United States District Court
Eastern District of Michigan
Southern Division

Frances A. Ahlberg and Michael Glenn, co-administrators of the Estate of Ralph A. Ahlberg, Deceased, and Frances A. Ahlberg, Individually, **Plaintiffs,** **v.** **Chrysler Corporation, a Delaware corporation, and Daimler-Chrysler Corporation, a Delaware corporation,** **Defendants.**	**Case No. 2:05-x-72555-MOB** **Hon. Marianne O Battani** **SD Iowa Case No. 4:04-cv- 60104** **Mag. Judge Thomas J. Shields** **Plaintiffs' Brief in Opposition to Nonparty Deponent Robert A. Lutz's Motion for Protective Order Quashing Deposition Subpoena Pursuant to *Fed R Civ P* 26(b)(2), 26(c)(1), and 45(c)(3)**

Argument Summary

1. Plaintiffs seek the deposition of Robert A. Lutz because he has information which could lead to the discovery of admissible evidence. Plaintiffs have exhausted all reasonable avenues before issuing a deposition subpoena on Robert A. Lutz. Plaintiffs do not anticipate the deposition will cause undue burden on Mr. Lutz.

2. Rule 45 coupled with Rule 26 of the Federal Rules of Civil Procedure confirm a deponent is required to testify about matters which are relevant to the subject matter in the pending action. "[Rule 45] permits pursuit of any 'information ... reasonably calculated to lead to the discovery of admissible evidence. It is [the language in Rule 26] that accounts for the broad scope of pretrial discovery in the federal courts ...." See, Rule 45 Advisory Committee Notes.

3. Robert A. Lutz was an executive at DaimlerChrysler from 1986 to 1998. (Lutz 6/27/05 Affidavit ¶5). During such time, he worked his way up the corporate ladder to President and Chief Operating Officer, and later Vice Chairman. (Lutz 6/27/05 Affidavit ¶6). During such tenure, he exercised decision-making over

product safety, product inclusion, and budget matters. The carnal information known to Robert A. Lutz bears directly on Plaintiffs' pending wrongful death case arising from DaimlerChrysler's failure to install an integral safety device, the brake-shift interlock ("BSI"), in its vehicles (during Mr. Lutz's tenure at DaimlerChrysler and during the model year production of the vehicle at issue) nearly a decade after all other major American car manufacturers made BSI a standard safety device.

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4. On October 5, 2003, Ralph Ahlberg was ran over and fatally killed when his 1999 Dodge Ram pick-up was placed in 'reverse' by his attended to two-year old grandson. Ralph tried to stop the rolling vehicle, which had his grandson in it, before it entered the street, but instead, he was tragically ran over by the near-ton vehicle. Plaintiffs filed this action for Ralph's conscious pain and suffering, his wrongful death and his widow's loss.

5. Plaintiffs' allege the 1999 Dodge Ram's movement was possible only because the vehicle was not equipped with an essential, incremental safety device, specifically a brake-shift interlock ("BSI"), which would have prevented the accident. Discovery found by Plaintiffs (and not produced by Defendant DaimlerChrysler, though requested) demonstrates by at least 1985 DaimlerChrysler was aware of the risk of children shifting vehicles out of "Park" without having to depress the brake pedal. ***Exhibit 1***, DaimlerChrysler's Response to Fourth Set of Request for Production of Documents No. 33. Not until nearly a decade after all other US automobile manufacturers sold vehicles with the standard BSI safety feature did DaimlerChrysler finally begin to manufacture all its US-based vehicles with standard BSI and marketed the system as a "Standard Safety Feature." ***Exhibit 2***, 2004 Dodge Durango Sales Sticker,

6. Plaintiffs' further allege Defendant DaimlerChrysler knew, or should have known, the absence of such device would have prevented the vehicle from being shifted out of 'park' to 'reverse' without stepping on the brake. Defendant denies such allegation.

7. Plaintiffs further allege DaimlerChrysler promotes its vehicles on the basis of safety and emphasizes Chrysler goes beyond government minimum safety requirements to ensure the best available safety devices are used to protect its customers. The advertising included vehicle models of the kind that killed Ralph Ahlberg. Defendant denies such allegations. See, ***Exhibits 3 & 4***, 1999 Dodge Ram Sales Brochure excerpts.

