

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY**

----- X  
LEE BORDELEAU; DANIEL BUCZEK; DEBBIE  
BUCZEK; ELEANOR M. CORCORAN; KENNETH  
SCHOLZ; MEL THOMPSON; DAPHNE THOMPSON;  
ROY SCHERRER; COHOCTON WIND WATCH LTD.;  
JOHN F. TUBRIDY; TIMOTHY JOLDOS; JACOB KERN  
JR.; MICHAEL KUZMA; DONALD A. PERRY;  
CHARLES SACKETT; CRYSTAL DEGENHART;  
DAVE BAILEY; GREG SWITALA; KENNETH P.  
WILLARD; CLIFF CARLSON; RICHARD NAYLON;  
BOB CONFER; DAVID MANTHIE; SONYA DUSZA;  
JEFFERY P. DANINGBURG; ROBERT SOMMERS;  
DONALD G. HOBEL; PAUL V. HURLEY; SANDRA L.  
MASTERSON; ANTHONY J. MANNA; GINNY ROBER;  
JAMES L. LESZYNSKI; DOUGLAS W. HALL;  
KATHLEEN F. TORRENCE; WAYNE D. CARLISLE;  
ROBERT OZZIMO; PAUL O'NEILL; ERIK O'NEILL; JIM  
BREM; PAULETTE PETERSON; STEVEN MATIASZ;  
RUS THOMPSON; JUL THOMPSON; BURR DEITZ;  
DAVE HAND; MICHAEL REBMANN; RAY ROBERTS;  
RICHARD A. COOPER; ANTHONY  
MATUSZAK; MIKE WALSH;

Plaintiffs,

- against -

The STATE OF NEW YORK; The NEW YORK STATE  
ASSEMBLY; The NEW YORK STATE SENATE;  
DAVID PATTERSON, individually and as Governor of the State of  
New York; DEAN SKELOS, individually and as Majority Leader  
and Temporary President of the New York State Senate; SHELDON  
SILVER, individually and as Speaker of the New York State  
Assembly; THOMAS P. DINAPOLI, individually and as Comptroller  
of the State of New York; AIDA BREWER, individually and as  
Treasurer of the State of New York; LAURA L. ANGLIN,  
individually and as Budget Director of the State of New York,  
ADVANCED MICRO DEVICES INC.; AMERICAN AXLE &  
MANUFACTURING, INC.; DELPHI HARRISON;  
INTERNATIONAL BUSINESS MACHINES CORPORATION;  
BASS PRO SHOPS OUTDOOR WORLD, LLC; WEST GENESEE  
HOTEL ASSOCIATES, d/b/a, Hyatt-Regency Buffalo;  
NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a Empire State Development Corporation;  
EMPIRE STATE DEVELOPMENT CORPORATION;  
ERIE CANAL HARBOR DEVELOPMENT CORPORATION;

Defendants.

Index No. 6582-08

**NOTICE OF  
MOTION TO DISMISS**

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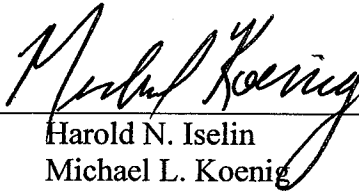
**PLEASE TAKE NOTICE** that upon the annexed affirmation of Michael L. Koenig, dated September 29, 2008, together with all exhibits annexed thereto, and the accompanying Memorandum of Law in Support of Defendant Advanced Micro Devices, Inc.'s ("AMD") Motion to Dismiss the Complaint, AMD, by its undersigned attorneys, shall move this Court at

the Supreme Court of the State of New York, Albany County, located at 16 Eagle Street, Albany, New York, 12207 on October 13, 2008 at 9:30 a.m. or as soon thereafter as counsel may be heard for an order dismissing the Complaint pursuant to CPLR § 3211(a)(3), on the basis that Plaintiffs are without legal capacity to sue, and CPLR § 3211 (a)(7), for failure to state a claim, and granting Defendant such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that, pursuant the briefing schedule agreed upon by the parties and ordered by the Court, answering papers, if any, shall be served on counsel for AMD by electronic and U.S. mail on October 6, 2008.

