No. 123895 & No. 124002
(consolidated)

In the Supreme Court of Illinois

PNEUMO ABEX LLC and OWENS-ILLINOIS, INC.,	)	Appeal from the Appellate Court of Illinois, Fifth District
	)	Case No. 5-16-0239
Defendants-Appellants,	)	
	)	Circuit Court of Richland,
v.	)	County, Illinois
	)	Case No. 13-L-21
JOHN JONES and DEBORAH JONES,	)	
	)	Hon. William C. Hudson, Judge Presiding
Plaintiffs-Appellees.	)	

DEFENDANT-APPELLANT OWENS-ILLINOIS, INC.'S BRIEF

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

This is an asbestos case where it is undisputed that Owens-Illinois ("O-I") did *not* make or sell the products that caused the Plaintiffs' injuries. Rather, Plaintiffs seek to impose vicarious liability on O-I for asbestos products made and sold by others in the 1960s, years *after* O-I left that business, because of a purported industry-wide "conspiracy of silence" about the health risks of asbestos.

This Court held twenty years ago, based on virtually the same circumstantial evidence offered here (the absence of product warnings, allegedly inaccurate product descriptions, and business contacts with alleged conspirators), that no reasonable jury could find that O-I engaged in the alleged conspiracy. The Court directed that, on remand, judgment be entered in favor of O-I. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102 (1999).

McClure set out the legal requirements of civil conspiracy and defined the burden of proof the plaintiffs must carry. *Id.* at 133-42. The Court then methodically reviewed the purported evidence against O-I and the other alleged conspirators. It concluded that no reasonable jury could find clear and convincing evidence of the indispensable core requirement: a conspiratorial agreement.

> Plaintiffs' evidence of parallel conduct is insufficient to establish the agreement required by the civil conspiracy theory. When plaintiffs' evidence of contacts [among the alleged conspirators] is added to this parallel conduct, the evidence still cannot support the jury's determination that plaintiffs proved agreement by clear and convincing evidence…. Even when considered in the light most favorable to plaintiffs, evidence of these contacts was as consistent with innocence as with guilt. Plaintiffs showed the separate acts by the alleged conspirators, *but the evidence failed to show that these acts*

> *were connected by an agreement.* To conclude, based on the evidence of record, that defendants engaged in a conspiracy requires speculation. *Liability based on such speculation is contrary to tort principles in Illinois and to the clear and convincing standard of proof applicable in civil conspiracy cases.*

Id. at 151-52 (emphasis added; citations omitted). Simply put, this Court found that the plaintiffs' conspiracy claim against O-I failed as a matter of law.

Since the *McClure* decision, O-I has been granted summary on this endlessly recycled conspiracy claim over 100 times. It was not always so. At first, the lower courts permitted additional trials, but no plaintiff's verdicts against O-I survived the post-trial process. In more recent years, however, the trial courts have refused to conduct wasteful trials. They have instead granted summary judgment because the purported evidence of conspiracy, all of which goes back decades, was before the court at the summary judgment stage.

That is what occurred in the trial court here. The Fifth District, however, reversed, distinguishing *McClure* on an erroneous procedural ground. *McClure*, it reasoned, was decided in the *JNOV* context, so the trial court erred by applying *JNOV* authority at the summary judgment stage. *Jones v. Pneumo Abex LLC,* 2018 IL App (5th) 160239, ¶22.

The Fifth District did not dispute that the relevant evidence was before the court on summary judgment. It simply ignored this Court's directive that, when the evidence that is before the court would require the entry of a directed verdict, "summary judgment should be entered." *Fooden v. Bd. of Governors,* 48 Ill. 2d 580, 597 (1971). Instead, the Fifth District ruled that, even though the parties agreed

below that the Plaintiffs' purported evidence of conspiracy was fully before the court, the judgment-as-a-matter-of-law standard is different for summary judgment than for *JNOV*.

The Fifth District made no claim that the circumstantial evidence before it was meaningfully different from the evidence in *McClure* (it was not). It nowhere explained how the purely circumstantial evidence against O-I was not as consistent with innocence of conspiracy as with guilt (*McClure* held that it was); or how the alleged parallel conduct of O-I and its supposed co-conspirators – Owens Corning Fiberglas, Unarco, Johns-Manville and others – was connected by an unlawful agreement (*McClure* held that it was not); or how the evidence went beyond mere speculation and met the "clear and convincing evidence" standard applicable in this case (*McClure* held that it did not).

The Fifth District's rationale was simply that it was too early in the case to declare that the proffered evidence of conspiracy was legally insufficient. Instead, the court should call in jurors and, along with the parties, expend weeks and limited resources conducting yet another repetitive conspiracy trial. Only then, and only in the event of a plaintiffs' verdict, the Fifth District seems to suggest, would it be procedurally appropriate for the court to follow *McClure* and grant O- I judgment as a matter of law.

This was reversible error. It was contrary to the jurisprudence of this Court, both as to the applicable legal standards under *Fooden* and *McClure,* and the very

holding as to O-I in *McClure*. Those decisions were binding on the Fifth District and the doctrine of *stare decisis* counsels that they be followed.

The Fifth District's decision also violates sound public policy. It would require trial courts to conduct repetitive, wasteful trials and defendants to incur unnecessary transactions costs, and create the very risk of "expand[ing] the civil conspiracy theory 'beyond a rational or fair limit'" that *McClure* said must be avoided. 188 Ill. 2d at 142.

Plaintiffs' alleged conspiracy is based on conduct that is decades old and well known to this Court. The endless recycling of this discredited conspiracy claim must come to an end. The decision by the Fifth District below should be reversed.

ISSUES PRESENTED

1. Did the Appellate Court fail to follow and apply the analysis and holding in *McClure v. Owens Corning Fiberglas Corporation*, 188 Ill. 2d 102 (1999)?

2. Did the Appellate Court ignore important precedent concerning the summary judgment standard as set forth by this Court in *Cohen v. Chicago Park District*, 2017 IL 121800 and *Fooden v. Board of Governors*, 48 Ill. 2d 580, 587 (1971)?

JURISDICTION

On April 12, 2016, the Circuit Court of Richland County granted O-I's summary judgment on Counts 1-2 of Plaintiffs' Complaint alleging civil conspiracy. C.9193-9195 (attached at A060-062). After a Rule 304(a) finding, Plaintiffs appealed that decision and the Fifth District Court of Appeals reversed on August 10, 2018. (Attached at A001-011). On May 17, 2016, the Circuit Court

granted O-I summary judgment on Counts 3-6 of Plaintiffs' Complaint alleging exposure to an O-I asbestos-containing product. C.9216 (attached at A063). Plaintiffs did not appeal that decision. C.9215, 9217-18 (attached at A106, A107-08). O-I appeals from the judgment entered by the Fifth District.

On November 28, 2018, this Court granted O-I leave to appeal. This Court has jurisdiction pursuant to Illinois Supreme Court Rule 315(h). On December 18, 2018, the Court granted O-I an extension of time to February 1, 2019 to file its brief.

STATEMENT OF FACTS

A. The Facts Are Virtually Identical to *McClure.*

In the trial court, the Plaintiffs acknowledged that their "evidence in this case includes the same exhibits admitted in *McClure*." C.7258. This Court is therefore well acquainted with the facts at issue in this appeal.

O-I made and sold asbestos-containing insulation products only for a limited period over sixty years ago: "In 1948, Owens-Illinois began commercial production and distribution of Kaylo. . . . In 1958, Owens-Illinois sold the Kaylo division to Owens Corning [Fiberglas]. Owens Corning also purchased plants where Owens-Illinois had manufactured Kaylo, including its plant in Berlin, New Jersey." *McClure,* 188 Ill. 2d at 116; C.7737 at 2-19. Kaylo was a high-temperature hydrous calcium silicate insulation" that "included 15% to 22% asbestos." *McClure*, 188 Ill. 2d at 116; C.8918. Owens Corning Fiberglas Corp. ("OCF") was a separate corporation formed by O-I and Corning Glass in 1938. *McClure*, 188 Ill. 2d at 125; C.9127.

The Court is also well aware of the evolutionary development of scientific knowledge regarding possible asbestos health hazards during the last century, including the recognition that "in the 1940s and 1950s" there was a "threshold limit value for asbestos [that] was adopted by the American Conference of Governmental Industrial Hygienists and by many states" based on a United States Public Health Service study recommending "that dust levels be kept below this threshold in order to prevent asbestosis." *Id.* at 111.[1]

In *McClure*, as here, plaintiffs alleged that the "conspiracy defendants" made and/or sold asbestos-containing products or fiber, extolled their virtues, and failed to warn of associated hazards and how to avoid them. C.32-33 at ¶¶ 4-5, 19 (attached at A066-67). They allegedly belonged to the same trade and industry groups, some of which O-I was not a member. *See, e.g., McClure*, 188 Ill. 2d at 126-27; C.9074-76. Some owned each other's stock, and their Boards of Directors sometimes had common members. C.7262-64.

Just as in *McClure* (and every conspiracy case filed against O-I since), the alleged asbestos conspiracy here is not based on any direct evidence of conspiratorial agreement by O-I. *See, e.g., McClure,* 188 Ill. 2d at 143; *Gillenwater v. Honeywell Int'l, Inc.,* 2013 IL App (4th) 120929, at ¶81. Plaintiffs disclosed a

[1] In addition, the materials submitted by the Plaintiffs in the trial court here recounted that the only large-scale epidemiology study of insulation workers published before 1964 found that their asbestos dust exposures were generally below the threshold limit value and that such work was "not a dangerous occupation." C.7612, 7750.

"conspiracy" expert, Dr. Barry Castleman, to testify about "an agreement [by Defendants] to suppress and failure to disclose information about the health hazards of asbestos[.]" C.4554. Castleman, whose testimony was before the Court in *McClure*, 188 Ill. 2d at 150-51, readily admits that there is no evidence that O-I was involved in the decisions of *any other company* concerning whether to warn of asbestos-related health hazards, or that any other company was involved in O-I's decisions:

> Q. Are you aware, Dr. Castleman, of any documents or other evidence showing that any company ever solicited Owens-Illinois' view about whether or not they should put a warning label on asbestos-containing materials?
>
> A. No.
>
> Q. Did Owens-Illinois ever, to your knowledge, participate in any other company's decision about whether or not to put a warning on an asbestos-containing product?
>
> A. Not as far as I'm aware.
>
> Q. Did Owens-Illinois, to your knowledge, ever participate in any other company's decision about the content of any warning or caution about the health risks of asbestos?
>
> A. No. I mean, nobody was – the whole industry was getting away with not warning people during the period of the 1940s and the 1950s, *so I don't think the subject ever came up between companies.*

C.5615 at 145:24-146:24 (attached at A113) (emphasis added).