8. Plaintiffs allege Defendant was negligent in numerous respects, engaged in fraudulent concealment regarding their vehicles' safety features, and defectively designed the 1999 Dodge Ram.

9. Defendant denies Plaintiffs' allegations.

10. Plaintiffs have engaged in over a year-and-a-half worth of written discovery, and taken DaimlerChrysler's corporate deposition, but several issues remain outstanding. Other alternatives were sought before Plaintiffs issued a subpoena on Mr. Lutz.

Fact Summary

11. Plaintiffs request the deposition of Robert Lutz, formerly a Senior Executive with Chrysler Corporation (now DaimlerChrysler), and currently employed by General Motors as an executive.

12. Mr. Lutz' deposition is not sought lightly. In fact, efforts were made, through a careful sequence of events and communications with Mr. Lutz, and later the Civil Service Process Division of General Motors and General Motors counsel from DykemaGossett, to arrange his deposition by consent, and for as limited a time as reasonably possible, but without success.

13. Attached to this Brief, with the Appendix accompanying it, are the following documents which set for the chronology of events regarding Mr. Lutz's deposition testimony:

March 29, 2005	Letter from David A. Domina to Robert A. Lutz inquiring about availability to give deposition testimony regarding his responsibilities at DaimlerChrysler; stating deposition would be taken at a time and location of his convenience and would not take longer than 60 minutes. ***Exhibit 5***.
April 29, 2005	Christine Carter, Paralegal at Domina Law pc ("DLpc") phones General Motors regarding receipt of March 29, 2005 letter. Confirmation General Motors received such letter. ***Exhibit 6***.
May 14, 2005	Subpoena for June 10, 2005, Deposition of Robert A. Lutz at General Motors Corp. (Unable to be served.) ***Exhibit 7***
May 23, 2005	Lisa Hoffman of General Motors Civil Process Service Department phones DLpc indicating General Motors will not accept service of Robert A. Lutz subpoena. Ms. Hoffman indicates she will get back to me by Tuesday, May 24, 2005, regarding whether General Motors will accept service.
May 23, 2005	Claudia L. Stringfield phones Lisa Hoffman. Inquiry was made why General Motors would block issuance of a validly issued federal subpoena on Mr. Lutz to testify personally, and not on behalf of General Motors. She stated General Motors does not permit access to their executives, even if the subpoena is for personal service.

	Claudia L. Stringfield agrees to forward pdf version of March 29 letter and subpoena with understanding issuance will not constitute service at this point and time.
May 23, 2005	Claudia L. Stringfield emails pdf version of March 29, 2005, letter to Lisa Hoffman. ***Exhibit 8***.
May 25, 2005	Claudia L. Stringfield-Johnson phones Lisa Hoffman because no return call from her. Voicemail indicated she was out of the office. Sent Hoffman an email regarding failure to return call. ***Exhibit 9.***
June 3, 2005	Maynord Tim, Esq. and Lisa Hoffman phone Claudia L. Stringfield-Johnson. Apologized for not returning my call as agreed to do in May 23, 2005, telephone conference and email. Claudia L. Stringfield informed them, as previously, we did not anticipate Mr. Lutz's deposition would take longer than one hour, but may take up to 4 hours depending on his cooperation and memory. Maynord Tim indicated they would get back to me regarding the subpoena.
June 6, 2005	Telephone call from Michael Cooney, Esq. of Dykema Gossett Law Firm. Stated he would accept service on Mr. Lutz so long as we would agree to move the deposition date to June 30, 2005, or after the Court issues a ruling on a Motion for Protective Order they would file.

	Claudia L. Stringfield-Johnson agreed to do that.
June 6, 2005	Letter from Dykema Gossett Law Firm confirming General Motors authorized acceptance of service of subpoena on Mr. Lutz. ***Exhibit 10***
June 8, 2005	Stringfield letter to General Motors forwarding subpoena by certified mail. ***Exhibit 11***
June 8, 2005	Subpoena for "June 30, 2005, or mutually agreeable time" Deposition of Robert A. Lutz at General Motors Corp. ***Exhibit 12***
June 15, 2005	Claudia L. Stringfield phones Lisa Hoffman at General Motors and confirms General Motors received the subpoena by certified mail on June 13, 2005.
June 17, 2005	Letter from Lisa Hoffman of General Motors to Domina Law pc forwarding and acknowledging receipt of Subpoena for Mr. Lutz's deposition. ***Exhibit 13***

14. Plaintiffs have attached an Affidavit of Richard A. Sands delineating the attempts made to serve Mr. Lutz. ***Exhibit 14***.

