

NORMAN KULIG and VICTORIA KULIG, his wife,	:	
	:	
Plaintiffs,	:	DOCKET NO.: 03-0519
v.	:	
	:	CIVIL ACTION - ASBESTOS
ABB, INC., et al.,	:	
	:	
Defendants	:	
	:	
	:	

Defendants, Ford Motor Company ("Ford"), DaimlerChrysler Corporation ("DCC"), and
and General Motors Corporation ("GM"), by and through their counsel, Duane Morris LLP and
Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray, file the within Motion and in support thereof
state as follows:

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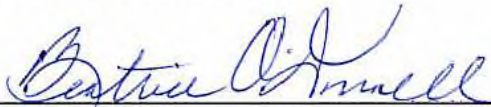
4. Such evidence, testimony, or opinions regarding unrelated litigation would not only be completely irrelevant to the issues in this case, but also highly inflammatory and prejudicial to these Defendants.
5. Testimony, evidence, opinions, and other references to unrelated litigation are inadmissible pursuant to Pa.R.E. 402, which renders irrelevant evidence inadmissible, and Pa.R.E. 403, which states that even relevant evidence will be inadmissible if the probative value is outweighed by the danger of unfair prejudice.
6. As an example of the inadmissible, highly inflammatory, irrelevant, and prejudicial testimony that they may attempt to elicit, Plaintiffs have served Defendants with the report of Richard A. Lemen, Ph.D., M.S.P.H., who Plaintiffs plan to offer as an expert on causation and state-of-the art.
7. In his report about state-of-the art knowledge about exposure to *asbestos and asbestos disease*, Dr. Lemen has inserted the following two sentences: "Ford has been sued in the past by former Nazi slaves who were compelled to work under brutal conditions in German factories. Ford has denied allegations that it maintained control over its Ford-Welke subsidiary in Cologne, Germany during World War II and that it knowingly profited from forced slave labor. See Report of Richard A. Lemen, page 13, attached as Exhibit "A."
8. Dr. Lemen offers no reason why alleged litigation relating to events that occurred in another country years before Plaintiff's birth, involving factual allegations other than exposure to asbestos, are in any way relevant to the issues of fact in the instant case. Thus, evidence or testimony relating to those events are inadmissible under Pa.R.E. 402.
9. Similarly, any references to other unrelated litigation involving Ford, DCC, and GM, including, but not limited to claims involving the Pinto, the Bronco II, the Explorer,

Bridgestone Tires, anti-lock brake systems, upper ball joints, paint processes, head gaskets, seat buckles, engine intake manifolds, engine coolant, distributor-mounted thick film ignition (TFI) modules, rear axles, fuel tanks, and tires, are completely irrelevant to the issues surrounding Plaintiff's alleged asbestos exposure.

10. Moreover, references to the alleged litigation involving non-asbestos products made by Ford, DCC, or GM, or litigation involving "Nazi slaves," would be highly inflammatory and prejudicial to the Defendant or Defendants involved.
11. Any references to unrelated litigation, such as Dr. Lemen's proffered "expert" testimony, are completely irrelevant to the issues in asbestos litigation, and can serve no purpose other than distracting the jury and causing extreme prejudice to the Defendant or Defendants involved.
12. Pursuant to Pa.R.E. 402 and 403, any evidence, testimony, opinions, or other references to this unrelated litigation must be excluded from the trial of this matter.

WHEREFORE, Ford, DCC, and GM, respectfully request that this Honorable Court grant their Motion in Limine and preclude any references to prior, unrelated litigation involving these automobile companies.

Respectfully submitted,

BY: 

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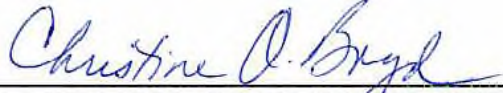
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NORMAN KULIG and VICTORIA KULIG, his wife,

V.

Defendants

CIVIL ACTION - ASBESTOS

And now, this _____ day of _____, 2003, upon consideration of the foregoing Motion In Limine To Exclude References To Unrelated Litigation filed by Ford Motor Company, DaimlerChrysler Corporation and General Motors Corporation, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiffs are prohibited from introducing documents, depositions, opinions, and testimony regarding unrelated litigation, as evidence against Ford Motor Company, DaimlerChrysler Corporation and General Motors Corporation.

J.

TABLE OF AUTHORITIES

CASES

<i>Commonwealth v. Morris</i> , 425 A.2d 715 (Pa. 1981).....	5
<i>Gen. Equip. Mfrs. v. Westfield Ins. Co.</i> , 635 A.2d 173 (Pa. Super. 1993).....	4
<i>Gutteridge v. A.P. Green Servs.</i> , 804 A.2d 643 (Pa. Super. 2002).....	4
<i>Webb v. Zern</i> , 220 A.2d 853 (Pa. 1966).....	4

RULES OF EVIDENCE

Pa.R.E. 402	3
Pa.R.E. 403	3, 5
Pa.R.E. 404(b).....	4

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

NORMAN KULIG and VICTORIA KULIG, his	:	
wife,	:	
	:	
Plaintiffs,	:	DOCKET NO.: 03-0519
	:	
v.	:	
	:	CIVIL ACTION - ASBESTOS
ABB, INC., et al.,	:	
	:	
Defendants	:	
	:	
	:	

**MEMORANDUM OF LAW IN SUPPORT MOTION IN LIMINE
TO EXCLUDE REFERENCES TO UNRELATED LITIGATION**

Defendants, Ford Motor Company ("Ford"), DaimlerChrysler Corporation ("DCC"), and General Motors Corporation ("GM"), in support of their motion *in limine* to exclude references to other litigation, state as follows:

I. INTRODUCTION

Plaintiffs Norman and Victoria Kulig brought this action against numerous defendants, including Ford, DCC, and GM, for personal injuries arising out of Mr. Kulig's alleged exposure to asbestos-containing materials. As to Ford, DCC, and GM, Plaintiffs allege negligence and strict liability relating to alleged exposure to these Defendants' friction products while Mr. Kulig worked as a gasoline station attendant at North Penn Arco for summers, evenings and weekends from 1977 to 1979, pumping gas, helping the mechanics, cleaning the shop, and performing general labor. See Plaintiffs' Complaint; Dep. N. Kulig (4/10/02) at 22-32.

Ford, DCC, and GM expect that Plaintiffs and/or their experts may attempt to offer testimony, evidence, opinions, and arguments regarding unrelated litigation involving these Defendants, including, but not limited to prior products liability litigation involving, for example, the Ford Pinto, the Ford Explorer/Bridgestone Tires, and automotive rollover cases. These

Defendants object to any references to this unrelated litigation, which would be irrelevant, highly inflammatory and prejudicial, and devoid of any proper purpose at trial.

As an example of the inadmissible, highly inflammatory, irrelevant, and prejudicial testimony that they may attempt to elicit, Plaintiffs have served Defendants with the report of Richard A. Lemen, Ph.D., M.S.P.H., who Plaintiffs plan to offer as an expert on causation and state-of-the art. In his report about state-of-the art knowledge about exposure to asbestos and asbestos disease, Dr. Lemen has inserted the following two sentences into an unrelated opinion concerning Ford: " Ford has been sued in the past by former Nazi slaves who were compelled to work under brutal conditions in German factories. Ford has denied allegations that it maintained control over its Ford-Welke subsidiary in Cologne, Germany during World War II and that it knowingly profited from forced slave labor." See Report of Richard A. Lemen, page 13, attached as Exhibit "A."

Dr. Lemen offers no reason, and can offer no reason, why alleged litigation relating to events that occurred in another country years before Plaintiffs birth, involving factual allegations other than exposure to asbestos, are in any way relevant to the issues of fact in the instant case. Moreover, neither Plaintiffs nor Dr. Lemen can demonstrate any probative value that would outweigh the clearly prejudicial nature of his "expert" opinion.

Similarly, any references to other unrelated litigation involving Ford, DCC, and GM, including, but not limited to claims involving the Pinto, the Bronco II, the Explorer, anti-lock brake systems, upper ball joints, paint processes, head gaskets, seat buckles, engine intake manifolds, engine coolant, distributor-mounted thick film ignition (TFI) modules, rear axles, fuel tanks, and tires, are completely irrelevant to the issues surrounding Plaintiffs alleged asbestos exposure. Ford, DCC, and GM would be unduly and irreparably prejudiced if Plaintiffs were

permitted to introduce testimony, evidence, opinions, or arguments relating to this unrelated litigation at the trial of this asbestos personal-injury case.

References to unrelated litigation, such as the alleged suits referred to by Dr. Lemen and the other products liability cases described above, are completely irrelevant to the issues in asbestos litigation, and can serve no purpose other than distracting the jury and causing extreme prejudice to the Defendant or Defendants involved. Pursuant to Pa.R.E. 402 and 403, any evidence, testimony, opinions, or other references to this unrelated litigation are inadmissible, and Ford, DCC, and GM, now move *in limine* to exclude these irrelevant and highly prejudicial references from the trial of this matter.

