

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

JAMES M. MALONEY,

Plaintiff,

- against -

ELIOT SPITZER, in his official capacity as  
Attorney General of the State of New York, and his  
successors,

Defendants.

-----X

**CV 03-786 (ADS) (MLO)**

**REPLY MEMORANDUM**

James M. Maloney (JM-3352)  
Plaintiff *pro se*  
33 Bayview Avenue  
Port Washington, New York

(516) 767-1395

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REPLY TO DEFENDANT’S PRELIMINARY STATEMENT

Beginning in the Preliminary Statement (Brief in Opp. at p. 1), Defendant urges that the Complaint “must be dismissed.” It should be noted at the outset, however, that the only motion now pending before the Court is Plaintiff’s motion for summary judgment. Defendant has had ample opportunity to make a 12(c) motion for judgment on the pleadings, and in fact the parties agreed to more than one briefing schedule for such a motion, but no such motion was ever made. In this regard, the Court’s attention is respectfully directed to entries 12 and 14 of the docket sheet. While this Court may, of course, consider a dismissal of the action on justiciability grounds *sua sponte*, Plaintiff respectfully requests that he first be given a full and fair opportunity to argue against such a dismissal and/or to add parties per Rule 17, *see infra* at 8-9, which necessarily cannot be done adequately in the context of this reply memorandum. Accordingly, although the justiciability and real-party-in-interest issues that Defendant raises will be addressed herein, it is not the purpose of this memorandum to address them fully.

As to Point 1(B) in the Preliminary Statement (Brief in Opp. at p. 1-2), Plaintiff concedes that he cannot be prosecuted under Penal Law § 265.02, because he has never “been previously convicted of any crime,” which is an element of that statute. Plaintiff respectfully leaves to this Honorable Court the resolution of the question of whether it may address the constitutionality of criminalizing simple possession of nunchaku in the home by persons who *have* been convicted of crimes. Whatever the resolution of that issue, it is submitted that the question of the constitutionality of the parallel provision in Penal Law § 265.01 is fully justiciable, for the reasons set forth at pages 5 through 8 of the Main Brief, as set forth herein, and as will be set forth should the Court request further briefing on that issue.

REPLY TO DEFENDANT’S STATEMENT OF FACTS

Although detailed facts about the occurrence of August 23-24, 2000, are not relevant to this case, Plaintiff feels compelled to set the record straight. The “incident” referred to involved Plaintiff’s having observed a telephone worker (who had climbed a pole outside Plaintiff’s window to work on the phone lines) for a period of several seconds with a small telescope, which was mounted in a manner such that it arguably may have been mistaken for a rifle. Following this brief observation, the telephone worker asked, “What was that?” and, having been assured that there was no threat, continued his work. He apparently nevertheless reported the “incident” to police, who later appeared in plain clothes, asking Plaintiff to “come outside and talk.” When asked by Plaintiff whether they were state or federal officers, the police spokesperson replied: “Both.” This led to Plaintiff’s initially doubting that those persons were police at all and refusing to leave his home, following which the response escalated, with armed police surrounding Plaintiff’s home for some twelve hours and eventually, with the assistance of an attorney whose presence had been requested by Plaintiff, forcing Plaintiff to surrender even though no warrant for his arrest was ever obtained. While Plaintiff was in custody, the police occupied his home and used explosives to open his safe, from which they seized a .38 caliber Smith & Wesson revolver that Plaintiff had legally purchased in Florida in 1984. Plaintiff pled guilty to disorderly conduct, a violation, in connection with the simple possession of that revolver locked in the safe in his home. No *Mapp* hearing to determine the admissibility of the revolver was ever held. Should the Court wish to receive further material in support of any of the foregoing, Plaintiff will provide same, but it is respectfully submitted that these issues of fact are not germane to this motion, or even to this case.