Jurisdiction

15. Subpoenas for the attendance of a witness at a deposition are issued pursuant to Rule 45(a)(2). According to the Rule, these subpoenas must be issued from the court for the district in which the deposition is to be taken. Wright & Miller, 9A *Fed Prac & Proc* Civ2d § 2460. *See also*, *Krupritz v. Savannah College of Art & Design*, 155 FRD 84 (DC Pa 1994) (holding the plain language of Rule 45 requires subpoena be

issued from the district in which the deposition is to be taken). Plaintiffs issued the subpoena for Mr. Lutz from the United States District Court for the Eastern District of Michigan. See ***Exhibit 12***.

16. This Court has jurisdiction to hear Petitioner Robert A. Lutz's Motion for Protective Order to Quash Deposition Subpoena. *See, Fed R Civ P* 45; *Productos Mistolin, S.A. v. Mosquera*, 141 FRD 226 (DC Puerto Rico 1992) (district court where nonparty witness resides in the court with jurisdiction to issue subpoena and render any decisions regarding such issuance and motions to quash); *In re Digital Equip. Corp.*, 949 F.2d 228 (8th Cir 1991) (same); *Petersen v. Douglas County Bank & Trust Co.*, 940 F.2d 1389 (10th Cir 1991) (same). *See also*, Wright & Miller, *Federal Practice & Procedure* § 2459 ("Rule 45(c) clarifies motions to quash, modify, or condition the subpoena are to be made to the district court of the district from which the subpoena issued. It is the issuing court that has the necessary jurisdiction over the party issuing the subpoena and the person served with it to enforce the subpoena.")

Argument

A. Rule 45 does not stand on its own. It is intricately tied to two other realms: the Rules of Evidence and the Broad, Liberal Federal Discovery Rules.

17. Rule 45 provides a subpoena may be issued for a nonparty requesting they attend and provide testimony. The Advisory Committee's Notes confirm a Rule 45 subpoena shall be interpreted in accord with the Rules of Evidence and the Federal Rules of Discovery. See, Rule 45 *Committee Notes*.

18. Rule 26(a)(1) provides "any matter not privileged which is relevant to the subject matter involved in the pending action" is discoverable. Underlying the discovery provisions of the *Federal Rules of Civil Procedure* are two well-settled principles:

a. The first is the discovery process should be a liberal one. *St. Paul Reinsurance Co., Ltd. v. Commercial Financial Corp.*, 198 FRD 508, 511 (ND Iowa 2000); *Jochims v. Isuzu Motors, Ltd.*, 145 FRD 507, 509 (SD Iowa 1992) (citing *In re Hawaii Corp.*, 88 FRD 518, 524 (D Haw 1980)). *See also, General Telephone &*

Electronics Laboratories, Inc. v. Nat'l Video Corp., 297 FSupp 981 (DC Ill, 1968); *Mallinckrodt Chemical Works v. Goldman, Sachs & Co.*, 58 FRD 348 (SDNY 1973).

b. The second principle is the trial court exercises the very broadest discretion in discovery matters and the competing interests must be balanced. *Fed R Civ P* 37; *Galm v. Eaton Corp.*, 360 FSupp2d 978 (ND Iowa 2005); *Gagnon v. Sprint Corp.*, 284 F3d 839, (8th Cir 2002); *Western Electric Co., Inc. v. Stern*, 551 F2d 1 (3rd Cir 1976); *Huff v. N.D. Cass Co. of Alabama*, 468 F2d 172 (5th Cir 1972), *reh'g*, 485 F2d 710 (1973).

19. Unless the information sought is protected by the cloak of privilege or other rule-specific exclusion, discovery is broad enough to include information "reasonably calculated to lead to the discovery of admissible evidence." *Id.* The goal of discovery is to provide "information essential to the proper litigation of all relevant facts, to eliminate surprise, and to promote settlement" and "full and fair disclosure." *Jochims*, 145 FRD at 509; *Wagner v. Dryvit Sys.*, 208 FRD 606, 609 (8th Cir 2001).