1. Independent Testing of Kaylo.

In *McClure,* this Court reviewed in detail the evidence offered here about the scientific study by an independent testing laboratory that O-I initiated in the 1940s – indisputably unilaterally, not as part of a group – concerning its Kaylo

product. 188 Ill. 2d at 116-17; C.7275-88. This evidence comprises communications between the researchers and O-I, first about initial reports of no effect in laboratory animals exposed to Kaylo dust at levels far in excess of the threshold limit value, followed by positive findings of asbestosis in some animals. *Id.* The laboratory stated that "Kaylo . . . is capable of producing asbestosis and should be handled as a hazardous dust" and that "every precaution should be taken to protect workers." *Id.* at 117.

Then, as now, there is no evidence in this record that O-I communicated with any competitor about whether to conduct this study or whether to publish the results. In fact, as noted by this Court in *McClure* – and contrary to the allegation that O-I agreed to suppress evidence of asbestos health hazards – the article was published in the open literature by its authors without prior review or editing by O-I. *Id.* O-I's industrial hygienist at the time testified, "We wanted Saranac to publish the results of their animal experiments. Well, finally they did it. So it's public knowledge. There is no secret about it." C.8658.

2. The 1953 Sales Agreement.

The Court is also aware that, in 1953, O-I entered into a "Sales Agreement" with OCF for specified amounts of Kaylo. *Id.* at 116; C.7291-310. The Sales Agreement addressed price, volume, quality and other standard commercial terms. C.7291-7310 (attached at A118-37). It made no reference whatsoever to asbestos, product warnings, or what O-I or OCF may, should or must say – or not say – about asbestos health risks. The only obligation the Sales Agreement

imposed on OCF concerning its communications about Kaylo was to note that O-I was the manufacturer of the product and to use O-I's trade mark, which is hardly surprising given that O-I retained the right to sell Kaylo to others and needed to protect its trade mark. C.7293-94 at ¶¶ 7, 9.

3. The Sale of the Kaylo Division in 1958.

The Court had before it in *McClure* the 1958 Agreement by which O-I sold the Kaylo Division to OCF – lock, stock and barrel. C.9050-58 (attached at A138-46). That Agreement contains commercial terms regarding price, the assets purchased, allocation of risks, and the parties' respective obligations. *Id*. It contains nothing whatsoever about possible asbestos health hazards, warning labels, precautions necessary for workers, or what either party could, should or would say – or not say – about possible hazards arising from the manufacture or use of Kaylo.

4. Alleged Failure to Warn.

The Court in *McClure* considered evidence, also presented here, about whether O-I put a warning label on its product (it did not) or made efforts to protect its own plant workers concerning asbestos health hazards (there was evidence that it did). 188 Ill. 2d at 144-45. As for the failure to put a warning label on Kaylo, Plaintiffs' own expert admits it was a unilateral act by O-I.

> Q: Any decision about whether to put a warning label on Kaylo, was Owens-Illinois acting on its own, right?
>
> A: Right.

C.8996.

O-I's industrial hygienist, Bill Hazard, testified that, in making this judgment, he relied on the threshold limit value as a "safe limit" of exposure to asbestos dust; a published study at the time reported that insulation workers were not generally exposed above the threshold limit value and were in a "safe" occupation; that the independent animal studies regarding Kaylo were conducted at exposure levels many times greater than the threshold limit value; and that there were no cases of asbestos disease found in O-I's Kaylo plant workers through 1958. C.8629-32.

The record in *McClure*, and here, included testimony from O-I's plant manager at its Berlin, New Jersey, Kaylo plant, "that Owens-Illinois did warn its employees that asbestos exposure could cause asbestosis." *Id.*; C.8755-60. In fact, he testified that any O-I Kaylo plant employee "had authority to shut down the operation if they could see dust coming out of these pick up hoods." C.8735. In *McClure*, the plaintiffs sought to counter this evidence with testimony from an OCF employee, Helser, (who never worked for O-I) who said that "former" O-I employees (who moved to OCF after its purchase of the Kaylo Division in 1958) did not communicate such warnings "to him." *Id.* at 145. Helser was not disclosed as a witness in this case, however, and Plaintiffs chose not to place his testimony in the record. *See* Pls.' Answers to Rule 213 Interrogatories; C.4538-58.

Plaintiffs did, however, disclose Barry Castleman as their expert here (as they did in *McClure*) and he has testified that O-I acted unilaterally with respect to this subject.

Q: Any decision about whether to tell employees of Owens-Illinois about the potential hazards of asbestos; it was Owens-Illinois acting on its own, right?

A: Right.

C.8996.

5. "Non-Toxic."

The Court is already aware from *McClure* that O-I characterized its Kaylo product as "non-toxic." 188 Ill. 2d at 117-18; C.7491. As the Plaintiffs' own expert witness has acknowledged in the record below, this characterization "appears first in a 1952 Owens-Illinois advertisement in Petroleum Engineer." C.5617 at 154:24-155:11 (attached at A115). In fact, it is a multi-page technical article, not an "advertisement," written by Director of Research for the Kaylo Division, E.C. Shuman, The Petroleum Engineer, "Hydrous Calcium Silicate Heat Insulation," April, 1952 at C-55 to C-62. C.9009. Plaintiffs' expert also admits that O-I's 1952 characterization of Kaylo as "non-toxic" was a unilateral act, having "originally been adopted by Owens-Illinois in promoting the product prior to the involvement of Owens Corning as the principal distributor." C.5617 at 154:24-155:21 (attached at A115) (referring to Shuman's article in The Petroleum Engineer). Plaintiffs' expert further admits that, even though OCF subsequently used the phrase "non-toxic" in its own Kaylo ad in 1956, there is no evidence "of any communication between O-I and Owens Corning" either about the reference to Kaylo as "non-toxic" or about advertising Kaylo generally. *Id.* at 156:9-14.

The Court can take judicial notice of the fact that the United States Environmental Protection Agency has stated unequivocally, "Prior to 1970, asbestos was considered non-toxic and used for fire-proofing and to insulate homes, office buildings, and schools." U.S. Envtl. Prot. Agency, Solid Waste and Emergency Response Report No. EPA 520-F-94-014, Superfund at Work: Hazardous Waste Cleanup Efforts Nationwide at 6 (1994), *available at* https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000DXGY.PDF (attached at A152).[2] This characterization comports with the usage of the term "non-toxic" in the published scientific literature throughout the relevant period. E. R. A. Merewether, Industrial Medicine and Hygiene at 7 (Volume 3 1956) ("Non-toxic inorganic dusts – the common mineral dusts: silica in various forms, asbestos, coal, graphite, talc and others") (attached at A153-54); Peter A. Theodos, *Asbestosis: Report of the Section on Nature and Prevalence Committee on Occupational Diseases of the Chest, American College of Chest Physicians*, 45 Diseases of the Chest, 107, 108 (1964) ("Asbestos is not currently considered a toxic substance since it does not produce systemic poisoning.") (attached at A155-60).

The Court also noted in *McClure* what it called "conflicting evidence . . . as to the meaning of 'toxic' and the applicability of this term to asbestos." 188 Ill. 2d

[2] The Court may take judicial notice of the EPA website. *See, e.g., People v. Mata,* 217 Ill. 2d 535, 539-40 (2005) (court may take judicial notice of matters that are readily verifiable from sources of indisputable accuracy); *Denius v. Dunlap*, 330 F.3d 919, 926-27 (7th Cir. 2003) (courts should take judicial notice of information on government websites).

at 118. The Court had before it a trial court decision on that point from the Circuit Court of the Eleventh Judicial Circuit, County of McLean, in *Debolt v. Raymark Industries, Inc. and Owens Corning Fiberglas Corporation*, No. 87 L 305 (Ill. Cir. Ct. Oct. 9, 1998) ("The most common synonym for the word 'toxic' is 'poisonous.' Only in a most strained sense can asbestos fibers themselves be considered toxic. . . . [T]he statement that Kaylo itself is non-toxic was not untruthful and does nothing to evidence that OCF conspired with other asbestos companies in printing that statement in its brochure.") (attached at A161-72). For a contrary interpretation of "non-toxic" as it applied to asbestos, Plaintiffs relied in *McClure*, as here, on a hearsay statement made in 1995, in a proceeding in which O-I was not a party, by an individual employed by OCF (never by O-I) starting in 1968. C.7328-7339.

6. Sharing Published Scientific Literature.

The Court knows from *McClure* that in 1941 – years *before* O-I began its efforts to develop the Kaylo product – O-I's industrial hygienist allowed OCF (who then made fiberglass products) to borrow two published articles concerning the potential health effects of asbestos and how to control them, which OCF returned to O-I. *McClure,* 188 Ill. 2d at 125. As Plaintiffs' expert's admissions above attest, Plaintiffs offer no evidence that links O-I to OCF's intended use of the information, let alone establishes that O-I agreed to such use.

7. Evidence of Actual Agreement.

It is also noteworthy the plaintiffs did *not* place in the record in *McClure,* or in this case, evidence establishing the date of the supposed agreement by O-I a) not to issue product warnings or b) to suppress information about asbestos hazards. Nor have Plaintiffs identified who at O-I supposedly made this agreement, with whom he or she agreed, or how the agreement was supposedly communicated and acknowledged.

B. Plaintiffs' "New" Evidence.

Plaintiffs offered evidence below that was not in the *McClure* record but is of the same type as evidence specifically considered in *McClure*:

- Prior to 1949, O-I and OCF had common Board members. C.7262-64;
- Former O-I chemist and research director testified that O-I bought asbestos fiber from six different sources, including Johns-Manville and UNARCO. C.7741;
- Greater quantification of the dates and amounts of O-I's ownership interest in OCF than was in *McClure*;
- An accusation that O-I supplied cardboard boxes to OCF that were said to ship Kaylo in the 1960s;
- Hearsay statements by an OCF lawyer in an arbitration against O-I;
- An antitrust lawsuit filed by O-I in the 1990s;
- 2003 testimony of O-I's then CEO, Joseph Lemieux about his recollection of O-I's asbestos control program decades earlier.

The Fifth District cited only to the first two points in its opinion, but none of the "new" evidence even purports to demonstrate a conspiratorial agreement between O-I and OCF or any other company. *See Jones*, 2018 IL App (5th) 160239, ¶17.

1. Stock Ownership and Overlapping Boards

With regard to stock ownership and overlapping board members, there is no evidence of control of OCF by O-I. Its interest never exceeded 50% and it never nominated a majority of OCF's board. It is undisputed that shared directors ended by 1949. C.7394-95. There is no evidence that either the O-I Board or the OCF Board discussed Kaylo product warnings or asbestos health effects, let alone evidence that the common directors played any role related to those topics.

2. No Record Evidence of Cardboard Box Sales

With regard to the cardboard boxes, it was argued below that the boxes – presumably made pursuant to OCF's specifications – did not bear a printed warning of asbestos hazards. Neither the Fifth District nor the Plaintiffs cited any record evidence for the assertion that O-I made boxes for OCF. We can find no such evidence in the record on appeal in this case.

3. Arbitration Proceedings

The Plaintiffs also presented post-1958 evidence below (not cited by the Fifth District) concerning hearsay allegations and attorney arguments made in an arbitration proceeding between OCF and O-I in the 1990s concerning disputed indemnification obligations. C.7685-88. None of this "evidence" discloses, refers

to or establishes an agreement between O-I and OCF to suppress health information about asbestos.