Dated: Albany, New York  
September 29, 2008

GREENBERG TRAURIG, LLP

By:   
\_\_\_\_\_  
Harold N. Iselin  
Michael L. Koenig  
Victoria P. Lane  
54 State Street  
Albany, New York 12207  
(518) 689-1400

*Attorneys for Defendant  
Advanced Micro Devices, Inc.*

TO: James Ostrowski, Esq.  
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The Capital  
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665 Main Street, Suite 300  
Buffalo, New York 14203

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY**

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RICHARD A. COOPER; ANTHONY  
MATUSZAK; MIKE WALSH;

Plaintiffs,

- against -

The STATE OF NEW YORK; The NEW YORK STATE  
ASSEMBLY; The NEW YORK STATE SENATE;  
DAVID PATTERSON, individually and as Governor of the State of  
New York; DEAN SKELOS, individually and as Majority Leader  
and Temporary President of the New York State Senate; SHELDON  
SILVER, individually and as Speaker of the New York State  
Assembly; THOMAS P. DINAPOLI, individually and as Comptroller  
of the State of New York; AIDA BREWER, individually and as  
Treasurer of the State of New York; LAURA L. ANGLIN,  
individually and as Budget Director of the State of New York,  
ADVANCED MICRO DEVICES INC.; AMERICAN AXLE &  
MANUFACTURING, INC.; DELPHI HARRISON;  
INTERNATIONAL BUSINESS MACHINES CORPORATION;  
BASS PRO SHOPS OUTDOOR WORLD, LLC; WEST GENESEE  
HOTEL ASSOCIATES, d/b/a, Hyatt-Regency Buffalo;  
NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a Empire State Development Corporation;  
EMPIRE STATE DEVELOPMENT CORPORATION;  
ERIE CANAL HARBOR DEVELOPMENT CORPORATION;

Defendants.

Index No. 6582-08

**AFFIRMATION IN OPPOSITION  
TO PLAINTIFFS' ORDER TO  
SHOW CAUSE AND IN  
SUPPORT OF DEFENDANT'S  
MOTION TO DISMISS THE  
COMPLAINT**

----- X

MICHAEL L. KOENIG, an attorney duly admitted to practice law before the courts of  
the State of New York, hereby affirms the following pursuant to CPLR § 2106 and subject to the  
penalties of perjury:

1. I am a partner with the law firm of Greenberg Traurig, LLP, counsel for Advanced Micro Devices, Inc. (“AMD”), defendant in the above-captioned matter. As such, I am fully familiar with the facts and circumstances surrounding this matter. I make this affirmation in opposition to Plaintiffs’ Order to Show Cause and in support of AMD’s Motion to Dismiss the Complaint pursuant to CPLR 3211(a)(1) and 3211(a)(7).

2. Plaintiffs initiated this lawsuit on August 4, 2008 by filing an Order to Show Cause, supported solely with a Verified Complaint, with the Supreme Court, Albany County. A true and correct copy of the Order to Show Cause and Verified Complaint is attached hereto as “Exhibit A.”


3. On August 4, 2008, the Honorable John E. Egan signed the Order to Show Cause, thereby ordering the Defendants to show cause before this Court on September 15, 2008 why an Order should not be made and entered granting the ultimate relief sought in the Verified Complaint.

4. The parties subsequently agreed to a revised return date of October 13, 2008 and further agreed to the following briefing schedule: Plaintiffs’ memorandum of law in support of their Order to Show Cause to be served (by electronic and U.S. mail) and filed on September 15, 2008; Defendants’ responsive papers to be served (by electronic and U.S. mail) and filed on September 29, 2008; and Plaintiffs’ reply papers, if any, to be served (by electronic and U.S. mail) and filed on October 6, 2008.