20. All in all, the broad nature of discovery permitting access to relevant information about a party's claim or defense, applies equally with respect to depositions of parties and non-parties. *Fed R Civ P* 45; *Bell ex rel. Estate of Bell v. Board of Educ. of County of Fayette*, 225 FRD 186 (SD WV 2004).

B. The burden of persuasion in a Motion for Protective Order to Quash is borne by the Movant; Mr. Lutz failed to meet his burden.

21. If a Rule 45 subpoena is validly issued, executed and served requesting a nonparty attend a deposition, and the subpoenaed party challenges their attendance under Rule 45(c)(3)(A), the moving party has the burden to demonstrate why the validly issued subpoena should be quashed and a protective order entered. *Rozlynde Miller Properties, Inc. v. U.S.*, 1991 WL 28276 (WD Mich 1991) (petitioners have burden to demonstrate why validly issued subpoena should be quashed); *Irons v. Karceski*, 74 F3d 1262, 121264 (CADC 1995) (holding party seeking to quash subpoena bears heavy burden of proof). *See also*, Wright & Miller, *Federal Practice & Procedure*,

§ 2459 (moving party has burden to demonstrate undue burden if required to attend deposition).

22. Numerous courts have held the mere assertion by the moving party they will be subjected to undue burden if required to attend a deposition is insufficient to meet the requisite burden of persuasion:

a. The Eastern District of Pennsylvania held simply because subpoenaed nonparty asserted she would be placed in an "awkward position vis-a-vis the public, her career, and her employer" was not sufficient hardship to justify quashing subpoena requiring nonparty witness to testify at trial, where testimony of witness would not involve subjects intended to embarrass or harass her, but rather would relate to her knowledge of events, decisions and conversations while working with former employer. *Owens v. QVC*, 221 FRD 430 (ED Pa 2004).

b. In *Croom v. Western Connecticut State University*, 218 FRD 15, 16-17(D Conn 2002), the District Court of Connecticut held mere assertions, by affidavit or otherwise, of lack of knowledge and inconvenience are insufficient reasons to issue a protective order quashing a validly issued subpoena seeking relevant information or testimony.

c. In *Higginbotham v. KCS Intern., Inc.*, 202 FRD 444, 455 (D Md 2001), the District Court of Maryland held a subpoenaed individual's desire to, or pressures at, work instead of attending the deposition is not an "adequate excuse" to justify disobeying a subpoena.

23. Mr. Lutz states the "oral deposition would be very burdensome due to [his] very busy schedule and extensive responsibilities with General Motors." Lutz Affidavit ¶9. However, Plaintiffs are aware on Memorial Day Weekend, Mr. Lutz flew a L-39 Jet at the Yankee Air Show along the Detroit River. ***Exhibit 15***. Plaintiffs are

appreciative of Mr. Lutz's important role at General Motors and how valuable his time is, but they do not anticipate they will take up as much of Mr. Lutz's time as the Air Show he participated in just a month ago did. Nor do they believe non-specific assertions of a "busy schedule and extensive responsibilities" are good enough excuses placing justice beyond the reach of a Mrs. Ahlberg.

24. Mr. Lutz's assertions in his Affidavit at ¶¶ 7-8 that he has no knowledge regarding BSI, also fail to constitute undue burden:

a. Claim of subcontractor's secretary that she lacked personal knowledge as to subpoenaed information did not compel court to rule in her favor on motion to quash subpoena issued in action against employer for failure to remit monthly benefit contributions which required her to appear for deposition and produce any documents in subcontractor's possession regarding work subcontracted from employer; it was enough that she, as subcontractor's secretary, possessed records regarding relevant information. *Composition Roofers Union Local 30 Welfare Trust Fund v. Graveley Roofing Enterprises, Inc.*, 160 FRD 70 (ED Pa 1995).

b. The Southern District of New York held where the court denied a motion to quash a deposition subpoena when the movant claimed a lack of personal knowledge and stated: the mere allegation that the deponent knows nothing about the matters involved does not justify prohibiting the taking of the deposition. *Transcontinental Motors, Inc. v. NSU Motorenwerke Aktiengesellschaft*, 45 FRD 37 (SDNY 1968) (internal citations omitted).