4. O-I's Lawsuit Against T & N

Plaintiffs presented evidence (not cited by the Fifth District) that O-I filed a lawsuit in 1999 alleging it was the *victim* of a price-fixing conspiracy by fiber suppliers, pursuant to which those fiber suppliers falsely represented their actual experience with asbestos disease among their own contract insulation workers in order to protect the price of raw asbestos fiber. C.7605-39. OCF was not a defendant. None of this "evidence" states that, or purports to explain how, O-I agreed to conspire against itself.

5. O-I's OSHA Compliance in the 1970s

Finally, the Plaintiffs presented testimony given in 2003 by O-I's then-CEO, Joseph Lemieux (again not cited by the Fifth District) about his experiences in O-I's glass plants – *not* in O-I's Kaylo Division, as he never worked there. C.7824 at 132:4-10. In fact, Mr. Lemieux first learned in the 1980s that O-I once had a Kaylo Division. C.7824-25 at 132:24-133:2. He expressly disavowed any knowledge of a conspiratorial agreement involving O-I, as alleged in this case. C.7825 at 133:3-22.

The Plaintiffs nonetheless cited Mr. Lemieux's testimony that, in the 1970s while working in the Glass Container Division of O-I, he took steps to speed up compliance with then-new OSHA regulations concerning the presence of asbestos in the workplace. C.7814 at 90:7-14. O-I's 1974 Asbestos Control Program is in the

record and is indisputably a unilateral company policy designed to comply with, not subvert, OSHA regulations. C.7875-83.

Plaintiffs noted Mr. Lemiuex's inability to remember, as he sat for a deposition in 2003, seeing warning signs of asbestos hazards in two particular O-I glass plants prior to the 1970s. Pls.' Br. to the 5th Dist. at 21 (attached a A173-227); Testimony at C.7798 at 25:19-24. Mr. Lemiuex attested that between 1957 and 1972, he saw "signs and bulletins . . . indicating the presence of potentially hazardous substances within" O-I's glass plants, but that he could "not recall specifically the content or wording of any such sign or bulletin from between 20 and 45 years ago, [or] what specific substance was mentioned." C.7853

The Plaintiffs point to no evidence whatsoever that Mr. Lemiuex did or did not do anything concerning asbestos in the glass plants pursuant to an agreement with any other company, let alone OCF, to suppress information about asbestos health effects.

THE TRIAL COURT'S DECISION

The Richland County Circuit Court granted O-I summary judgment on Plaintiffs' conspiracy claim. C.9193-95 (attached at A060-62). Judge Hudson relied upon this Court's definitive ruling in *McClure* as well as the Fourth District's decision in *Gillenwater*. The Court noted that both counsel for Plaintiffs and O-I represented that the record here was identical the same as that in *Gillenwater* with regard to the agreement element of Plaintiffs' conspiracy claim. C.9194 (attached at A061).

The Circuit Court properly applied the clear and convincing standard to the evidence Plaintiffs proffered to show agreement. The Court wrote: "If a civil conspiracy is shown by circumstantial evidence, however, that evidence must be clear and convincing." C.9194 (attached at A061). Negligence allegations against scores of exposure defendants remain pending in Richland County.

THE FIFTH DISTRICT'S DECISION

In its opinion reversing the Richland County trial court, the Fifth District pointed to several "examples" of what it called the "numerous" genuine issues of material fact:

(i) Whether O-I sold Kaylo without a warning;

(ii) Whether O-I had reason to believe Kaylo was capable of causing asbestosis;

(iii) Whether O-I participated in the forming of OCF;

(iv) Whether, in 1953, O-I contracted to sell Kaylo to OCF;

(v) Whether O-I provided "warning free packaging for Kaylo until the late 1960s";

(vi) Whether OCF used the phrase "non-toxic" in Kaylo marketing material that identified O-I as the manufacturer; and

(vii) Whether O-I "remained close" to OCF after 1958 through stock ownership, discussions at board meetings or other activity.

Jones, 2018 IL App. (5th) 150239 at ¶17.

The Fifth District did not acknowledge that the vast majority of this purported evidence was before this Court in *McClure*. Nor did it explain how this evidence proves the agreement required by civil conspiracy law under the parallel

conduct rule, the innocent construction rule, and the clear and convincing evidence standard. The Fifth District made no effort to reconcile its call for a trial in this case with the *McClure* Court's order that judgment for O-I be entered on remand because no reasonable jury could find the requisite agreement based on this evidence. 188 Ill. 2d at 147.

The Fifth District criticized Judge Hudson's adherence to the holdings in *Rodarmel,* 2011 IL App (4th) 100463, and *Gillenwater,* 2013 IL App (4th) 120929, which, of course, were binding on the trial court. It was, the Fifth District stated, a "fatal flaw" to rely on cases decided at the *JNOV* stage when deciding a summary judgment motion. *Jones,* 2018 IL App. (5th) 160239, at ¶19. The legal standard applicable to a motion for *JNOV* is "different" than black letter summary judgment law, according to the Fifth District, and to consider *JNOV* cases at summary judgment stage "stands the concept of summary judgment on its head and results in our appellate court, in effect, trying the case." *Id.* at ¶23.

Most importantly, the Fifth District did not dispute that the complete factual record was before it and it did not cite or otherwise discuss this Court's ruling in *Fooden,* 48 Ill. 2d at 587 ("[I]f what is contained in the pleadings and affidavits would have constituted all of the evidence before the court and upon such evidence there would be nothing left to go to a jury, and the court would be required to direct a verdict, then summary judgment should be entered.").

STANDARD OF REVIEW

The reversal of the summary judgment granted to O-I by the Circuit Court is subject to *de novo* review. *Cohen v. Chicago Park District,* 2017 IL 121800, ¶17.

ARGUMENT

Based on evidence indistinguishable from the evidence here, this Court held in *McClure* that no reasonable jury could find clear and convincing evidence that O-I conspired to suppress information about the health effects of asbestos. That holding was the basis for a remand order, not for a new trial, but rather *that judgment be entered for O-I as a matter of law.* 188 Ill. 2d at 154. O-I has since received summary judgment on the "asbestos conspiracy" claim from Illinois courts more than 100 times. *See* Circuit Court Orders and Opinions (attached at A228–390).

The Fifth District refused to affirm summary judgment for O-I in this case based upon a non-existent distinction between the summary judgment standard and the standard for *JNOV* where, as here, the purported evidence of conspiracy is before the court. It did not even cite, let alone distinguish, this Court's holding in *Fooden* that, where the factual record is complete, both motions dictate the same result. 48 Ill. 2d at 587.

According to the Fifth District, the lower courts must compel O-I to go to trial based on the very evidence rejected in *McClure* and may only enter judgment in favor of O-I, as a matter of law, if a verdict is returned against O-I after significant judicial and party resources are expended. The Fifth District was wrong, both as a matter of Illinois law and of sound public policy.

This fundamental error concerning the legal standard to be applied where, as here, the evidence upon which the Plaintiffs rely is before the Court, should be corrected and, once corrected, end this case as to O-I. *McClure* decided plaintiffs' conspiracy claim against O-I failed on the merits as a matter of law. To the extent that the Plaintiffs in this case purported to offer something "new" concerning conduct that is more than six decades old, it is of the same type that this Court has already ruled insufficient as a matter of law to prove civil conspiracy by clear and convincing evidence.

I. ***STARE DECISIS* REQUIRES REVERSAL.**

The doctrine of *stare decisis* is a bedrock principle of American jurisprudence. It "is the means by which courts ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *Chi. Bar Ass'n v. Ill. State Bd. of Elections,* 161 Ill. 2d 502, 510 (1994). "*Stare decisis* enables both the people and the bar of this state 'to rely upon [this court's] decisions with assurance that they will not be lightly overruled.'" *Vitro v. Mihelcic,* 209 Ill. 2d 76, 82 (2004) (quoting *Moehle v. Chrysler Motors Corp.*, 93 Ill. 2d 299, 304 (1982)). "[W]hen a rule of law has once been settled . . . such rule ought to be followed[.]" *Maki v. Frelk,* 40 Ill. 2d 193, 196 (1968).

The Fifth District simply ignored this Court's ruling in *Fooden* that, in circumstances like those presented here, the standards for summary judgment and *JNOV* are the same and dictate the same result. Indeed, this Court relied upon summary judgment rulings, not just rulings on motions for *JNOV*, when

articulating the relevant legal standards in *McClure.* 188 Ill. 2d at 137-39 (citing *In re Asbestos School Litigation,* 46 F.3d 1284, 1292 (3d Cir. 1994); *Burnside v. Abbott Laboratories,* 351 P. Super. 264, 280 (1985); *Collins v. Eli Lilly Co.,* 116 Wis. 2d 166, 188 (1984)).

The Fifth District acknowledged that civil conspiracy based only on circumstantial evidence must be proven by clear and convincing evidence ("Evidence of parallel conduct alone is insufficient to establish a civil conspiracy by clear and convincing evidence."), *Jones,* at ¶11, but ignored the holding of *McClure* that the innocent construction rule prohibits a conspiracy finding based on circumstantial evidence as consistent with non-conspiratorial behavior as with conspiratorial agreement.

In *McClure,* the Court held that parallel conduct alone is insufficient *as a matter of law* to prove agreement in civil conspiracy. 188 Ill. 2d at 135. The Fifth District expressly relied upon parallel conduct (e.g., O-I's failure to put warning labels on its Kaylo product at a time when no company placed warnings on such products; O-I and OCF both characterizing Kaylo as "non-toxic" at different points in time) to justify denying O-I's summary judgment motion.

McClure held that the very additional evidence beyond parallel conduct offered here (e.g., the 1953 Sales Agreement with OCF; stock ownership) is insufficient to support conspiracy liability. *Id.* at 150-51. The Fifth District cited that evidence to *support* its refusal to grant O-I judgment as a matter of law.

McClure examined the additional conduct of all the alleged co-conspirators in granular detail, including "evidence of the relationship between Owens Corning and Owens-Illinois," and held, "[a]t most, these facts are as consistent with innocent as with guilty conduct. Thus, they do not support a finding by the jury that there was clear and convincing evidence of an agreement. *See Tribune Co.*, 342 Ill. at 529, 174 N.E. 561; *Regan,* 220 Ill. App. 3d at 1091-91, 163 Ill. Dec. 605, 581 N.E.2d 759." 188 Ill. 2d at 147.

The Fifth District had no discretion to ignore Illinois Supreme Court authority. The rulings of this Court are binding on all lower courts in this state. *People v. Artis,* 232 Ill. 2d 156, 164 (2009). There is no basis for disregarding *Fooden* or undermining *McClure's* continuing viability in stating the law of Illinois on civil conspiracy.