ON ABANDONING CLAIMS AND ON “OBTAINING HAPPINESS AND SAFETY”

Defendant asserts, at footnote 1 on page 3 of the Brief in Opposition, that Plaintiff has “apparently abandoned all but the Second and Ninth Amendment claims . . .” As briefed fully in Plaintiff’s main brief, however, one of the two asserted bases of the claimed unconstitutionality of the application of the statutes to criminalize simple possession of nunchaku in the home is the violation of an unenumerated right, the source of which may be found in the Ninth Amendment, *and/or* in the established doctrine of substantive due process, *and/or* in the “penumbras and emanations” of other provisions of the Constitution. Indeed, Plaintiff’s whole unenumerated-rights argument derives from the principle that, while the text of the Ninth Amendment “declares as a matter of law--of constitutional law, overriding other law--that some other rights are ‘retained by the people,’ and that these shall be treated as *on equal footing* with rights enumerated[.]” Main Brief at 21 (quoting Charles L. Black, Jr., *A New Birth of Freedom: Human Rights, Named and Unnamed* (1997), at 13), one must look elsewhere to define the specific content of that guarantee. That “elsewhere” may be the Declaration of Independence (as Professor Black compellingly argues in this last book that he wrote before his death in May 2001), *and/or* it may be the other provisions of the Bill of Rights (as a source of general principles), as has been established by Supreme Court precedent (albeit under the rubric of “substantive due process”) beginning with *Griswold v. Connecticut*, 381 U. S. 479 (1965), *and/or* it may be in the language of a very early (1825) case that speaks of “pursu[ing] and obtain[ing] happiness and safety.” That early source of authority, which is cited by Professor Black as linking the language of the Declaration to the Ninth Amendment’s explicit textual protection of unenumerated rights, *see A New Birth of Freedom* at 49-50, is

*Corfield v. Coryell*, 4 Wash. C.C. 371, 6 F. Cas. 546, 551-52 (C.C.E.D. Pa. 1825). The passage cited follows:

The inquiry is, what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole.

*Id.* The question now before this Court, of course, is whether banning the simple possession of nunchaku in the home is among “such restraints as the government may justly prescribe for the general good of the whole” in restricting the right “to pursue and obtain happiness and safety.” *Cf.* Complaint at ¶28 (“[T]o the extent that said statutes criminalize the simple possession of nunchaku within one’s home, [they] unjustly restrain and deprive Plaintiff and other residents of New York from pursuing and obtaining happiness and safety.”).

Plaintiff has not “abandoned” any claim; rather, the unenumerated-rights argument contemplates that each provision of the Bill of Rights, as well as the Fourteenth Amendment’s various clauses (due process, privileges and immunities, equal protection) and the aforementioned language from *Corfield*, are *all* incorporated into that argument, which in turn supports *all* Causes of Action *except* the Third (Second Amendment-based). Moreover, Plaintiff has made specific reference in the Main Brief (at page 24) to the applicability of the First Amendment, given that nunchaku practice is often expressive conduct (*see also* Declaration in Support at ¶ 20) (providing factual basis for First Amendment considerations).

REPLY TO DEFENDANT’S ARGUMENTS RE: JUSTICIABILITY

As noted above at page 1, the only motion now pending before the Court is *Plaintiff’s* motion for summary judgment. Defendant has had ample opportunity to make a 12(c) motion but has not done so. Plaintiff is mindful, however, that unless a case is justiciable, a federal court may not hear it--whether any party moves for dismissal or not. Bearing this in mind, Plaintiff devoted considerable space to the issue of justiciability in the Main Brief (Part C of the Introduction, from page 5 to 8), to which discussion the Court is respectfully referred.

Beginning at page 5 of the Brief in Opposition, Defendant suggests that this case is not justiciable, there framing the argument primarily as one based on the *appellate* standard of review appropriate to declaratory judgment actions (*see* page 8: “The discretionary authority granted by 28 U.S.C. § 2201(a) is reviewed deferentially on appeal . . .”), and thereby inviting this Court to exercise its discretion and refrain from granting the only relief sought herein.