c. Similarly, in *Parkhurst v. Kling*, 266 FSupp 780 (ED Pa 1967), the Eastern District of Pennsylvania held issuing party could test the truth of the witnesses' statements concerning lack of knowledge and denied moving party's motion for protective

order. The court refused to recognize movant's attached affidavit as a showing of 'good cause' and stated: "We conclude that the defendant has not shown sufficient 'good cause', as required by Rules 26 and 30(b), to preclude the plaintiff from taking Mrs. Kling's deposition. If the 'good cause' requirement could be thus simply met by an ex parte affidavit that the affiant had no relevant knowledge of the subject matter of the action the salutary purpose of Rule 26, providing for unlimited discovery would be easily and unjustifiably frustrated." *Parkhurst*, 266 FSupp at 781.

d. In *Travelers Rental Co. v. Ford Motor Co.*, 116 FRD 140 (D Mass 1987), the court allowed plaintiffs to depose four high-ranking Ford officers after five middle managers were deposed already. The court, in part, based its decision on the fact the information sought could not be gathered from the depositions of the subordinates.

25. As stated above in ¶¶ 4 through 10, Plaintiffs claims pending in the Southern District of Iowa assert DaimlerChrysler is liable on numerous theories, including misleading advertising, decisions to not install BSI despite Safety Committee and Transmission Engineering Committee recommendations, and communications with the National Highway Traffic Safety Administration ("NHTSA") that DaimlerChrysler, in 1988, was undergoing investigations and research regarding installation of BSI. See ***Exhibits 16, 17, & 18***.

26. The issues Plaintiffs seek to depose Mr. Lutz about do not center solely on BSI, but instead, center on Robert A. Lutz's participation, decision-making authority and communications with advertising, safety and transmission committees, as

well as other internal DaimlerChrysler committees. Plaintiffs also seek to inquire about communications with NHTSA.[1]

27. Additionally, Plaintiffs conducted a 3-day corporate deposition of DaimlerChrysler and have testimony from numerous other officials from DaimlerChrysler. The information from Mr. Lutz sought cannot be gleaned from the written and oral discovery conducted thus far. Plaintiffs exhausted their options before electing to contact Mr. Lutz for his deposition.

C. Robert A. Lutz's deposition testimony is relevant to the pending Southern District of Iowa litigation, and will lead to the discovery of admissible evidence.

28. Mr. Lutz' deposition is necessary, and reasonably calculated to lead to the discovery of evidence in the pending Southern District of Iowa litigation for at least these succinctly-stated reasons:

a. Lutz had overall design responsibility, including a decisional-role in the process of deciding whether an integral safety part would be included, or excluded from DaimlerChrysler vehicles prior to model year 1999 (the year in which the vehicle in question was built).

b. Lutz's decisional-role included work he performed for DaimlerChrysler in years 1992-1994 when the Company's Safety Committee made a strong recommendation BSI be included in its vehicles.

c. As early as 1988, Chrysler's Transmission Engineering Group recommended BSI be included on its vehicles equipped with automatic transmissions as an integral safety feature. Lutz was

[1] Plaintiffs have 2 internal communications at DaimlerChrysler addressed to Mr. Lutz regarding Lutz's communications with NHTSA regarding seat back latches. See ***Exhibits 19 & 20***. Plaintiffs would like to inquire about communications he had with NHTSA, in the same time frame as Exhibits 13 through 17, regarding BSI. Plaintiffs' are also aware in June, 1998, Robert Lutz provided deposition testimony regarding DaimlerChrysler's agreement with NHTSA to withhold information from the public. See ***Exhibit 21***. Plaintiffs have not been able to receive any information regarding this issue, despite requests, from DaimlerChrysler in the pending Southern District of Iowa case.

an executive with the company, also in a decision-making role about what safety equipment included or excluded in the vehicles, at that time.

d. Lutz had decision-making authority and supervision over DaimlerChrysler's adverting during, at least, the years 1997 through his departure in 1998, when production of model year 1999 Dodge Rams began.

e. Lutz went to General Motors as a "cost cutter" and auto designer, with executive responsibilities for those areas. It is expected Lutz's deposition will disclose at General Motors he:

   i. Never recommended a General Motors' vehicle be designed without BSI;

   ii. Never recommended BSI, used as integral equipment on General Motors vehicles since at least as early as approximately 1992, be removed from the vehicles;

   iii. Never took the position with General Motors, and we doubt he took it with Chrysler, the BSI be considered a piece of automobile equipment without safety features, or something other than safety equipment.

f. DaimlerChrysler contends BSI was not necessary on its automatic transmission vehicles because it had no "pedal misapplication" problems.[2] (Plaintiffs contend this is not accurate.)