II. THE FIFTH DISTRICT'S RULING DISREGARDS A SETTLED BODY OF LAW IN THE LOWER COURTS THAT FOLLOWS *MCCLURE.*

As the chart below demonstrates, *McClure* has been cited and followed nearly 300 times in the last twenty years:

Jurisdiction	Location	Number of opinions
State Courts		**170**
	Illinois	167
	Illinois Supreme Court	7
	1st District	72
	2d District	14
	3d District	6
	4th District	18
	5th District	18
	Trial Court Orders	31
	Iowa (Supreme Court)	1
	Maryland (Appellate Court)	1
	North Carolina (Appellate Court)	1
Federal		**123**
Court of Appeals		4
	Seventh Circuit	4
Federal District Courts		117
	N.D. Ill.	89
	C.D. Ill.	5
	S.D. Ill.	12
	D. Mass	1
	S.D.N.Y.	2
	N.D. Ohio	1
	E.D. Pa.	3
	W.D. Tenn.	1
	N.D. Tex.	2
Bankruptcy Courts		**2**
	N.D. Ill.	2

More specifically, Owens-Illinois has, based on *McClure*, obtained over 100 consecutive summary judgments in Illinois trial courts on the question whether it conspired to misrepresent or suppress information about the health hazards of asbestos. These 100-plus judgments include the one entered below in Richland

County and others from Adams, Macon, Mason, McLean, Morgan, Tazewell, and Winnebago Counties. *See* Circuit Court Orders and Opinions (attached at A180-342). The Circuit Court Orders are proper materials for judicial notice. *Koshi v. Trame*, 2017 IL App. (5th) 150398, ¶10 (citing Ill. R. Evid. 201(b)).

The Federal District Court presiding over the national multi-district litigation for asbestos also considered the same evidence and arguments presented by the Plaintiffs here and, adhering to the holding in *McClure*, granted summary judgment to Owens-Illinois on the conspiracy claim. *Ellis v. Pneumo Abex,* MDL No. 875, 2013 WL 1099016 (E.D. Pa. Jan. 3, 2013) (attached at A439-50).

It took years to establish this pattern. In the first cases considered after the issuance of the *McClure* opinion, Plaintiffs' counsel persuaded trial courts that *McClure* did not apply to defendants not specifically mentioned (like Honeywell) and, in any event, only dictated action on a motion for *JNOV*. The denial of summary judgment did not generate appealable orders, so the defendants were required to try these cases before obtaining relief post-verdict.

The Fourth District issued judgment notwithstanding verdict rulings repeatedly. *See Rodarmel v. Pneumo Abex*, 2011 IL App (4th) 100463; *Menssen v. Honeywell Int'l, Inc.*, 2012 IL App (4th) 100904; *Gillenwater v. Honeywell Int'l, Inc.*, 2013 IL App (4th) 120929. Only then did the trial courts begin heeding the dictates of *McClure* and *Fooden,* granting the defendants' motions for summary judgment – including the motions of O-I. This permitted, for the first time, appeals in this procedural posture. This Court has denied petitions for leave to appeal trial court

rulings granting O-I summary judgment. *See, e.g., Johnson v. Pneumo Abex, LLC,* No. 123820 (September 2018 term); *Garrelts v. Honeywell Int'l, Inc.,* No. 117078 (March 2014 term).[3]

With the exception of *Burgess v. Abex Corp.*, 311 Ill. App. 3d 900 (4th Dist. 2000), and *Dukes v. Pneumo Abex Corp.*, 386 Ill. App. 3d 425 (4th Dist. 2008), which were both repudiated by the Fourth District in *Rodarmel,* no Illinois asbestos conspiracy case of which we are aware has survived a motion for judgment as a matter of law since *McClure* – until the Fifth District's decision below.

III. THIS COURT HAS ALREADY CONCLUSIVELY DECIDED, ON INDISTINGUISHABLE EVIDENCE, THAT NO REASONABLE JURY COULD FIND THAT OWENS-ILLINOIS CONSPIRED.

A. Plaintiffs' Allegations Are the Same as in *McClure.*

The allegations leveled against O-I below are, for all practical purposes, the same as those leveled against O-I in *McClure* over twenty years ago, and in every asbestos conspiracy case brought by this plaintiffs' firm since. In *McClure,* plaintiffs alleged that Owens-Illinois conspired with OCF, Unarco, Johns-Manville, and other companies to "positively assert in a manner not warranted by the information possessed by the conspirators, that * * * it was safe for people to work with and in close proximity to asbestos and asbestos containing materials"

[3] The appellate court rulings were issued as Rule 23 decisions and are therefore not discussed here. Under Illinois Supreme Court Rule 23, rulings that do not "establish[] a new rule of law or modif[y], explain[ ] or criticize[ ] an existing rule of law," or otherwise address "an apparent conflict of authority" need not be published. Ill. Sup. Ct. R. 23(a).

and to "suppress information about the harmful effects of asbestos * * * causing asbestos workers to be and to remain ignorant of that information." 188 Ill. 2d at 108-09. In furtherance of this alleged conspiracy, the conspirators, *inter alia,* sold asbestos products without warning of their adverse health effects, allegedly refused to warn their own employees about these hazards, and supposedly altered and suppressed information concerning these hazards. *Id.*

That is precisely what O-I is alleged to have done here. *See* C.33-34 at ¶20 ("One or more of the Conspirators performed the following overt acts in furtherance of the conspiracy: a) sold products . . . without warning of the hazards known to the seller . . . ; b) refused to warn its own employees about the hazards of asbestos known to it . . . ; c) edited and altered the reports and drafts of publications . . . concerning the hazards of asbestos[.]") (attached at A067-68).

B. Plaintiffs Rely on the Same Evidence Presented in *McClure.*

Plaintiffs' proffered evidence on the question of agreement is not meaningfully different than that plaintiffs offered in *McClure*. This Court has already analyzed the evidence concerning the historical development of knowledge concerning asbestos hazards; the perceived safe level of exposure in the 1940s and 1950s; the relationship between O-I and OCF (including stock ownership, the 1953 Sales Agreement, and the 1958 Agreement transferring complete ownership of the Kaylo Division to OCF); O-I's allowing OCF to borrow two published scientific articles in 1941; the unilateral characterization of Kaylo by O-I as "non-toxic" in a 1952 technical article and the later use of the phrase by OCF

in a 1956 ad; and the information provided by O-I and OCF to their respective employees about potential health hazards of asbestos.[4]

McClure held that none of this evidence satisfies the parallel conduct rule, the innocent construction rule, or the application of the clear and convincing evidence standard. The conduct was found to be either unilateral or as consistent with normal business behavior as with conspiratorial misconduct.

To hold otherwise, as did the Fifth District below, means that a seller/buyer relationship, memorialized in an agreement that nowhere provides for agreed limits on what can or cannot be said about the health effects of the product, is clear and convincing evidence of a health-effects conspiracy. So is evidence of merely holding stock in another company. Or sharing copies of *published* information.

The Fifth District concluded that using the term "non-toxic" in a manner that is consistent with how it was understood by the U.S. Environmental Protection Agency and the American College of Chest Physicians is clear and convincing evidence of a conspiracy. If so, that conspiratorial inference extends to the highest reaches of government and the medical profession.

The issue in this case is *not* whether the "non-toxic" characterization was wrong, or even negligently so. "Accidental, inadvertent, or negligent participation

[4] In *McClure*, plaintiffs called a former OCF employee, Helser, to testify that former O-I employees did not tell him about potential hazards of asbestos when they worked together at OCF. Plaintiffs did *not* offer Helser's testimony in opposition to O-I's motion below and have not disclosed Helser as a witness in this case.

in a common scheme does not amount to conspiracy." *McClure,* 188 Ill. 2d at 133-34; *see also, Menssen,* 2012 IL App (4th) 100904, at ¶12 ("The agreement must be knowingly and intentionally made.").

Rather, the issue here is whether describing a product in a manner that comports with contemporary common usage is at least as consistent with normal business judgment as with conspiratorial conduct. O-I made this characterization in 1952 and even Plaintiffs' expert admits it did so unilaterally.

The innocent construction for O-I's failure to put a warning label on Kaylo was provided in the sworn testimony of its industrial hygienist in the 1940s and 1950s, who explained that he unilaterally concluded that end-users of Kaylo were not exposed to asbestos dust above the then-recognized safe level and were not considered to be in danger. C.88529-32. O-I had no asbestos disease in its plant workers and the animal studies regarding Kaylo were conducted at exposure levels many times greater than the threshold limit value for asbestos dust. *Id.* A published study reported that thermal insulation workers in the field were not in a dangerous occupation. *Id*. Hazard's reliance on this information is as consistent with innocent unilateral business judgment as with conspiratorial conduct, and therefore it is *not* clear and convincing evidence of conspiracy under *McClure*.

C. The Types of Evidence Found Insufficient in *McClure.*

McClure not only held that the foregoing evidence was insufficient as a matter of law, it held that other evidence of this same type offered against O-I's co-defendants failed to meet the clear and convincing evidence standard. For

example, evidence that OCF and Johns-Manville were both involved in drafting an allegedly misleading trade association pamphlet about asbestos was legally insufficient. 188 Ill. 2d at 149-50 ("[T]here is no evidence indicating to what extent these companies controlled the content of the pamphlet. To conclude that the content of the pamphlet demonstrates an agreement between these companies, therefore, is unreasonable.").

McClure also held that evidence OCF bought the asbestos manufacturing plant of alleged co-conspirator Unarco and included an indemnification provision concerning possible asbestos-related personal injury claims in the contract was legally insufficient to prove conspiracy. *Id.* at 150 ("The clause does nothing more than identify each parties' [sic] responsibilities with respect to . . . litigation, such as their obligations to pay judgments and to share relevant documents. There is no evidence that Owens Corning's purchase of the Bloomington plant was anything other than an arm's-length transaction between competitors.").

McClure stands for the entirely unremarkable proposition that communications between competitors concerning information relevant to their industry is normal business practice and *not* evidence – let alone clear and convincing evidence – of conspiracy:

> Plaintiff showed that Owens-Illinois lent Owens Corning two published articles about the health effects of asbestos, that Owens Corning received information from Johns-Manville about its labeling decision, that Owens Corning sought information from other asbestos product manufacturers about their responses to the Califano announcement, and that asbestos product manufacturers held meetings in 1979 and

> 1983 to discuss litigation strategy, bankruptcy, insurance and the impact of the Califano announcement. The mere exchange of information by manufacturers of the same or similar products is a common practice, however, and does not support an inference of an agreement.

Id. at 147 (citations omitted).

D. Plaintiffs' "New" Evidence of Decades Old Conduct Adds Nothing.

1. Evidence Cited by Fifth District

To the extent that the Plaintiffs here offered additional evidence beyond that in *McClure*, it was of the same type as presented in *McClure,* either against O-I or the other alleged conspirators. The Fifth District mentioned only two examples.

First, the evidence of O-I's minority stock ownership in OCF the Fifth District cited was actually not new, but it was more specific as to the time of ownership than in *McClure* and provided more quantification. *McClure* held that OCF's purchase of Unarco's Bloomington asbestos products plant is not clear and convincing evidence of conspiratorial agreement. 188 Ill. 2d at 150. The Fifth District nowhere explains why that ruling does not foreclose the notion that just buying stock in another company satisfies the clear and convincing evidence standard, let alone how such an inference of conspiracy could rationally be made after 1958, when O-I sold its Kaylo division to OCF.