5. Plaintiffs served a Memorandum of Law in support of their Order to Show Cause on September 15, 2008.

6. No previous application for the relief herein prayed for has been made.

Dated: Albany, New York  
September 29, 2008



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Michael L. Koenig

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Exhibit A

At a Special Term of the New York State Supreme Court held in and for the County of Albany at the Courthouse, 16 Eagle Street Albany, New York, on the 4th day of August, 2007.

OFFICE OF ALBANY COUNTY COMBINED COURTS  
08 AUG -4 PM 12:46  
ALBANY, N.Y.

PRESENT: HON. JOHN C. EGAN, JR.

LEE BORDELEAU  
DANIEL BUCZEK  
DEBBIE BUCZEK  
ELEANOR M  
CORCORAN  
KENNETH SCHOLZ  
MEL THOMPSON  
DAPHNE THOMPSON  
ROY SCHERRER  
COHOCTON WIND  
WATCH LTD.  
JOHN F. TUBRIDY  
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BURR DEITZ  
DAVE HAND  
MICHAEL REBMANN  
RAY ROBERTS  
RICHARD A. COOPER  
ANTHONY MATUSZAK  
MIKE WALSH

*Plaintiffs,*

-against-

The STATE OF NEW YORK,  
The NEW YORK STATE ASSEMBLY,  
The NEW YORK STATE SENATE,  
DAVID PATTERSON, individually and as Governor of the State of New York,  
DEAN SKELOS, individually and as Majority Leader and Temporary President of the New York State Senate,  
SHELDON SILVER, individually and as Speaker of the New York State Assembly  
THOMAS P. DINAPOLI, individually and as Comptroller of the State of New York

Albany County Clerk  
Document Number 10241898  
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ORDER TO SHOW CAUSE

Index No. CS82-08

AIDA BREWER, individually and as Treasurer of the State of New York,  
LAURA L. ANGLIN, individually and as Budget Director of the State of New York,  
ADVANCED MICRO DEVICES INC.  
AMERICAN AXLE & MANUFACTURING, INC  
DELPHI HARRISON  
INTERNATIONAL BUSINESS MACHINES CORPORATION  
BASS PRO SHOPS OUTDOOR WORLD, LLC  
WEST GENESEE HOTEL ASSOCIATES, d/b/a, Hyatt-Regency Buffalo  
NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a Empire  
State Development Corporation  
EMPIRE STATE DEVELOPMENT CORPORATION  
ERIE CANAL HARBOR DEVELOPMENT CORPORATION,

*Defendants.*

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Upon the annexed verified complaint, duly verified the 4th day of August, 2008, and all the proceedings heretofore had herein, it is hereby

ORDERED that the Defendants show cause before this Court at Special Term Part — to be held at the Courthouse, 16 Eagle Street, Albany, New York, on the 15 day of ~~August~~, SEPTEMBER, 2008, at 9:30 a.m., or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein:

1. barring the state defendants from giving state funds to the private defendants or any other private corporation or undertaking similarly situated;
2. directing the return of funds previously transferred to private defendants pursuant to the current state budget or pursuant to action of any public defendant within the last four months, in violation of the state constitution, together with interest.
3. declaring that it is illegal for any state defendants to transfer state monies to private corporations unless explicitly authorized by one of the exceptions specified in Article VII.

4. awarding costs, disbursements and reasonable attorneys; and,
5. granting all such other, further, and/or alternative relief as the Court deems just and proper.

Sufficient cause appearing therefore, leave is hereby granted to the plaintiffs to submit upon the return day of this Order to Show Cause, and on any subsequent argument and hearing thereof, such additional affidavits, exhibits and other proof as may be necessary.