29. Admissibility of the evidence sought is not the touchstone for whether the subpoena shall be quashed. *See*, Wright & Miller, *Federal Practice & Procedure*, § 2459 (stating it is not necessary to establish the admissibility of documents

[2] It has contended at times BSI is designed to prevent inadvertent confusion between the brake pedal and the accelerator by a driver, but there was no such confusion with its vehicles, so it required no BSI part. See, ***Exhibit 22*** (41:4-21). However, Lutz was an executive with DaimlerChrysler when the company chose to retrofit its Jeep Cherokee and Grand Cherokee automobiles for model years 1997 and prior years. He was also involved in the decision against retrofitting other vehicles, including pickup trucks like the one involved in the Ahlberg case.

or testimony sought to be discovered because relevancy, rather than admissibility, is the test in determining whether evidence sought by a subpoena is proper). *See also*, *U.S. v. 691.81 Acres of Land, More or Less, Situated in Clark County, State of Ohio*, 443 F2d 461 (6th Cir 1971) (holding moving party is not required to establish admissibility of documents or testimony sought because relevancy is the proper test); *Boeing Airplane Co. v. Coggeshall*, 280 F2d 654 (US App DC 1960) (same).

30. In this instance, the information sought is relevant to Plaintiffs' claims and Defendant DaimlerChrysler defenses. The information Mr. Lutz provides will lead to the discovery of admissible evidence.

D. Plaintiffs' exercised necessary means to retrieve the relevant information from other sources before subpoenaing Mr. Lutz.

31. Robert Lutz is one of a handful of Chrysler executives never deposed in connection with BSI litigation. Other executives have been deposed either in the Ahlberg case or other cases. Executives deposed in other cases involving BSI include:

a. Robert Eaton, President and Chairman of the Board
b. Francois Castaing, Chief of Engineering
c. Ronald Boltz, Product Platform Chairman for one of 4 product divisions
d. Several design engineers
e. The head of advertising
f. Three corporate representatives designated by DaimlerChrysler to testify in this litigation, including Product Engineering personnel.

32. Mr. Lutz' deposition is, at this point, one of a diminishing number of omitted pieces from the process of deposing Chrysler's management cadre at times relevant to engineering and business decisions that ultimately placed the DaimlerChrysler product, a Dodge Ram pickup, in the stream of commerce, with that stream leading ultimately to Ralph Ahlberg's death.

Conclusion

33. Plaintiffs anticipate a responsive, cooperative, reasonable and appropriate Robert Lutz as a witness will not have to testify for more than approximately 60 minutes. If his memory must be jogged with documents, the deposition could take two to 3 times the length it should take.

June 29, 2005

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

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United States District Court
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Southern Division

Frances A. Ahlberg and Michael Glenn, co-administrators of the Estate of Ralph A. Ahlberg, Deceased, and Frances A. Ahlberg, Individually,	**Case No. 2:05-x-72555-MOB** **Hon. Marianne O Battani**
Plaintiffs,	**SD Iowa Case No. 4:04-cv- 60104** **Mag. Judge Thomas J. Shields**
v.	**Certificate of Service**
Chrysler Corporation, a Delaware corporation, and Daimler-Chrysler Corporation, a Delaware corporation,	
Defendants.	

I certify on June 29, 2005, I filed Plaintiffs' Brief in Opposition to Nonparty Deponent Robert A. Lutz's Motion for Protective Order Quashing Deposition Subpoena Pursuant to Fed R Civ P 26(b)(2), 26(c)(1), and 45(c)(3) with the Clerk of the Court which sent notification of such filing to:

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I further certify on June 29, 2005, I forwarded by email Plaintiffs' Brief in Opposition to Nonparty Deponent Robert A. Lutz's Motion for Protective Order Quashing Deposition Subpoena Pursuant to Fed R Civ P 26(b)(2), 26(c)(1), and 45(c)(3) to the following:

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