As an initial matter, it is worth noting that the statutory application complained of has been in place for thirty years (as of September 1, 2004) and has now, for the first time, been challenged. This fact would be irrelevant in addressing the inquiry of justiciability, and perhaps even that of discretion in granting declaratory judgment, but for the complementing fact that *at the very time of its enactment the constitutionality of the total ban on possession of nunchaku was questioned by a division of the executive branch of the State of New York*. As noted in the Main Brief at 2, a memorandum from the Division of Criminal Justice Services to the Governor dated April 4, 1974--12 days before the bill was signed into law--pointed out that nunchaku have legitimate uses in karate and other martial-arts training, and opined that “in view of the current interest and participation in these activities by many members of the public, it appears unreasonable--and perhaps even unconstitutional--to prohibit those who have



a legitimate reason for possessing chuka sticks from doing so.” A copy of that memorandum is attached hereto as **Appendix A** for the Court’s ready reference, and was also submitted as Exhibit 9 to the Maloney Declaration.

Defendant has conceded that Plaintiff is a martial artist (Brief in Opp. at p. 1), and it is beyond dispute that Plaintiff has so far been prosecuted once for the simple possession of nunchaku in his home. It is therefore obvious that Plaintiff must choose between (1) risking more prosecutions and (2) forgoing possession of nunchaku in his home for martial-arts practice, which Plaintiff (and apparently the State of New York Executive Department’s Division of Criminal Justice Services at the time of enactment) believes to be constitutionally protected conduct. Accordingly, the case is ripe for review, and Plaintiff, who is a member of the affected class and has an actual stake in the outcome of a case of controversy that is both genuinely adversarial and will be resolved by this Court’s rendering declaratory judgment, has standing to bring the action. *See, e.g., Steffel v. Thompson*, 415 U.S. 452, 462 (1974) (“refusal on the part of the federal courts to intervene when no state proceeding is pending may place the hapless plaintiff between the Scylla of intentionally flouting state law and the Charybdis of forgoing what he believes to be constitutionally protected activity”); *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967); *Northeastern Florida Contractors v. Jacksonville*, 508 U.S. 656, 663 (1993) (setting forth standing requirements); *see also* sources cited at pages 6-7 of the Main Brief.

As to the Court’s exercise of discretion and its corresponding authority to deny the only relief sought, declaratory judgment, Defendant’s argument (which focuses on questions of appellate review of such an exercise of discretion) is both premature and inappropriate. The proper question before this Court is simply whether a declaration as to the constitutionality of

the application of the nunchaku ban to simple home possession would serve justice. As the United States Court of Claims noted in 1968:

Considerations relevant to the issuance of . . . equitable relief are also pertinent to the use of the Declaratory Judgment Act . . . and the historical origins of declaratory relief are in equity . . .

*King v. United States*, 182 Ct. Cl. 631, 645-46, 390 F.2d 894, 905 (Ct. Cl. 1968) (citations omitted). As noted at the outset, the total statutory ban on nunchaku has been in place for some thirty years, and the constitutionality of the application of the nunchaku ban to prevent martial artists from peaceful possession of nunchaku for martial-arts practice was seriously questioned at the time of enactment by a division of the executive branch of the State of New York (*see* Appendix A). Thus, there has been reasonable doubt as to the constitutionality of the ban on nunchaku as applied to martial artists' peaceful possession from the very beginning. As discussed in the Main Brief at 4-5, recent enforcement of the total ban by the Attorney General has had the effect of making the identity of purchasers of nunchaku known to the Attorney General and to law enforcement authorities, which makes the question of the constitutionality of the extension of the ban to simple home possession more pressing. As the United States District Court for the Southern District of New York has recently explained:

Declaratory relief . . . permits the court in one action to define the legal relationships and adjust the attendant rights and obligations at issue between the parties so as to avoid the dispute escalating into additional wrongful conduct. In this manner, the [declaratory judgment] statute can avert greater damages and multiple actions and collateral issues involving not only the original litigants but potentially other third parties. So employed, the remedy promotes . . . speed, economy and effectiveness.

*Dow Jones & Company, Inc. v. Harrods*, 237 F. Supp. 2d 394, 405 (S.D.N.Y. 2002).