Sufficient cause appearing therefor, it is further

ORDERED that good and sufficient service shall be had herein by the service of a copy of this Order to Show Cause together with the Petition and supporting papers upon which it was granted upon defendants in the following manner:

1. Upon the STATE OF NEW YORK, the STATE ASSEMBLY, the STATE SENATE, DAVID PATTERSON, DEAN SKELOS, and SHELDON SILVER, by delivering six copies to the office of the Attorney General during regular business hours, and by Express Mail to Messrs. PATERSON, SKELOS, and SILVER at their principal Albany offices.
2. Upon THOMAS P. DINAPOLI, AIDA BREWER, and LAURA L. ANGLIN, by delivering a copy to their offices during regular business hours.
3. Upon the following corporations—

ADVANCED MICRO DEVICES INC.  
AMERICAN AXLE & MANUFACTURING, INC.  
INTERNATIONAL BUSINESS MACHINES CORPORATION  
BASS PRO SHOPS OUTDOOR WORLD, LLC.--

--by mailing a copy to their registered agents or registered address for service of process, or, if they do not have one, by mailing a copy by Express mail to their corporate presidents.

4. Upon DELPHI HARRISON, by Express Mail to the Chief Executive Officer,  
Delphi Harrison Thermal System, 200 Upper Mountain Rd  
Lockport, NY 14094

5. Upon NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a Empire State Development Corporation, and EMPIRE STATE DEVELOPMENT CORPORATION by delivering two copies to their office at 30 South Pearl Street, Albany, NY 12245 during business hours.
6. Upon ERIE CANAL HARBOR DEVELOPMENT CORPORATION, by Express Mail to 424 Main Street - Suite 717, Buffalo, NY 14202
7. Upon West Genesee Hotel Associates, d/b/a, Hyatt-Regency Buffalo, by service upon the Secretary of State.

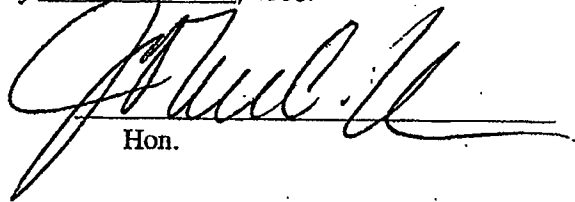
In each case, such service shall be made on or before August 9th, 2008.

Answering papers shall be served and filed by SEPT. 8, 2008.

Reply papers shall be served and filed by SEPT. 11, 2008.

DATED:

*ALBANY*  
Buffalo, New York  
August 4<sup>th</sup>, 2008.

  
Hon.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

**COPY ORIGINAL**

LEE BORDELEAU  
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DEBBIE BUCZEK  
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JUL THOMPSON  
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DAVE HAND  
MICHAEL REBMANN  
RAY ROBERTS  
MIKE WALSH

*Plaintiffs,*

Plaintiffs designate Albany  
County as the place of trial as  
the location of the offices of  
several defendants

**SUMMONS**

Index No. CS02-08  
Date purchased and  
summons filed: 8/4/08

-against-

The STATE OF NEW YORK,  
The NEW YORK STATE ASSEMBLY,  
The NEW YORK STATE SENATE,  
DAVID PATTERSON, individually and as Governor of the State of New York,  
DEAN SKELOS, individually and as Majority Leader and Temporary President of the  
New York State Senate,  
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AIDA BREWER, individually and as Treasurer of the State of New York,  
LAURA L. ANGLIN, individually and as Budget Director of the State of New York,  
ADVANCED MICRO DEVICES INC.

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WEST GENESEE HOTEL ASSOCIATES, d/b/a, Hyatt-Regency Buffalo  
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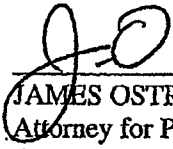
*Defendants.*

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*To the above named Defendants:*

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's Attorney within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Buffalo, New York  
August 4, 2007

  
\_\_\_\_\_  
JAMES OSTROWSKI  
Attorney for Plaintiffs  
63 Newport Ave.  
Buffalo, New York 14216  
(716) 435-8918