as soon as possible after a case is filed. Chrysler's proposed stay would prevent a deposition in any case in which the plaintiff has named Chrysler as a defendant, risking severe prejudice to the plaintiff's opportunity to prove his exposure to asbestos.¹ Thus, contrary to Chrysler's allegation that its requested relief does not prejudice any party, the grant of a total stay in all actions in which Chrysler is a defendant risks severe prejudice to numerous plaintiffs.

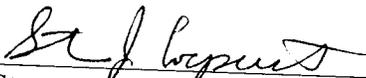
Furthermore, the instant motion is based substantially upon Chrysler's assertion that ". . . the issues raised in Chrysler's pending Consolidated *Frye* Motion could fully resolve some plaintiffs' cases against Chrysler in this Court . . ." Chrysler Motion at p. 2. This premise is demonstrably incorrect. As the court is aware, in its *Frye* Motion, Chrysler asserted that epidemiologic studies precluded the possibility that any causation opinion ascribing an asbestos disease to brake exposure could pass muster under *Frye*. However, as the court observed during the hearing, Chrysler's evidence failed to show that there exists a "negative study" that would "trump" any methodology linking brake exposure to disease. Thus, whatever the outcome of the cases litigated in the *Frye* hearing, it remains clear that causation opinions depend upon the facts of each individual case, with details of actual exposure being of paramount importance. Therefore, it will remain necessary for all of the pending cases against Chrysler to undergo full and complete discovery in order to determine the facts underlying any future causation opinion. Accordingly, a stay of cases that are in the discovery process and are still months, if not years, away from their trial dates would be counterproductive. Therefore, Chrysler's instant Motion should be denied.

¹ The same considerations will undoubtedly apply to product identification witnesses in a great number of cases, because, of necessity, a high percentage of such witnesses are of advanced years.

For the foregoing reasons, plaintiffs represented by Brookman, Rosenberg, Brown and Sandler respectfully request that the Global Motion to Stay Friction Actions against Chrysler pending Resolution of Chrysler LLC's Consolidated *Frye* Motion be denied.

Respectfully submitted,

Brookman, Rosenberg, Brown and Sandler

By: 
Steven J. Cooperstein, Esquire

SJC:ch

cc: Alice Johnston, Esquire
Ryan Leggiero, Esquire
Edward Nass, Esquire
Robert Paul, Esquire
James Fitzgerald, Esquire
Lee Balefsky, Esquire
Joseph McGill, Esquire
Benjamin Shein, Esquire

IN RE:

: NO. 00001

ASBESTOS LITIGATION

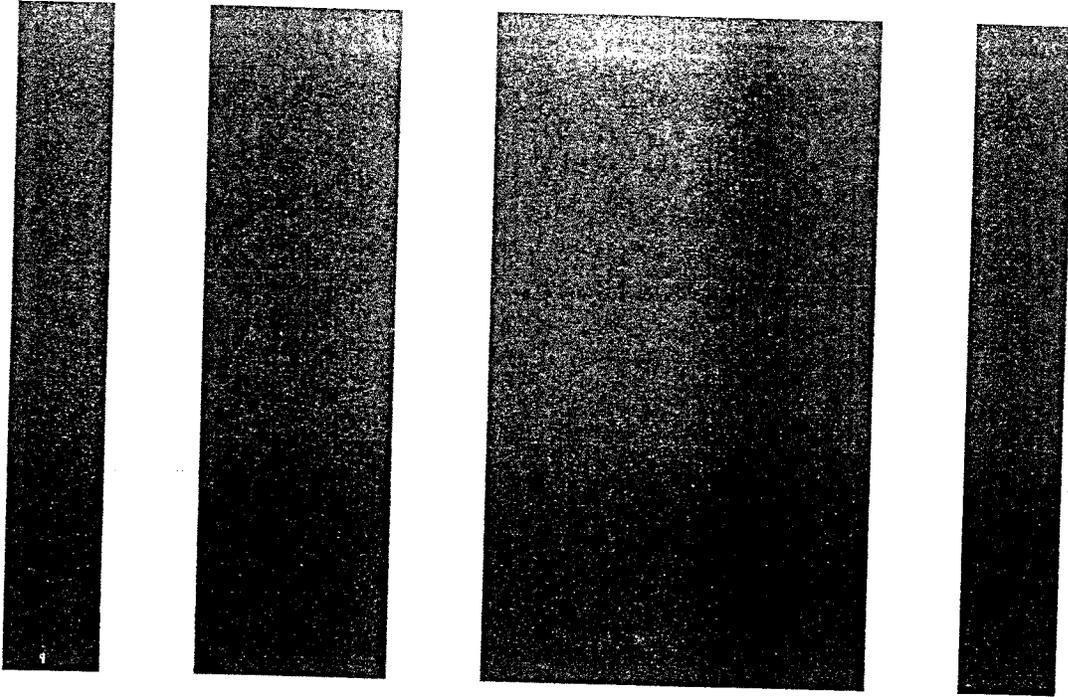
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ORDER

AND NOW, this _____ day of _____, 2008, upon consideration of Chrysler LLC's Global Motion to Stay Friction Actions Against Chrysler Pending Resolution of Chrysler LLC's Consolidated *Frye* Motion, and the Responses thereto, it is hereby ORDERED that said Motion is DENIED.

By the Court:

Tereshko, J.



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April 7, 2008

Honorable Allan L. Tereshko
Supervising Judge, Complex Litigation Center
622 City Hall
Philadelphia, PA 19107
Attn: Donna Candelora, Esquire

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ALL ASBESTOS FRICTION CASES INVOLVING CHRYSLER LLC

**RESPONSE OF PLAINTIFFS REPRESENTED BY BARON & BUDD, P.C. TO GLOBAL
MOTION TO STAY FRICTION ACTIONS AGAINST CHRYSLER'S PENDING
RESOLUTION OF CHRYSLER LLC'S CONSOLIDATED FRYE MOTION**

CONTROL NO. 030890

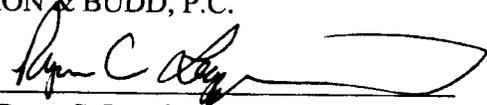
DEFENSE COUNSEL: ALICE S. JOHNSTON, ESQUIRE

Dear Judge Tereshko:

On behalf of Plaintiffs represented by Baron & Budd, P.C., Baron & Budd, P.C. joins Brookman, Rosenberg, Brown & Sandler's Response to Chrysler's Global Motion to Stay Friction Actions Against Chrysler's Pending Resolution of Chrysler LLC's Consolidated *Frye* Motion.

Respectfully submitted,

BARON & BUDD, P.C.

By: 
Ryan C. Leggiero, Esquire

Asbestos Litigation Phila Ccp Vs. A.C.&S, I-MTANS



cc: Alice Johnston, Esquire
Steve Cooperstein, Esquire
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