Second, the Fifth District cited the purported sale of cardboard boxes by O-I to OCF as evidence of a conspiracy to suppress the health effects of asbestos because OCF's print specifications supposedly did not include a warning. *Jones,* at ¶17. As noted above, O-I can find no such evidence in this record, and it is

difficult to reconcile with evidence cited in *McClure* that OCF put a warning on Kaylo in 1966. 188 Ill. 2d at 121.

Even if there were such evidence of post-1958 "box-making" in this record, however, it would be insufficient as a matter of law to prove conspiracy. The inference Plaintiffs seek violates the innocent construction rule. Plaintiffs have offered no evidence that O-I had any control over what OCF specified be printed on its cardboard boxes. Under *McClure,* mere knowledge of another's activity does not establish conspiratorial agreement. *Id.* at 150.

2. Evidence in the Record But Not Cited by Fifth District.

The evidence offered by Plaintiffs below concerning where O-I sourced the asbestos fibers used in making Kaylo, the arbitrated dispute between OCF and O-I in the 1990s, and the efforts in the 1970s by O-I to comply with changing OSHA regulations concerning asbestos in its glass plants did not even bear mention by the Fifth District, and for good reason.

As a matter of law and common sense, purchasing raw materials from multiple suppliers and brokers is quintessential unilateral business conduct protected by the innocent construction rule. *See Rodarmel,* 2011 IL App (4th) 100463, at ¶107 ("Buying asbestos from Johns-Manville cannot logically serve as evidence in addition to the parallel conduct, because buying asbestos already is presupposed in the parallel conduct."); *United States v. Townsend,* 924 F.2d 1385, 1394 (7th Cir. 1991) ("evidence of a buyer-seller relationship, standing alone, is insufficient to support a conspiracy"); *United States v. Kimmons,* 917 F.2d 1011, 1016

(7th Cir. 1990) ("The relationship of buyer and seller absent any prior or contemporaneous understanding beyond the mere sales agreement does not prove conspiracy.") (citations omitted).

The gist of OCF's claim in arbitration was for contractual indemnification. C.7383-7391; *see also* C.5564-79 ("The documents of the arbitration between O-I and Owens Corning … over indemnification for asbestos claims actually supports the notion that these two companies treated each other at arm's length and supports Defendant's contention of no conspiracy.") (Drummond, J.) (attached at A419). That a lawyer for OCF (not O-I) argued that "familial feelings" explained a decades-long delay in asserting OCF's claim is hardly competent evidence of an agreement to suppress information about asbestos.

Similarly, the evidence that, with respect to its glass plants, O-I struggled to *comply* with an evolving regulatory scheme imposed by OSHA in the 1970s is not clear and convincing evidence of an agreement to *suppress* information about potential health hazards. There was no evidence given by Mr. Lemieux that O-I acted, or failed to act, pursuant to an agreement with others. In fact, he expressly denied the conspiratorial activity alleged here. C.7825 at 133:3-22. O-I's asbestos control program in the 1970s is in the record and belies a claim that it was anything other than a unilateral act designed to protect workers through OSHA compliance. C.7878-7902.

In *Menssen,* the Appellate Court has expressly considered "documents dated after implementation of OSHA that showed Bendix's policies and procedure

to implement the new standards" as well as evidence of an anticipated OSHA citation. 2012 IL App (4th) 100904, at ¶32. The Appellate Court held that this evidence did not "clearly and convincingly show[] a conspiratorial agreement among corporations in the asbestos industry." *Id.* at ¶33.

Evidence that O-I and OCF shared some common Directors prior to 1949 (C.7394-95) is also legally insufficient. Here, as in *Rodarmel*, at ¶117, "The record appears to contain no evidence of the extent to which the shared director actually controlled the decision making–including decisions on what to say to the public about asbestos. Implying a conspiratorial agreement from a shared director would be speculation[.]" (citations omitted). Mr. Jones's asbestos exposure did not even begin until the 1960s.

It defies common sense to suggest that filing a complaint against T&N alleging that O-I was the *victim* of an unlawful conspiracy proves that O-I was actually a *member* of a conspiracy.

E. *McClure* Is Based on Sound Public Policy.

The *McClure* decision was founded upon a concern over the proper "scope of a manufacturer's liability." 188 Ill. 2d at 141. The Court refused to make manufacturers "insurers of their industry." *Id.* at 142. Where, as here, the plaintiff was injured as a result of the products of others, conspiracy liability absent clear and convincing proof "would expand the civil conspiracy theory 'beyond a rational or fair limit.' Requiring evidence in addition to parallel conduct ensures

that a manufacturer's responsibility for action of a competitor is based on more than speculation and conjecture." *Id.* (citation omitted).

Justice Jackson famously issued a similar warning, stating that permitting an inference of conspiracy in a circumstance such as this is "characteristic of the long evolution of that elastic, sprawling and pervasive offense" and "exemplifies the tendency of a principle to expand itself to the limit of its logic." *Krulewitch v. United States,* 336 U.S. 440, 445 (1949).

The Fifth District's decision ignores these concerns. It elevates speculation to the realm of proof. If permitted to stand, it would mandate an unending stream of wasteful trials, all on the road to *JNOV*. The "elephantine mass" that is asbestos litigation, *Norfolk & Western Railway Co. v. Freeman Ayers,* 538 U.S. 135, 166 (2003), would grow in an even more distorted way, sanctioning a stream of Illinois-only asbestos conspiracy trials against O-I and other solvent defendants despite their evidentiary shortcomings.

It is no answer to argue that the real sources of Mr. Jones's asbestos exposure include some bankrupt companies who cannot be impleaded in this action. Johns-Manville, Unarco and OCF have established bankruptcy trusts that provide no-fault compensation for such injuries and together are funded with literally billions of dollars. *In re Johns-Manville Corp.*, 68 B.R. 618, 621-22 (Bankr. S.D.N.Y. 1986); *UNARCO Bloomington Factory Workers v. UNR Indus., Inc.,* 124 B.R. 268, 272 (N.D. Ill. 1990); *In re Owens Corning,* Case No. 00-bk-03837 (D. Del. Sept. 26, 2006). Even if that were not so, however, it would not justify endorsing a civil

conspiracy theory against O-I that is "contrary to tort principles in Illinois." *McClure*, 188 Ill. 2d at 152.

The extraordinary traffic of "asbestos conspiracy" claims in Illinois is unique. Such claims are rarely even alleged elsewhere and, when they are, are resolved on summary judgment. *See, e.g., Ellis*, 2013 WL 1099016 (E.D. Pa. Jan. 3, 2013); *Grigg v. Allied Packing and Supply, Inc., et. al,* No. RG12629580 (Cal. Super. Ct. Mar. 13, 2013) (granting summary judgment for O-I because the evidence did not "establish the existence of an 'agreement' between O-I and OCF required to establish civil conspiracy") (attached at A451-52).

No principle of civil conspiracy law embodied in Illinois law supports changing the course that the Illinois courts have been on since *McClure.*

F. The Fifth District's Decision Mirrors the Decision Reversed By This Court in *McClure*.

Ironically, the Fifth District's decision below has more in common with the reversed Fourth District opinion in *McClure* than it does with the binding opinion of this Court. Both Appellate Courts pointed to O-I's sale of Kaylo without a warning label, *Jones*, at ¶5; *McClure v. Owens Corning Fiberglas Corp.,* 298 Ill. App. 3d 591, 594 (4th Dist. 1998) (reversed 188 Ill. 2d 102 (1999)). Both Appellate Courts also pointed to the 1953 contract between O-I and OCF; the parallel use of the characterization of Kaylo as "non-toxic" by O-I, and later by OCF; O-I's sharing published literature about the health effects of asbestos in 1941; and the

"relationship" between the two companies. *Jones*, at ¶17; *McClure*, 298 Ill. App. 3d at 598.

The Fifth District's *Jones* decision, having used the same evidence to reach the same conclusion, deserves the same fate as the Fourth District's *McClure* decision: reversal with judgment awarded to O-I.

G. *Gillenwater* Does Not Support the Fifth District's Decision.

The Fifth District cited *Gillenwater v. Honeywell International, Inc,* 2013 IL App (4th) 120929, at ¶96, for the proposition that "there was clear and convincing evidence that Owens-Illinois and Owens Corning engaged in a conspiracy to conceal that Kaylo dust was potentially a respiratory hazard from 1953 to 1958, during the period of the distributorship between the two companies." *Jones,* at ¶21. Plaintiffs will surely cite it for the same proposition before this Court.

This language is plainly *dicta* given that the plaintiff in *Gillenwater*, like Mr. Jones here, was not exposed to asbestos until many years after 1958. *See, e.g., Excelon Corp. v. Dep't of Revenue,* 234 Ill. 2d 266, 277 (2009) (*Dicta* "refers to a remark or expression of opinion that a court uttered as an aside, and is generally not binding authority or precedent within the *stare decisis* rule. . . . [It] is any statement made by a court for use in argument, illustration, analogy or suggestion. It is a remark, an aside, concerning some rule of law or legal proposition that is not necessarily essential to the decision and lacks the authority of adjudication.").

Gillenwater actually *affirms judgment for O-I as a matter of law based on evidence that is identical to that presented by Plaintiffs here.* The court correctly held that where,

as here, there was no evidence that the plaintiff ever used a product made by O-I, it had no legal duty to warn the plaintiff of the dangers of asbestos: "Defendants had no duty to warn anyone of the dangers of asbestos in the abstract, wherever it might be found; their duty was to warn of the dangers of their particular asbestos-containing products." 2013 IL App (4th) 120929, ¶76 (citations omitted). All that was left to decide was whether O-I and the other defendants breached their duty "to refrain from encouraging others, such as Owens Corning, to breach their duty" to a plaintiff that allegedly used an Owens Corning product in the 1960s, by virtue of a demonstrable agreement. *Id.*

The court concluded that "[b]y selling the Kaylo Division to Owens Corning in 1958, Owens-Illinois took an affirmative step inconsistent with the object of the conspiracy, in that henceforth it would be impossible for Owens Corning (by culpable silence) to continue selling Kaylo manufactured by Owens-Illinois." *Id.* at ¶111. An inference of conspiracy was therefore unsustainable: "Upon selling the Kaylo Division to Owens Corning, Owens-Illinois lost its power to stop the assembly line. To make Owens-Illinois liable for the Kaylo that Owens Corning continued to churn out would make Owens-Illinois an insurer of Owens Corning." *Id.* at ¶122. This, of course, echos the concerns of this Court in *McClure*.

O-I disputes the *dicta* of the G*illenwater* court that it would be proper under *McClure* to find clear and convincing evidence of a conspiratorial agreement between O-I and OCF before the sale of the Kaylo Division to OCF in 1958. If the 1953 Sales Agreement (which was expressly considered in *McClure*) can serve as

the basis for inferring an agreement to suppress information – despite the fact that the agreement contains only ordinary commercial terms and not one word about asbestos, possible health hazards, product warning labels, or what either party could, should or would otherwise say about that subject – then *every* bulk sales transaction or distribution agreement would permit the same inference.