This Court now has before it a formal constitutional challenge, by a martial artist, to

the most basic application of the statutory ban that infringes on the rights of martial artists, i.e., the simple possession of nunchaku in one's home. To avoid rendering declaratory judgment under these circumstances would not serve justice and would only result in one form or another of "additional wrongful conduct," *see supra* (i.e., the State of New York will continue to deprive citizens of their right to possess nunchaku in their homes and/or citizens will break the law by so possessing them). The Court should decide the case before it.

ON THE ATTORNEY GENERAL'S PROPERLY BEING NAMED AS THE DEFENDANT

Defendant argues that the Attorney General is not the proper defendant or party in interest, and as such is providing the first formal notice of this objection in the Brief in Opposition. Although the Nassau County District Attorney was originally also named as a defendant, he was dismissed by stipulation (after the County Attorney's office requested same) in the interest of saving the taxpayers money. The Attorney General is a proper defendant because he has actively enforced the nunchaku ban by, among other things, seeing to it that citizens who have purchased nunchaku are identified and informed that *any* possession is illegal (*see* Main Brief at 4-5 and *infra* at 9). However, should this Court find that the Attorney General is the wrong party, Rule 17(a) provides litigants an opportunity to substitute or add other parties following notice of a defect. While one court has stated that Rule 17 applies only to plaintiffs, *Gardetto v. Mason*, 854 F. Supp. 1520 (D. Wyo. 1994), that court also noted that if Rule 17(a) were to apply, "it is clear that dismissal is not an appropriate remedy, at least 'until a reasonable time has been allowed after objection' to cure the defect." *Id.* at 1544. (This Court has recognized, however, that Rule 17(a) *does* apply where there is a defect in naming the proper defendant, as evidenced by the stipulation and docket sheet attached hereto as **Appendix B**). Moreover, naming of additional *plaintiffs* from among those who have been

affected by the Attorney General's "civil" enforcement of the criminal statutes (but who have not yet been identified because discovery was never ordered) would be another means of curing the "party" defect were this Court to read Rule 17 as was done in *Gardetto, supra*.

REPLY TO DEFENDANT'S ARGUMENT: POINT I

Defendant sets up a "straw man" argument by equating the question of justiciability with the question of whether Plaintiff is likely to be prosecuted *by the Attorney General* for possession of nunchaku in his home (Brief in Opp. at 9-14), but the real question is whether Plaintiff must choose between risking additional prosecutions and forgoing protected activity. In support of the "straw man" argument, Defendant attempts to cast the Attorney General's recent actions resulting in nunchaku suppliers' having had to supply the Attorney General with lists of their customers as an attempt to protect the purchasers and a means to "reach out to the defrauded customers." Brief in Opp. at 13. Yet paragraph 10 of Defendant's Appendix B (Assurance of Discontinuance *In the Matter of Bud K*) states: "Any person in New York State who possesses a weapon or dangerous instrument prohibited by New York Penal Law §265.01 must voluntarily surrender it to the appropriate law enforcement authority to avoid prosecution." This is nothing less than enforcement of a criminal statute, albeit by a novel means.

Defendant goes on to posit that Plaintiff's presumed non-membership in any State's "militia" denies him not only a Second Amendment claim, but even *standing* to assert one. Brief in Opp. at 15. There appears to be no case law supporting such a proposition.

REPLY TO DEFENDANT'S ARGUMENT: POINT II

Here Defendant begins by making the argument that there is little *precedent* to support Plaintiff's position that the Second Amendment protects, as against a State, a citizen's liberty to possess nunchaku in his or her home. Plaintiff does not disagree, being well aware that the