II. ARGUMENT

A. Unrelated Litigation Involving Ford, DCC, and/or GM Has No Relevance to the Litigation of This Asbestos Personal Injury Lawsuit

The allegations against DCC, Ford and GM at issue in unrelated lawsuits, such as the products-liability cases involving the gas tanks, tires, and distributor-mounted thick film ignition (TFI) modules, as well as the alleged suits "brought by former Nazi slaves" referenced in Dr. Lemen's report, are wholly dissimilar and completely irrelevant to the issues in this asbestos litigation. Pursuant to the Pennsylvania Rules of Evidence, this Honorable Court has the authority to exclude any argument, testimony, or documentary evidence when it lacks a proper relationship to the issues in the case. See Pa.R.E. 402 (excluding irrelevant evidence); Pa.R.E. 403 (excluding evidence due to prejudice, confusion, or waste of time). As a matter of law, testimony, evidence, opinions, and other references to unrelated litigation are inadmissible in this case, and any impermissible effort to link DCC, Ford and/or GM's actions and knowledge with respect to friction products with knowledge and/or actions in other, unrelated litigation must fail. Id.

With respect to Ford, DCC, and GM, the legal and factual issues in these Plaintiffs' negligence and strict liability case can be simplified into basic questions such as: did defendants owe a duty of care to plaintiff; did defendants breach that duty; was plaintiff exposed to asbestos from defendants' friction products; were the friction products unreasonably dangerous; did those friction products cause plaintiff's peritoneal deciduoid epithelial mesothelioma; and was plaintiffs' disease foreseeable? See Webb v. Zern, 220 A.2d 853, 854 (Pa. 1966) (adopting Restatement 402A as the law of the land in Pennsylvania); Gutteridge v. A.P. Green Servs., 804 A.2d 643, 655 (Pa. Super. 2002) (discussing requirements for recovery under negligence theory in asbestos case). The actions and or knowledge of these automobile companies with respect to features of Ford, DCC, and GM vehicles other than friction products, such as modern anti-lock brake systems, upper ball joints, paint processes, head gaskets, seat buckles, engine intake manifolds, engine coolant, distributor-mounted thick film ignition (TFI) modules, rear axles, fuel tanks, and tires, which have all been the subject of unrelated claims against these companies, are immaterial to the resolution of these basic questions. Similarly, Ford's alleged conduct at its German subsidiary during World War II has no bearing whatsoever on the factual issues in this case.

The introduction of testimony or evidence concerning other, unrelated litigation is prohibited when the facts of the prior litigation are completely unrelated to the facts and/or theories of recovery in the subsequent case. See Gen. Equip. Mfrs. v. Westfield Ins. Co., 635 A.2d 173 (Pa. Super. 1993). References to previous litigation are presumptively inadmissible, unless the offering party can demonstrate that the evidence and/or testimony is admissible for a permissible purpose, such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or absence of accident. Pa.R.E. 404(b). Here, plaintiffs' only purpose in

seeking to reference other, unrelated lawsuits can be to try to demonstrate that these companies acted in conformity with their allegedly faulty "character" in the previous lawsuits. In this manner, plaintiffs hope to mislead the jury into associating allegedly negligent or iniquitous conduct of Ford, DCC, and GM in other, unrelated situations, with plaintiffs' allegations regarding friction products in this case.

Even if plaintiffs were to allege that past corporate conduct is relevant to the issue of punitive damages, which Ford, DCC, and GM maintain are improper in this case, the allegations concerning these companies' conduct and/or knowledge in other, unrelated litigation involving different subject matters has absolutely no relationship to the defendants' knowledge, if any, about the alleged harm caused by asbestos in these companies' friction products. Since plaintiffs can offer no proper purpose for evidence, testimony or opinions regarding prior, unrelated litigation, all references to such litigation must be excluded at trial.

B. References to Unrelated Litigation should be excluded as unfairly prejudicial

Furthermore, even if the references to unrelated litigation were relevant, which they are not, such evidence or testimony should also be excluded because any probative value they may have is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. References to unrelated litigation involving the three major automobile companies can only serve to confuse or mislead the jury, who could easily be unfairly swayed to reach a verdict based on what these Defendants learned or did with respect to other products and other litigation, as opposed to what these companies knew or did with respect to asbestos in friction products.

References to unrelated litigation, such as the alleged litigation involving "Nazi slaves," is unquestionably inflammatory and blatantly prejudicial to the Defendant or Defendants allegedly connected to that litigation. In Pennsylvania, such evidence is clearly inadmissible.

Pa.R.E. 403; see also Commonwealth v. Morris, 425 A.2d 715 (Pa. 1981). The understandable

jury confusion and resultant prejudice created by admitting evidence totally unrelated to friction material products will far outweigh the probative value, if any, of such evidence. The confusion and prejudice resulting from the patently erroneous admission of this type of evidence and/or testimony will pervade the entire trial and deny Ford, DCC, and GM the right to a fair trial. Ford, DCC, and GM have the absolute right to ask the jury to evaluate their conduct as it relates to friction products, and not to be judged by previous allegedly negligent actions or omissions in unrelated lawsuits involving completely dissimilar issues. Therefore, any references to unrelated litigation involving these Defendants must be excluded to prevent irreparable harm and reversible error.

III. CONCLUSION

Accordingly, for the reasons set forth herein, Ford, DCC, and GM respectfully request that this Honorable Court grant their Motion in Limine and Preclude All References to Unrelated Litigation, including, but not limited to litigation relating to the Pinto, the Bronco II, the Explorer, anti-lock brake systems, upper ball joints, paint processes, head gaskets, seat buckles, engine intake manifolds, engine coolant, distributor-mounted thick film ignition (TFI) modules, rear axles, fuel tanks, and tires, and Dr. Lemen's proposed testimony regarding Nazi slave laborers.

Respectfully submitted,

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Attorneys for Defendant,
General Motors Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion In Limine To Exclude References To Unrelated Litigation, and Memorandum of Law in Support Thereof was served on all counsel of record this 26th day of September, 2003, by hand delivery to the Honorable Judge Lawrence Clark and Special Master Richard B. Wickersham, and by e-mail to all counsel of record.

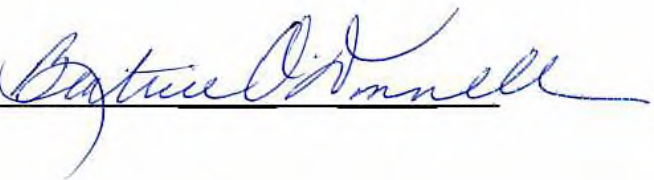
BY: 

Exhibit A

health hazards associated with asbestos in brake shop workers. Dr. Selikoff advised Mr. Gaeler that their examination of brake shop workers turned up disturbing findings relative to the health effects of asbestos and disease in brake shop workers. In 1980 for the first time Ford placed a warning on after market brake linings; the cautionary statement made no reference to asbestos being a cancer causing agent. Ford has been sued in the past by former Nazi slaves who were compelled to work under brutal conditions in German factories. Ford has denied allegations that it maintained control over its Ford-Welke subsidiary in Cologne, Germany during World War II and that it knowingly profited from forced slave labor.

26. In May of 1975, Dr. Selikoff had a meeting with Ford, Chrysler and GM. The purpose of the visit was to review the results of his investigation of brake service workers in New York City and information concerning cases of mesothelioma among brake service mechanics. Dr. Selikoff revealed that significant quantities of brake lining dust are present when vehicles are relined. Dr. Selikoff advised the representatives that he was turning over his data to OSHA, the Occupational Safety and Health Committee and the Motor Vehicle Manufacturer's Association.

27. In 1933, Bendix acquired the Marshall Asbestos Corporation. In 1939, Marshall became a Bendix division. In 1985, Bendix merged into Allied Signal Corporation. In 1987, Allied Signal Corporation merged into Allied Signal, Inc. Bendix manufactured asbestos containing brake linings from the 1930s until the early 1990s. They also manufactured brake blocks, clutch facings and disc brake pads at one time or another that contained asbestos. Bendix's brake lining products were manufactured with up to 50% chrysotile asbestos. Bendix was a member of the following organizations during its existence: Brake Lining Materials Association; Friction Materials Standards Institute; Asbestos Information Association; and National Safety Council. Bendix alleges in discovery responses that they were unaware of the hazards of asbestos until the 1970s. Nonetheless, a memorandum from E.A. Martin of Bendix to N. Hendry of Johns-Manville, dated September 12, 1966 states that "My answer to the problem is: if you have enjoyed a good life while working with asbestos products why not die from it. There's got to be some cause." Bendix did not include warning labels with their brake linings until 1979. In fact, they continued to make and sell asbestos-containing brake linings until the early 1990s.

28. Borg-Warner Corporation was incorporated in Illinois on May 9, 1928 in order to acquire the stock of Borg & Beck, Marvel Carburetor Co., and Warner Gear Co. In 1935, Borg-Warner became an operating company through the acquisition of a number of subsidiaries that were eventually dissolved. Between 1937 and the early 1950s, it continued to acquire companies, and by the mid-1960s it had a large number of divisions and subsidiaries. Since 1984 Borg-Warner Automotive, Inc. has held the assets of the automotive units of Borg-Warner Corporation. In 1987 Borg-Warner Automotive, Inc. was merged into Borg-Warner Corporation, and on May 4, 1987, Borg-Warner Automotive, Inc. was incorporated as BW-Automotive, Inc. Three of Borg-Warner Corporation's business units were involved in the manufacture, distribution and sale of