The Fourth District's *dicta* cannot be reconciled with its acknowledgement that "[t]he innocent explanation rule was the very essence of *McClure*" and that "the innocent-explanation rule is inherent in the standard of clear and convincing evidence." *Id*. at ¶126. Nor can it be squared with the court's agreement that if a non-conspiratorial explanation would be reasonable, then all the evidence, viewed in the light most favorable to the plaintiff, so overwhelmingly favors the defendant that a contrary verdict based on that evidence could never stand." *Id.* at ¶129. The McLean County Circuit Court is the only court of which we are aware to address *Gillenwater* in the context of alleged exposure between 1953 and 1958. That court found that *Gillenwater*'s commentary regarding that time period was indeed *dicta* and "struggled" to see how it could be reconciled with *McClure*. C.7958-59 (April 25, 2015 Decision of Foley, J.).

McClure considered the very evidence that served as the basis for the *dicta* in *Gillenwater*. The Fourth District drew an inference, in *dicta*, that cannot stand under either the rules articulated in *McClure* or its holding. Even if it were otherwise, however, it would not affect the outcome of this case because here, as in *Gillenwater,* the plaintiff's asbestos exposure post-dated 1958.

IV. THE FIFTH DISTRICT'S DECLARATION THAT A "DIFFERENT" STANDARD APPLIES DEPENDING ON WHETHER A MOTION SEEKS SUMMARY JUDGMENT OR *JNOV* IS WRONG AS A MATTER OF LAW AND SOUND PUBLIC POLICY.

A. Illinois Law Provides that, Where the Evidence Is Before the Court, the Standards for Summary Judgment and *JNOV* Are the Same.

For almost fifty years, it has been the law of Illinois that, where the factual record is complete, the standards for summary judgment and for *JNOV* are the same. *Fooden*, 48 Ill. 2d at 587 ("[I]f what is contained in the pleadings and affidavits would have constituted all of the evidence before the court and upon such evidence there would be nothing left to go to the jury, and the court would be required to direct a verdict, then summary judgment should be entered."). This rule of law has been reiterated by this Court as recently as 2017. *See Cohen,* 2017 IL 121800, at ¶27.

The Court also made it clear well before the issuance of its opinion in *McClure* that the relevant standard of proof applies equally at the summary judgment stage as at any other. *Reed v. Nw. Publ'g Co.*, 124 Ill. 2d 495, 512 (1988) ("[A] ruling on a motion for directed verdict or summary judgment necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits.").

The concept that motions for summary judgment and motions for directed verdict or *JNOV* apply the same standard is well-established across the nation and *Fooden* represents a concise statement of the consensus view. *See, e.g., Bazzel v. Pine Plaza Joint Venture*, 491 So. 910, 911 (Ala. 1986); *Orme Sch. v. Reeves*, 802 P.2d 1000,

1008 (Ariz. 1990) ("[A]ssuming discovery is complete, the judge should grant summary judgment if, on the state of the record, he would have to grant a motion for directed verdict at the trial."); *Aguilar v. Atl. Richfield Co.,* P.3d 493, 514 (Cal. 2001); *Burnham v. Karl & Gelb, P.C.*, 717 A.2d 811, 812 (Conn. 2000) ("The [summary judgment] test is whether a party would be entitled to a directed verdict on the same facts"); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991) ("[T]he standard for granting summary judgment mirrors the standard for a directed verdict.") (internal quotation omitted); *Dunnick v. Elder*, 882 P.2d 475, 479 (Idaho Ct. App. 1994); *Davis v. United Fire & Cas. Co.,* 500 N.W.2d 725, 727 (Iowa Ct. App. 1993) *citing Sherwood v. Nissen*, 179 N.W.2d 336, 339 (Iowa 1970) (The summary judgment standard is "functionally akin to a directed verdict."); *Guy v. McKnight*, 735 So.2d 955, 957 (La. App. 2000), *writ denied* 764 So. 2d 963 (La. 2000); *Tucci v. Guy Gannett Pub. Co.*, 464 A.2d 161, 167 (Me. 1983); *Donaldson v. Farrakhan*, 436 Mass. 94, 96 (2002); *Skinner v. Square D. Co.,* 516 N.W.2d 475, 481 (Mich. 1994) ("[T]he inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law"); *Martin v. City of Washington*, 848 S.W.2d 487, 492 (Mo. 1993) (same); *Grisham v. John Q. Long V.F.W. Post, No. 4057, Inc.*, 519 So. 2d 413, 415 (Miss. 1998) ("The motion for summary judgment is the functional equivalent of the motion for directed verdict made at the close of all the evidence, the difference being that the motion for summary judgment occurs at an earlier stage."); *Gerard v. Inglese*, 206 N.Y.S. 2d 879, 881 (N.Y. App. Div. 1960) ("[S]ummary judgment in

favor of a plaintiff may and should be granted if on the same proof, undisputed, the plaintiff would be entitled to a directed verdict on trial."); *Hinkle v. Cornwell Quality Tool Co.*, 532 N.E. 2d 772, 776 (Ohio Ct. App. 1987); *Palmisciano v. Burrillville Racing Ass'n*, 603 A.2d 317, 320 (R.I. 1992); *Byrd v. Hall*, 847 S.W.2d 208, 212-214 (Tenn. 1993); 11 Moore's Federal Practice - Civil § 56.04[2][a] (2018).

Federal Courts addressing this same question have also unequivocally held that the standard on summary judgment is the same as the standard for deciding whether judgment as a matter of law or directed verdict should be granted. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) ("[T]he standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that 'the inquiry under each is the same.'") (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986))); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) ("[The] standard [for granting summary judgment] mirrors the standard for a directed verdict . . . .") (quoting *Anderson*, 477 U.S. at 250)); *see also Harvey v. Office of Banks and Real Estate*, 377 F.3d 698, 707 (7th Cir. 2004) ("Just as we do with summary judgment decisions, we examine all the evidence in the record to determine whether a reasonable jury could have found in favor of [plaintiff]. . . . This process differs from the one used for summary judgments only insofar as we now know exactly what evidence the jury considered in reaching its verdict."); *Murray v. Chi. Transit Auth.*, 252 F.3d 880, 886 (7th Cir. 2001) ("[A] court should render judgment as a matter of law when 'a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for

that party on that issue.'") (quoting *Reeves*, 530 U.S. at 150)); C*hi. Conservation Ctr. v. Frey*, 40 F. App'x 251, 254 (7th Cir. 2002) (quoting *Murray*, 252 F.3d at 886).

One of the fundamental purposes of *JNOV* decisions is to "avoid unnecessary retrials in situations where verdicts are not factually sustainable." *Pedrick v. Peoria & E. R.R. Co.,* 37 Ill. 2d 494, 504 (1967). The same is true for summary judgment rulings: "[S]ummary judgment is an important tool in the administration of justice . . . its use in a proper case is to be encouraged, and . . . its benefits inure not only to the litigants, in the saving of time and expenses, but to the community in avoiding congestion of trial calendars and the expenses of unnecessary trials." *Fooden,* 48 Ill. 2d at 586 (citation omitted).

B. The Trial Court Properly Followed Controlling Authority.

Counsel for Plaintiffs and Counsel for O-I expressly conceded that the factual record before the trial court on the crucial element of agreement was the same as that in the *Gillenwater* case. C.9194 (attached at A013). In *Gillenwater,* O-I was granted *JNOV* in the trial court and the Fourth District affirmed. 2013 IL App (4th) 120929 at ¶¶3-6. The Fourth District relied upon *McClure* and found that the evidence so overwhelmingly favored O-I that no verdict against it could ever stand. *Id.* at ¶¶6, 143.

Judge Hudson was thus faced with literally the identical factual record on which the Fourth District Appellate Court, having granted all reasonable inferences in plaintiff's favor, had decided that *no verdict for plaintiffs could ever stand.* The Fourth District's decision relied upon this Court's decision in *McClure*,

based on a virtually identical factual record, holding that *no verdict for plaintiff against O-I or OCF could ever stand*. The notion that Judge Hudson should have conducted a jury trial knowing that no verdict for Plaintiff could ever stand has no legal basis.

C. The Proper Application of the Summary Judgment Standard Does Not Require the Courts to "in Effect, Try the Case."

The Fifth District expressed the concern that Judge Hudson's reliance on *JNOV* authorities like *McClure, Gillenwater* and *Rodarmel* to grant summary judgment would "result in our appellate court, in effect, trying the case." *Jones,* at ¶23. This concern is not well-founded.

Safeguards are contained in the mandated analysis of motions for judgment as a matter of law, including those filed before trial (motion for summary judgment), during trial (motions for directed verdict) or after trial (motions for *JNOV*). Regardless of the procedural posture, the court reviews the evidentiary material in the light favorable to the non-movant and grants the non-movant the benefit of all reasonable and permissible inferences from that material. Properly employed, this procedure prevents the Court from substituting its judgment for the jury's. Every court at the trial and appellate level post-*McClure* has recited and honored these rules, and the courts have found *over 100 times* that there is insufficient circumstantial evidence against O-I to satisfy the clear and convincing evidence standard.

As an abstract proposition, if these rules are *not* observed, summary judgment could invade the province of the jury. That concern is misplaced here because the trial court, like this Court in *McClure,* observed the rules. The problem was, despite the rules of interpretation, there was a lack of clear and convincing evidence under established Illinois law. "The ruling on a motion for directed verdict or summary judgment necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits." *Reed*, 124 Ill. 2d at 512 (quoting *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 252 (1986)).

Summary judgment was not granted because Judge Hudson misunderstood the summary judgment standard. It was granted because of a failure of proof.

CONCLUSION

McClure is good law and should not be disturbed. There is no "new" evidence concerning the purported asbestos conspiracy. All of that evidence goes back decades and all of it was either expressly considered and rejected in *McClure* or is the type of evidence rejected in *McClure*.

For the last seven years, the Illinois courts have repeatedly granted O-I judgment as a matter of law because the Plaintiffs' proof – including the "new" evidence – is not clear and convincing evidence of agreement. Those rulings comport with *Fooden* and *McClure*. Upholding this Court's precedents is particularly apt here because the Plaintiffs' asbestos exposure history did not even begin until years after O-I left the thermal insulation industry in 1958.

We therefore respectfully request that this Court reverse the August 10, 2018 decision of the Fifth District and reinstate the summary judgment entered in favor of Owens-Illinois, Inc. by the Richland County Circuit Court on April 12, 2016.

Respectfully submitted,

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RULE 341 CERTIFICATION

I certify that this brief conforms to the requirements of and 341(a) and (b). The length of this brief excluding the pages or words contained in the Rule 341(d) cover, 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 46 pages.

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NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that the statements set forth in this instrument are true and correct. On February 1, 2019 Defendant-Appellant Owens-Illinois, Inc.'s Brief was served upon the Clerk of the Illinois Supreme Court and was served by email on counsel of record below. Per the Clerk's Office's directive, on February 4, 2019, Defendant-Appellant Owens-Illinois, Inc.'s revised Brief was served upon the Clerk of the Illinois Supreme Court and was served by email on counsel of record below:

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(consolidated)

In the Supreme Court of Illinois

PNEUMO ABEX LLC and OWENS-ILLINOIS, INC.,	)	Appeal from the Appellate Court of Illinois, Fifth District
	)	Case No. 5-16-0239
Defendants-Appellants,	)	
	)	Circuit Court of Richland,
v.	)	County, Illinois
	)	Case No. 13-L-21
JOHN JONES and DEBORAH JONES,	)	
	)	Hon. William C. Hudson, Judge Presiding
Plaintiffs-Appellees.	)	

DEFENDANT-APPELLANT OWENS-ILLINOIS, INC.'S SEPARATE APPENDIX

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2018 IL App (5th) 160239

NO. 5-16-0239

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JOHN JONES and DEBORAH JONES, Plaintiffs-Appellants, v. PNEUMO ABEX LLC and OWENS-ILLINOIS, INC., Defendants-Appellees.	)))))))))	Appeal from the Circuit Court of Richland County. No. 13-L-21 Honorable William C. Hudson, Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court, with opinion.
Presiding Justice Barberis and Justice Welch concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiffs, John and Deborah Jones, brought an action against defendants, Pneumo Abex LLC (Abex) and Owens-Illinois, Inc. (Owens-Illinois), among others, to recover for harm that John allegedly suffered as a result of asbestos exposure that occurred while John was employed in construction. Plaintiffs' complaint alleged Abex was responsible for John's injuries because it entered into a civil conspiracy with Johns-Manville and other manufacturers of asbestos-containing products to suppress information about the harmful health effects of asbestos and to falsely assert asbestos exposure was safe. The complaint further alleged that Owens-Illinois entered into the same conspiracy with Owens-Corning Fiberglas Corporation (Owens-Corning), a nonparty in this case. The trial court entered summary judgment in favor of defendants on the civil conspiracy claims. On appeal, plaintiffs argue that the trial court erred in granting summary

judgment because genuine issues of material fact exist as to (1) whether defendants entered into a conspiratorial agreement to suppress or misrepresent information about the health hazards of asbestos and (2) whether defendants committed acts in furtherance of such an agreement. For the following reasons, we reverse and remand this cause for further proceedings consistent with this opinion.

¶ 2 BACKGROUND

¶ 3 The two defendants in this appeal are (1) Abex, a manufacturer of asbestos-containing brake linings, and (2) Owens-Illinois, a manufacturer and distributor of Kaylo, an asbestos-containing insulation, between 1948 and 1958. Plaintiffs' complaint against defendants is based on civil conspiracy. Neither defendant employed John, and plaintiffs' conspiracy claim against Abex does not allege any asbestos exposure directly attributable to Abex. According to plaintiffs' complaint, John contracted lung cancer from his exposure to asbestos-containing insulation during his career in construction, which began in 1969. The complaint asserted John worked with Johns-Manville and Owens-Corning insulation during his construction career.

¶ 4 As to plaintiffs' claim of conspiracy, the complaint alleged that Abex conspired with other manufacturers of asbestos-containing products to falsely assert it was safe for people to work in close proximity to asbestos and to suppress information about the harmful health effects of asbestos exposure. Plaintiffs claim Abex committed numerous tortious acts in furtherance of the conspiracy. Specifically, plaintiffs argue that although Abex was aware of the health hazards of asbestos exposure, it continued making and distributing asbestos-containing products without adequately protecting employees and customers, and it also manipulated the scientific and legal landscape to shield the asbestos industry from liability and ensure continued profitability. The complaint alleged John was injured as a result of this conspiratorial conduct.

¶ 5 The complaint identified the following overt acts that were allegedly committed by the companies in furtherance of the conspiracy: (1) selling asbestos products, which were used at John's work, without warning customers of the health hazards of asbestos exposure; (2) failing to warn employees about the health hazards of asbestos exposure; (3) editing and altering reports and drafts of publications initially prepared by Dr. Anthony Lanza, a physician employed by another alleged conspirator, Metropolitan Life Insurance, during the 1930s, which concerned the health hazards of asbestos exposure; (4) entering into a written agreement to suppress the results of research on the health effects of asbestos exposure; (5) obtaining an agreement in the 1930s from the editors of ASBESTOS Magazine, the only trade magazine devoted exclusively to asbestos, that the magazine would not publish articles connecting asbestos exposure to disease and sustaining such agreement into the 1970s; (6) suppressing the dissemination of a 1943 report prepared by Dr. LeRoy Gardner, a former director of the Saranac Laboratory for the Study of Tuberculosis (Saranac Laboratory), in which he was critical of the idea that there was a safe level of asbestos exposure; (7) defeating further study of the health of workers through their control of the Asbestos Textile Institute; (8) editing and altering reports and publication drafts initially prepared by Dr. Arthur Vorwald, a former director at Saranac Laboratory, from 1948 through 1951; (9) suppressing the results of the fibrous dust studies conducted between 1966 and 1974 that concluded asbestos exposure caused lung cancer and mesothelioma; (10) participating in drafting a pamphlet published by the National Insulation Manufacturers Association (NIMA) which purportedly failed to disclose the specific health hazards of asbestos exposure; (11) purchasing asbestos without warning labels from co-conspirators; (12) refusing to warn employees who used asbestos-containing materials in the manufacture of the companies' products; and (13) altering the original report of a study performed by the Industrial Hygiene

Foundation to delete all references to the association of asbestosis (scarring of the lungs) and lung cancer. The complaint further alleged that Owens-Illinois engaged in the same conspiracy with Owens-Corning.

¶ 6 In June 2015, Abex filed a motion for summary judgment, asking the trial court to follow *Rodarmel v. Pneumo Abex, L.L.C.*, 2011 IL App (4th) 100463, *Menssen v. Pneumo Abex Corp.*, 2012 IL App (4th) 100904, and *Gillenwater v. Honeywell International, Inc.*, 2013 IL App (4th) 120929, all Fourth District cases that found there was insufficient evidence to show Abex had agreed with other companies to suppress or misrepresent the health hazards of asbestos. In August 2015, Owens-Illinois filed a separate motion for summary judgment, also arguing, in pertinent parts, that there was insufficient evidence to support a finding of conspiracy. Relying on these Fourth District civil conspiracy cases, the trial court granted summary judgment in favor of defendants.

¶ 7 This appeal followed.

¶ 8 ANALYSIS

¶ 9 "Civil conspiracy is defined as 'a combination of two or more persons for the purpose of accomplishing by concerted action either an unlawful purpose or a lawful purpose by unlawful means.' " *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 133 (1999) (quoting *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 23 (1998)). To state a claim for civil conspiracy, a plaintiff must allege the existence of an agreement and a tortious act committed in furtherance of that agreement. *Id.*

¶ 10 "Civil conspiracy is an intentional tort and requires proof that a defendant 'knowingly and voluntarily participates in a common scheme to commit an unlawful act or a lawful act in an unlawful manner.' " *Id.* (quoting *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 64 (1994)).

Accidental, inadvertent, or negligent participation in a common scheme does not result in conspiracy. *Id.* at 133-34. Moreover, mere knowledge of the fraudulent or illegal actions of another does not amount to conspiracy. *Id.* at 134.

¶ 11 Because a conspiracy is almost never susceptible to direct proof, it is usually established by circumstantial evidence and inferences drawn from the evidence, coupled with common sense knowledge of the behavior of persons in similar circumstances. *Id.* However, if a civil conspiracy is shown by circumstantial evidence, that evidence must be clear and convincing. *Id.* Our supreme court has determined that "parallel conduct may serve as circumstantial evidence of a civil conspiracy among manufacturers of the same or similar products but is insufficient proof, by itself, of the agreement element of this tort." *Id.* at 135. Evidence of parallel conduct alone is insufficient to establish a civil conspiracy by clear and convincing evidence. *Id.* at 146.

¶ 12 This appeal is before us on the trial court's grant of summary judgment in favor of defendants. Summary judgment is appropriate only where the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *General Casualty Insurance Co. v. Lacey*, 199 Ill. 2d 281, 284 (2002). A triable issue precluding summary judgment exists where the material facts are disputed or where the material facts are undisputed but reasonable persons might draw different inferences from those facts. *Morris v. Union Pacific R.R. Co.*, 2015 IL App (5th) 140622, ¶ 23.

¶ 13 In determining whether a genuine issue of material fact exists, the court should construe the pleadings, depositions, admissions, exhibits, and affidavits strictly against the movant and liberally in favor of the nonmoving party, drawing all reasonable inferences in favor of the nonmovant. *Id.*; *Shuttlesworth v. City of Chicago*, 377 Ill. App. 3d 360, 366 (2007). Summary

judgment is a drastic remedy and should only be allowed when a moving party's right is clear and free from doubt. *Morris*, 2015 IL App (5th) 140622, ¶ 22. "The purpose of summary judgment is not to try a question of fact, but to determine if one exists." *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). We review a summary judgment ruling *de novo*. *Morris*, 2015 IL App (5th) 140622, ¶ 23.

¶ 14 After careful review, we find the record is replete with genuine issues of material fact from which a trier of fact could reasonably conclude the existence and acts in furtherance of a civil conspiracy. Consequently, the trial court erred in granting summary judgment in favor of defendants and against plaintiffs.

¶ 15 As to Abex, for example, plaintiffs presented evidence that Abex allegedly entered into an agreement with Johns-Manville to suppress or misrepresent information regarding the health hazards of asbestos. Specifically, plaintiffs introduced evidence that Abex signed a 1936 agreement to underwrite experiments with asbestos dust to be performed by Dr. Gardner. Further evidence shows that after Abex received a copy of the 1948 report of Dr. Gardner's dusting experiments, which was published two years after Dr. Gardner's death, Abex returned the report at the request of Johns-Manville's general counsel, Vandiver Brown, who wanted all references to cancers and tumors deleted from the report. Brown felt it would be unwise to have any copies of the draft report outstanding if the final report was to be different in any substantial respect. Plaintiffs also produced evidence that shows Abex asked Brown to act on its behalf at a conference in which the sponsoring companies of Dr. Gardner's experiments agreed to delete any reference to cancer and tumors from the final published report.

¶ 16 Similarly, plaintiffs presented evidence that Owens-Illinois allegedly entered into an agreement with Owens-Corning to suppress information about the hazards of asbestos. Owens-

Corning was formed by Owens-Illinois and Corning Glass in 1938. Plaintiffs presented evidence that Owens-Illinois began manufacturing and selling a thermal insulation product named Kaylo in 1943, and Owens-Illinois continued to sell Kaylo after it received warning that it was potentially a respiratory hazard. One such warning was from Dr. Vorwald, who wrote to Owens-Illinois in 1952 that studies showed "Kaylo dust is capable of producing a peribronchiolar fibrosis typical of asbestosis."