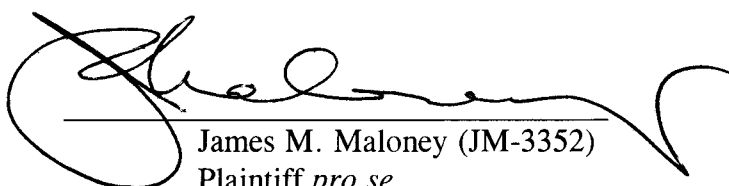
Second Amendment argument has yet to be recognized by the Supreme Court as guaranteeing a personal right (as the Fifth Circuit has done), nor as having been incorporated against States, but this Court remains free to interpret the Amendment for itself. At page 18-19, the Brief in Opposition goes on to argue that nunchaku are not “arms.” But, for one thing, if all “arms” must be firearms, the prefix “fire-” is surplusage. More importantly, the Framers’ having failed to “envision a nunchaku-wielding militia” when drafting the Second Amendment should be of no more consequence than their failure to have envisioned motion pictures or the Internet when drafting the First. Further, the argument that nunchaku are not destructive enough to be weapons of a modern militia leads to an odd consequence: if the Second Amendment guarantees a personal right, it would be only for highly destructive, modern weapons! Finally, nunchaku *do* appear to have been used by the military in Vietnam, *see* Maloney Dec. at ¶ 19.

Defendant concludes by misconstruing the unenumerated-rights argument as solely Ninth Amendment-based, arguing that that amendment does not encompass “a right to bear arms independent of the Second Amendment.” But this is simply a “shell game.” If the Second Amendment does not apply--as Defendant argues is the case--logically it cannot be a shield against looking elsewhere for the source of an unenumerated right. Giving credence to Defendant’s argument would amount to a constitutional jurisprudence destructive of liberty.

#### CONCLUSION

For all of the foregoing reasons, Plaintiff’s motion should be granted.

Dated: October 31, 2004  
Port Washington, New York

  
James M. Maloney (JM-3352)  
Plaintiff *pro se*  
33 Bayview Avenue  
Port Washington, New York

**APPENDIX A**

A 8667-A

**Memorandum**

APR 9 REC'D



STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
DIVISION OF CRIMINAL JUSTICE SERVICES

April 4, 1974

TO: Michael Whiteman

FROM: Archibald R. Murray *ARM*

RE: A. 8667-A

Purpose

To amend a number of sections in Article 265 of the Penal Law to penalize the possession of, manufacture or dealing in "chuka sticks."

Discussion

This bill proposes to outlaw the possession, manufacture or shipment of "chuka sticks," as that device is defined in bill section 1. By placing the basic prohibition in Penal Law section 265.05(3), the possession of chuka sticks is made per se criminal, i.e., no mens rea is required and the crime, therefore, is one of absolute liability. Even if the chuka stick is being employed with significant frequency as a weapon in the commission of violent crimes, its inclusion in the per se category is of doubtful wisdom and questionable legality.

It is our understanding that chuka sticks are also used in karate and other "martial arts" training. In view of the current interest and participation in these activities by many members of the public, it appears unreasonable -- and perhaps even unconstitutional -- to prohibit those who have a legitimate reason for possessing chuka sticks from doing so. There are alternative ways in which the problem can be handled. If it is desired to keep chuka sticks in the per se prohibited class, an exception could be drafted for those who possess them for lawful martial arts training. Such a course is employed for switchblade and gravity knives, which are also prohibited in this same subdivision (P.L. sec. 265.05[3]). In their case, section 265.20(5) permits their possession for hunting or fishing by a person who has a hunting or fishing license.

A second, and more appropriate, alternative would be to treat chuka sticks under Penal Law section 265.05(9) where, to constitute the crime, possession must be coupled with "an intent to use the same unlawfully against another." This would put chuka sticks in the same category as other objects which are potential weapons but which also have legitimate uses, such as knives and razors.

page 2

It should be noted that the first version of this bill (A. 8667) in fact pursued precisely this latter course.

A technical -- probably typographical -- error appears on page 1, line 4. The word "designated" probably should read "designed."

Recommendation

In view of the foregoing, we cannot recommend approval of this bill in its present form.



