

**Lotrean v 3M Co.**

2023 NY Slip Op 30338(U)

January 27, 2023

Supreme Court, New York County

Docket Number: Index No. 153361/2020

Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART 42

Justice

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MARINEL LOTREAN, MARIE LOTREAN,
Plaintiff,

- v -

3M COMPANY f/k/a MINNESOTA MINING AND
MANUFACTURING, ALBERT KEMPERLE, INC., ATLANTIC
RICHFIELD COMPANY, CHEVRON U.S.A. INC, CHEVRON
PHILLIPS CHEMICAL COMPANY LP, E.I. DU PONT DE
NEMOURS AND COMPANY, EXXON MOBIL
CORPORATION, H. EDELSTEIN AUTOMOTIVE SUPPLY
INC, PPG INDUSTRIES, INC, RUST-OLEUM
CORPORATION SUED INDIVIDUALLY AND AS
SUCCESSOR-IN-INTEREST TO RUST-OLEUM
CORPORATION, SAFETY-KLEEN SYSTEMS, INC, SHELL
OIL COMPANY, ZEP INC., SUED INDIVIDUALLY AND AS
SUCCESSOR-IN-INTEREST TO ACUITY SPECIALTY
PRODUCTS, A DIVISION OF ACUITY BRANDS,
INC., SUCCESSOR-IN-INTEREST TO LIGHTING
EQUIPMENT AND CHEMICAL DIVISIONS OF NATIONAL
SERVICES INDUSTRIES, INC., d/b/a ZEP
MANUFACTURING,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 016) 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 263, 264, 265, 266, 267, 268, 269, 270, 280, 281, 282

were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 017) 271, 272, 273, 274, 275, 276, 277, 278, 279, 291, 292, 293, 294, 295, 296, 297, 298, 299, 317

were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 018) 283, 284, 285, 286, 287, 288, 289, 290, 300, 301, 302, 303, 304, 318, 319, 320, 321, 322, 323

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 019) 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 342, 343, 357, 358

were read on this motion to/for ORDER OF PROTECTION

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 020) 335, 336, 337, 338, 339, 340, 341, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355

were read on this motion to/for

ORDER OF PROTECTION

In this products liability action, plaintiff Marinel Lotrean seeks to recover damages suffered as a result of exposure to products containing the chemical compound known as benzene between 1979 and 1992, when he worked for Camera Auto Body in the State of Texas. The complaint alleges, *inter alia*, that the defendants were in the business of manufacturing, marketing, distributing and/or otherwise placing into the stream of commerce benzene-containing products, that the products were defective when they left the defendants' possession, custody and control, that the products were intended to be used in the manner in which they were used by the plaintiff and that the products were defective in that they caused diseases such as cancer and were not safe for intended use. The complaint further alleges that the defendants were aware of the defect and danger of the product and failed to take the necessary precautions to warn or otherwise protect the plaintiff. The defendants answered and denied these allegations. By an order dated October 13, 2022, the court directed that remaining paper discovery responses to previously served demands must be exchanged by November 1, 2022 and that EBTs were to be conducted by December 31, 2022.

Defendants Chevron U.S.A. Inc. ("Chevron"), Atlantic Richfield Company ("ARCO"), Exxon Mobil Corporation ("Exxon"), and Shell Oil Company ("Shell"), each move pursuant to CPLR 3103(a) to preclude the plaintiff's from deposing a corporate designee of each moving defendant (MOT SEQ 016, 017, 019, 020). The plaintiff opposes each of the defendant's motions and cross-moves as to each of them pursuant to CPLR 3124 to compel production of substantial discovery responses.

The plaintiff also moves pursuant CPLR 3124 to compel Rust-Oleum Corporation ("Rust-Oleum") to produce complete responses to all interrogatories, production of all non-privileged responsive documents, and the submission of all privilege logs of any documents Rust-Oleum withheld (MOT SEQ 018). Rust-Oleum cross-moves pursuant to CPLR 3103 for a protective order vacating the plaintiff's second amended notice of deposition.

All motions referenced herein were fully submitted prior to the compliance conference which resulted in the order dated January 11, 2023. That order resolved the motions.

None of the defendants demonstrated entitlement to an order protecting them from producing witnesses for deposition. See CPLR 3103. Such orders are issued to “prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.” CPLR 3103(a). Since none of those circumstances have been demonstrated, the plaintiff is indisputably entitled to depose a designated representative of each defendant. See Perez v Time Moving & Storage, 28 AD3d 326 (1<sup>st</sup> Dept. 2006). Counsel shall be guided by the Uniform Rules for the Conduct of Depositions (22 NYCRR Part 221) and the New Uniform Rules for the Supreme Court and County Court, effective February 1, 2021.

In regard to the plaintiff’s cross-motions, the defendants are reminded that CPLR 3101(a) provides that “there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action” and this language is “interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” Osowski v AMEC Constr. Mgt., Inc., 69 AD3d 99, 106 (1<sup>st</sup> Dept. 2009) quoting Allen v Crowell-Collier Publ. Co., 21 NY2d 403, 406-407 (1968). All discovery requested by the plaintiff and directed by the court in this and prior orders is “material and necessary” to the prosecution of this action.

Accordingly, upon the foregoing papers, it is

ORDERED that motions of Chevron U.S.A. Inc., Atlantic Richfield Company, Exxon Mobil Corporation, and Shell Oil Company pursuant to CPLR 3103(a) to preclude the plaintiff from deposing a company designee (MOT SEQ 016, 017, 019, 020) are denied and the cross-motions of the plaintiff pursuant to CPLR 3124 to compel discovery as against the same defendants are granted in accordance with this court’s order dated January 11, 2023, and it is further

ORDERED that the deadline for the defendants to designate a witness for deposition is extended to February 17, 2023, and it is further

ORDERED that the motion of the plaintiff to compel discovery pursuant to CPLR 3124 as against Rust-Oleum (MOT SEQ 018) is granted and the cross-motion of defendant Rust-Oleum Corporation pursuant to CPLR 3103 for a protective order is denied in accordance with the order dated January 11, 2023, and it is further

ORDERED that the deadline for the defendants to respond to plaintiff's document discovery demands is extended to February 17, 2023, and it is further

ORDERED that all other discovery deadlines and directives contained in this court's order dated January 11, 2023, remain in effect, and it is further

ORDERED that counsel shall appear for a status conference on March 23, 2023, at 11:30 a.m., as previously scheduled.

This constitutes the Decision and Order of the court.

  
NANCY M. BANNON, J.S.C.  
HON. NANCY M. BANNON

<u>1/27/2023</u>					
DATE					
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
SEQ 016	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
SEQ 017	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
SEQ 018	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
SEQ 019	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
SEQ 020	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE