

MISC. Subpoena's

BLA LitSupport

From: Siegel, Melissa
Sent: Friday, November 22, 2013 1:12 PM
To: BLA LitSupport
Subject: FW: World Trade Center subpoena

Melissa Siegel | Assistant Counsel | NYC Environmental Protection
(O) 718 595-7418 | (M) 347 244-9655 | msiegel@dep.nyc.gov

From: Wies, Peter (Law) [<mailto:pwies@law.nyc.gov>]
Sent: Friday, November 22, 2013 12:41 PM
To: Siegel, Melissa
Cc: Lieberman, Brian (Law)
Subject: RE: World Trade Center subpoena

Melissa,

This will acknowledge receipt of the subpoena, and to advise you that we are working with our outside counsel, Patton Boggs, to respond to it.

Regards,

Peter E. Wies
Assistant Chief and Senior Counsel
Toxic and Mass Tort Unit
New York City Law Department
100 Church Street
New York, New York 10007
pwies@law.nyc.gov
(212) 356-2685
Please note new phone number

From: Siegel, Melissa [<mailto:melissas@dep.nyc.gov>]
Sent: Friday, November 22, 2013 8:57 AM
To: Wies, Peter (Law); Lieberman, Brian (Law)
Subject: World Trade Center subpoena

Good morning. DEP received the attached WTC subpoena late yesterday.

Melissa Siegel | Assistant Counsel | NYC Environmental Protection
(O) 718 595-7418 | (M) 347 244-9655 | msiegel@dep.nyc.gov

AO 88A (Rev. 05/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York



In re: WorldTrade Center Lower Manhattan Disaster

Plaintiff

v.

Defendant

Civil Action No. 1:21-MC-01002

(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: DEPARTMENT OF ENVIRONMENTAL PROTECTION
59-17 JUNCTION BLVD., 13TH FLOOR, FLUSHING, NY 11373

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: LAW OFFICES OF MICHAEL E. PRESSMAN
125 MAIDEN LANE, 17TH FLR, NY NY 10038

Date and Time:

01/15/2014 2:02 pm

The deposition will be recorded by this method:

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:
PLEASE SEE ATTACHED RIDER.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/15/2013

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

DEFENDANT

CENTRAL PARKING SYSTEMS INC. OF NEW YORK,

, who issues or requests this subpoena, are:

ERIN P. FENYES, ESQ., & MICHAEL E. PRESSMAN, INC.

ERIC S. FENYES, ESQ., LAW OFFICES OF MICHAEL E. PRESSMAN

125 MAIDEN LANE, 17TH FLR, NY NY 10038; (212) 430-8080, EFENYES@MEPRESSMAN.COM

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 1:07-cv-04459-AKH

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ or _____

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____ *Server's signature* _____

Printed name and title _____

Server's address _____

Additional information regarding attempted service, etc: _____

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

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

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

RIDER
DOCUMENTS TO BE PRODUCED BY NON-PARTY WITNESS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

For the building located at 70 Greenwich Street, New York, NY (hereinafter referred to as the Building"), at which your company performed services including abatement and/or cleanup and/or removal of asbestos, particulate matter, chemical waste, or any other toxic waste material (hereinafter referred to as "work") following the September 11, 2001 attacks on the World Trade Center, please produce the following:

1. Any and all contracts and other writing retaining your company to perform the aforementioned work at the Building;
2. Any and all correspondence regarding your work in the Building;
3. Any and all documents evidencing your firm's retention to perform work in the Building;
4. Any and all documents evidencing the damage sustained to the Building as a result of the September 11, 2001 attacks, including the contamination of the Building;
5. Any and all daily or otherwise work records documenting your performance on the Building;
6. Any and all documents signifying when work was performed on a daily, or otherwise, basis and on which floors of the Building the work was performed;
7. Any and all documents including the name of all individuals employed or otherwise performing work at the Building;
8. Any and all documents evidencing the work performed at the Building including testing for toxic or dangerous materials or substances, including the location within the Building and any contracts, applications, and permits for the work;
9. Any and all documents evidencing the air quality or other testing, done prior to, during, and after the work was performed at the Building;
10. Any and all documents reflecting communications with the Building owners, agents or representatives regarding the work to be performed;
11. Any and all policies and procedures, including any manuals, regarding the work performed, including any safety plans and/or procedures in effect as of September 11, 2001;

12. Any and all documents evidencing the identity of the entity or entities to which you rendered bills and/or received payment for the work performed as well as such documents evidencing any companies to/from which those individuals performing the work were employed;
13. Any and all insurance policies and declaration pages, certificates and binders, with reference to the work as aforementioned within all of the above items.
14. Any and all documents evidencing insurance claims;
15. Any and all documents referencing and/or evidencing the relationship of your company to any other entity associated with the building; and relationship of your company to any other entity providing services or personnel at, to or for said building;
16. Any and all documents evidencing information relating to any federal/state/city agencies for applications, permits and violations applied for or received relative to the work performed at the Building.