**APPENDIX B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
WILLIAM T. JAYE and BARBARA VERDONIK

**CV 03 4503 (DRH)**

*Plaintiffs,*

-against-

**STIPULATION**

S-B POWER TOOL COMPANY, f/k/a  
SKIL CORPORATION

HURLEY J.  
LINDSAY, M.

*Defendant.*

-----X

Counsel for the Defendant represents that the Real Defendant in Interest pursuant to FRCP Rule 17 is:

ROBERT BOSCH TOOL CORPORATION, a Delaware Corporation.

Based on the above representation:

**THE PARTIES HEREBY STIUPULATE** that the caption to this action shall be amended as follows:

-----X  
WILLIAM T. JAYE and BARBARA VERDONIK

*Plaintiffs,*

-against-

ROBERT BOSCH TOOL CORPORATION, f/k/a  
S-B POWER TOOL COMPANY, f/k/a  
SKIL CORPORATION

*Defendant.*

-----X

and the parties shall use the amended caption on all papers after the court "so-orders" this stipulation and it is received by the undersigned attorneys.



Victor M. Serby, Esq. [VS-4606]  
Attorney for Plaintiffs



Susan B. Clearwater, Esq. [SC-6740]  
Attorney for Defendant

SO ORDERED:

\_\_\_\_\_  
Hon. Dennis R. Hurley, USDJ

**U.S. District Court  
Eastern District of New York (Central Islip)  
CIVIL DOCKET FOR CASE #: 2:03-cv-04503-DRH-ARL**

Jaye et al v. S-B Power Tool Company  
Assigned to: Judge Denis R. Hurley  
Referred to: Magistrate-Judge Arlene R. Lindsay  
Demand: \$1250000  
Cause: 28:1332 Diversity-Product Liability

Date Filed: 09/09/2003  
Jury Demand: Plaintiff  
Nature of Suit: 365 Personal Inj. Prod.  
Liability  
Jurisdiction: Diversity

**Plaintiff**  
-----

**William T. Jaye**

represented by **Victor M. Serby**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Barbara Verdonik**

represented by **Victor M. Serby**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**  
-----

**Robert Bosch Tool Corporation**

represented by **Susan B. Clearwater**  
Quirk and Bakalor, P.C.  
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Email: sclearwater@quirkbakalor.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text

09/09/2003	<a href="#">1</a>	COMPLAINT Summons Issued against S-B Power Tool Company filing fee \$ 150, receipt number 10684, filed by William T. Jaye, Barbara Verdonik. (Attachments: # <a href="#">1</a> Civil Cover Sheet)(Romano, Daniel) (Entered: 09/12/2003)
10/23/2003	<a href="#">2</a>	SUMMONS Returned Executed by William T. Jaye, Barbara Verdonik. S-B Power Tool Company served on 10/20/2003, answer due 11/10/2003. (Serby, Victor) (Entered: 10/23/2003)
11/05/2003	3	ANSWER to Complaint filed by (S-B Power Tool Company) Robert Bosch Tool Corporation, s/h/a Power Tool Company, f/k/a SKIL Corporation, by its attorneys, Quirk and Bakalor, P.C.(Dachille, Patti) (Entered: 12/02/2003)
11/05/2003	4	DISCLOSURE of Interested Parties filed by S-B Power Tool Company. (Dachille, Patti) (Entered: 12/02/2003)
12/26/2003	<a href="#">5</a>	STIPULATION pursuant to FRCP Rule 17 to amend the caption to reflect that <i>ROBERT BOSCH TOOL CORPORATION</i> is the Real Defendant in Interest by William T. Jaye, S-B Power Tool Company, Barbara Verdonik. (Serby, Victor) (Entered: 12/26/2003)
12/26/2003	<a href="#">6</a>	STIPULATION re [3] Answer to Complaint <i>withdrawing the Second Affirmative Defense of Breach of Warranty as plaintiff is not making a claim for breach of any warranty.</i> by William T. Jaye, S-B Power Tool Company, Barbara Verdonik. (Serby, Victor) (Entered: 12/26/2003)
01/05/2004	7	STIPULATION AND ORDER; that the caption to this action shall be amended as further set forth herein. ( Signed by Judge Denis R. Hurley on 1/5/04.) c/m (Fagan, Linda) (Entered: 01/15/2004)
02/11/2004	8	ORDER that a Status Conference is set for 3/2/2004 04:30 PM before Magistrate-Judge Arlene R. Lindsay.. Signed by Judge Arlene R. Lindsay on 2/11/04. cm(Mierzejewski, Elizabeth) (Entered: 02/18/2004)
03/02/2004	9	PRETRIAL SCHEDULING ORDER; At a regularly scheduled conference before the undersigned, all counsel being present, the following pretrial scheduling order for this action was adopted: Joinder of additional parties to be completed: -; Amend the pleadings completed: 5/3/04; All discovery, inclusive of expert discovery, to be concluded: 9/20/04; Letter application for a promotion summary judgment conference to be submitted to the District Court by this date: 9/28/04. The parties are directed to refer the District Court's individual rules with respect to the submission of 56.1 sttements; parties to submit proposed joint pretrial order to the Chambers of the undersigned: 10/8/04; Final Settlement conference before the undersigned: 10/12/04 at 2:00 p.m. Counsel must have initiated settlement discussions prior to conference. Parties and Counsel are required to appear in person with full settlement authority to engage

		in settlement discussions. ( Signed by Judge Arlene R. Lindsay on 3/2/04.) c/g (Fagan, Linda) (Entered: 03/08/2004)
03/02/2004	11	MINUTE ENTRY: Case called for proceedings held before Arlene R. Lindsay : Initial Conference Hearing held on 3/2/2004. For plaintiff: Mr. Serby, For Defendant Ms. Clearwater. (Mierzejewski, Elizabeth) (Entered: 03/23/2004)
03/09/2004	10	LETTER MOTION dtd 3/8/04 from counsel for Plaintiffs to Judge Lindsay Regarding Request that the court modify the scheduling order to permit adding a claim for punitive damages to the complaint if and when information from the CPSC becomes available to allow such a claim to be made in good faith.. (Mierzejewski, Elizabeth) (Entered: 03/19/2004)
03/16/2004		ORDER denying the [10] Letter Motion to modify the scheduling order. As the deadline is closer and counsel is able to provide an estimate of any additional time needed the application may be renewed. . Signed by Judge Arlene R. Lindsay on 3/6/04. cmcm(Mierzejewski, Elizabeth) (Entered: 03/19/2004)
05/03/2004	<a href="#">12</a>	AMENDED COMPLAINT , <i>FIRST</i> against Robert Bosch Tool Corporation, filed by William T. Jaye, Barbara Verdonik.(Serby, Victor) (Entered: 05/03/2004)
06/01/2004	<a href="#">13</a>	ANSWER to Complaint <i>First Amended</i> by Robert Bosch Tool Corporation. (Clearwater, Susan) (Entered: 06/01/2004)
09/13/2004	<a href="#">14</a>	Letter from Richard H. Bakalor to Magistrate Judge Arlene Lindsay Regarding extension of discovery deadline. (Clearwater, Susan) (Entered: 09/13/2004)
09/14/2004		ORDER re <a href="#">14</a> : On consent, the application is granted. All discovery (fact & expert) shall be completed by October 29, 2004. Letter application for a pre-motion summary judgment conference to be submitted to the District Judge by November 8, 2004. The final conference before the undersigned is adjourned to November 22, 2004 at 10:30 a.m. The proposed joint pre-trial order shall be electronically filed prior to the final conference. So Ordered. Signed by Judge Arlene R. Lindsay on 9/14/04. (c/ecf)(Goodstein, Alyce) (Entered: 09/14/2004)
09/29/2004	<a href="#">15</a>	REQUEST for Admissions by William T. Jaye.(Serby, Victor) (Entered: 09/29/2004)
10/21/2004	<a href="#">16</a>	RESPONSE to Discovery Request from Robert Bosch Tool Corporation by Robert Bosch Tool Corporation.(Clearwater, Susan) (Entered: 10/21/2004)

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