¶ 17 Plaintiffs' evidence indicates Owens-Illinois and Owens-Corning entered into a distributorship agreement in 1953. Under the agreement, Owens-Illinois continued to manufacture Kaylo and Owens-Corning distributed it. This agreement lasted until 1958 when Owens-Illinois sold its Kaylo division to Owens-Corning. Plaintiffs presented evidence that during this agreement, the two companies did not place any warning on Kaylo packaging. Rather, plaintiffs' evidence shows the companies advertised Kaylo as "non-toxic" despite knowing the advertisement was false. Plaintiffs' evidence further indicates the two companies remained close after Owens-Illinois sold its Kaylo division to Owens-Corning in 1958. Owens-Illinois continued to provide warning-free packaging for Kaylo until the late 1960s, and Owens-Illinois maintained a major investment in Owens-Corning into the 1970s. Plaintiffs produced evidence that Owens-Illinois owned over 750,000 shares of Owens-Corning stock as late as 1978. Plaintiffs' evidence also indicates that the profits and earnings of Owens-Corning were a recurrent topic of conversation at Owens-Illinois directors meetings from the 1940s through the 1970s.

¶ 18 The foregoing examples are only a few of the numerous genuine issues of material fact in the record from which a trier of fact could find the elements of civil conspiracy by clear and convincing evidence. When construing the record liberally in favor of plaintiffs, it is possible for

a fair-minded trier of fact to find in favor of plaintiffs. We acknowledge that defendants dispute plaintiffs' evidence. At the very least, however, reasonable persons could draw different inferences from the facts of record. At this stage in the litigation, it was error for the trial court to weigh the evidence and grant summary judgment.

¶ 19 The trial court in this case relied on two dispositions rendered by our colleagues in the Fourth District in arriving at its decision to grant summary judgment in favor of defendants. The court cited *Rodarmel*, 2011 IL App (4th) 100463, in support of its decision to grant summary judgment in favor of Abex, concluding "this matter is indistinguishable from *Rodarmel* on the material issues." The court also cited *Gillenwater*, 2013 IL App (4th) 120929, in support of its decision to grant summary judgment in favor of Owens-Illinois, concluding "this matter is indistinguishable from *Gillenwater* on the material issues." There is a fatal flaw in the court's reliance on these two authorities: the action of the trial court at issue in both cases was judgment notwithstanding the verdict (*n.o.v.*), not summary judgment.

¶ 20 In *Rodarmel*, the Fourth District considered whether the agreement between Abex and other asbestos-manufacturing companies to suppress the cancer references in the Saranac publication was a conspiratorial agreement. The court found no evidence that Abex agreed with other companies to suppress or misrepresent the health hazards of asbestos. *Rodarmel*, 2011 IL App (4th) 100463, ¶ 132. Therefore, the court held that Abex was entitled to a judgment *n.o.v.* "because of a lack of clear and convincing evidence on the agreement element of a civil conspiracy." *Id.*

¶ 21 In *Gillenwater*, the Fourth District found there was clear and convincing evidence that Owens-Illinois and Owens-Corning engaged in a conspiracy to conceal that Kaylo dust was potentially a respiratory hazard from 1953 to 1958, during the period of the distributorship

between the two companies. *Gillenwater*, 2013 IL App (4th) 120929, ¶ 96. However, the court concluded the conspiracy ended with Owens-Illinois's sale of its Kaylo division to Owens-Corning at the end of the distributorship agreement in 1958. *Id.* ¶¶ 107-08. Because the conspiracy between the two companies ended in 1958, 14 years prior to the plaintiff's alleged injury by Kaylo in 1972, the court affirmed the trial court's grant of judgment *n.o.v.* to Owens-Illinois. *Id.* ¶¶ 107, 118.

¶ 22 In this case, the action is at the summary judgment stage, *not* the judgment *n.o.v.* stage as in the Fourth District cases. Plaintiffs were not required to prove a conspiracy by clear and convincing evidence in order to survive a motion for summary judgment. Rather, plaintiffs were merely required to present sufficient facts, when viewed in the light most favorable to plaintiffs, from which a trier of fact could find the existence of a conspiracy by clear and convincing evidence. At this stage of the litigation, there are genuine factual issues from which a trier of fact may conclude by a clear and convincing standard the elements of civil conspiracy. These questions should have been considered by the trier of fact.

¶ 23 In sum, there are no definitive answers to the disputed questions of fact presented by plaintiffs at this point in the litigation, thereby precluding summary judgment. Again, the purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact. To ignore this standard of analysis and mechanically follow cases applying a different, judgment *n.o.v.*, standard rather than the rationale and black letter law of summary judgment stands the concept of summary judgment on its head and results in our appellate court, in effect, trying the case. For these reasons, the trial court erred in granting summary judgment in favor of defendants.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we reverse the trial court's order granting summary judgment in favor of defendants and remand this cause for further proceedings.

¶ 26 Reversed and remanded.

2018 IL App (5th) 160239

NO. 5-16-0239

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JOHN JONES and DEBORAH JONES, Plaintiffs-Appellants, v. PNEUMO ABEX LLC and OWENS-ILLINOIS, INC., Defendants-Appellees.	)))))))))	Appeal from the Circuit Court of Richland County. No. 13-L-21 Honorable William C. Hudson, Judge, presiding.

Opinion Filed: August 10, 2018

Justices: Honorable Richard P. Goldenhersh, J.

Honorable John B. Barberis, P.J., and
Honorable Thomas M. Welch, J.
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C196-C198	03/14/13	Notice of Filing
C199-C206	03/14/13	Answer and Affirmative Defenses of Defendant John Crane Inc. to Plaintiffs' Complaint at Law
C207-C208	03/14/13	John Crane Inc.'s Motion to Strike Plaintiffs' Prayer for Punitive Damages
C209-C230	03/15/13	Answer to Plaintiffs' Original Complaint - Met Life
C231	03/15/13	Receipt # 5515249
C232-C235	03/19/13	Affidavit of Service - Owens-Illinois, Inc.
C236-C240	03/19/13	Affidavit of Service - American Biltrite
C241-C244	03/20/13	Affidavit of Service - Akzo Nobel
C245-C248	03/20/13	Affidavit of Service - Georgia-Pacific Coro.
C249-C252	03/20/13	Affidavit of Service - John Crane
C253-C256	03/20/13	Affidavit of Service - Zurn Industries
C257-C260	03/20/13	Affidavit of Service - Union Carbide Corp.
C261-C263	03/20/13	Affidavit of Service-Chicago Gasket Co.
C264-C267	03/20/13	Affidavit of Service - Crane Co.
C268-C270	03/20/13	Affidavit of Service - Foster Wheeler
C271-C273	03/20/13	Affidavit of Service - Caterpillar Inc.
C274-C276	03/20/13	Affidavit of Service - Brand Insulation
C277-C279	03/20/13	Affidavit of Service - Trane U.S.
C280-C282	03/20/13	Affidavit of Service - General Electric
C283-C286	03/20/13	Affidavit of Service - Sprinkmann Sons Coro.
C287	03/21/13	Appearance - Kelsey-Hayes Company
C288	03/22/13	Affidavit of Service - Sprinkmann Sons Com.
C289-C291	03/22/13	Notice of Filing
C292-C293	03/22/13	John Crane Inc.'s Answer to Any and All Counterclaims for Contribution That Have Been Filed or May Be Filed
C294	03/22/13	Receipt #5515332
C295-C301	03/22/13	Notice of Filing
C302	03/22/13	Appearance - Owens-Illinois
C303	03/22/13	Receipt# 5515330
C404-320	03/22/13	Owens-Illinois, Inc.'s Answer and Affirmative and Other Defenses to Plaintiffs' Complaint
C321-C322	03/25/13	Affidavit of Service - DAP, Inc.
C323-C325	02/27/13	Affidavit of Service Homasote Company
C326	03/25/13	Certificate of Service for York International Corp.'s Requests for Production Directed to Plaintiffs
C327-C331	03/25/13	Appearance-York International
C332	03/25/13	Receipt# 5515367
C333	03/25/13	Receipt# 5515365
C334	03/25/13	Appearance - Georgia Pacific
C335-C354	03/25/13	Defendant Georgia – Pacific LLC f/k/a Georgia Pacific Corp.'s Answer and Affirmative and Other Defenses to Plaintiffs' Complaint at Law
C355	03/25/13	Notice of Filing

VOLUME 2

NUMBER	DATE	DESCRIPTION
C356-C362	03/25/13	Defendant's Domco Products Texas Inc. f/k/a Domco Products Texas L.P., Motion to Dismiss Plaintiffs' Complaint
C363 C364	03/25/13	Entry of Appearance and Jury Demand - Domco Products Texas
C365	03/25/13	Receipt# 5515361
C366	03/27/13	Receipt# 5515381
C367	03/27/13	Appearance - KCG, Inc.
C368	03/27/13	Notice of Filing
C369-C370	03/27/13	Motion to Strike Plaintiffs' Prayer for Punitive Damages
C371-C379	03/27/13	Answer to Plaintiff's Complaint at Law
C380-C382	03/27/14	Request for Production of Documents
C383	03/27/13	Entry of Appearance – Kimberly-Clark Corp.
C384	03/27/13	Receipt # 5515377
C385-C397	03/27/13	Answer of Defendant Kimberly-Clark Corporation to Plaintiffs' Complaint
C398-C401	03/27/13	Notice of Filing
C402-C405	03/27/13	Entry of Appearance - CBS Corp.
C406	03/27/13	Receipt# 5515380
C407-C420	03/27/13	Defendant CBS Corporation's Answer and Affirmative Defenses to Plaintiffs' Complaint
C421-C424	03/27/13	Notice of Filing
C425-C431	03/27/13	Defendant CBS Corporation's Answer to All Counterclaims and Counterclaims for Contribution
C432-C436	03/27/13	Notice of Filing
C437-C450	03/28/13	Honeywell International Inc.'s Answer and Affirmative Defenses to Plaintiffs' Complaint
C451-C458	03/28/13	Honeywell International Inc.'s Counterclaim for Contribution and Setoff and Answer to Any ru1d All Counterclaims Which May Now or Hereinafter Be Filed
C459	03/28/13	Receipt# 5515392
C460-C465	03/28/13	Honeywell International Inc.'s Motion to Strike Plaintiffs' Prayer for Punitive Damages
C466 C468	03/28/13	Entry of Appearance and Jury Demand - Oakfabco., Inc.
C469	03/28/13	Receipt# 5515391
C470-C483	03/28/13	Defendant Oakfabco, Inc. f/k/a The Kewanee Boiler Company's Answer and Affirmative Defenses to Plaintiffs, Complaint
C484-C488	03/28/13	Entry of Appearance - American Biltrite Inc.
C489	03/28/13	Receipt # 5515390

C490-C498	03/28/13	Defendant, American Biltrite Inc.'s, Combined Motion to Dismiss Plaintiffs' Complaint and Memorandum of Law in Support Thereof
C499-C503	03/28/13	Entry of Appearance - Draco Mechanical Supply Inc.
C504	03/28/13	Receipt# 5515389
C505-C513	03/28/13	Defendant, Draco Mechanical Supply, Inc.'s, Combined Motion to Dismiss Plaintiffs' Complaint and Memorandum of Law in Support Thereof
C514-C518	03/28/13	Entry of Appearance - J.M Manufacturing Company, Inc.
C519	03/28/13	Receipt #5515388
C520-C528	03/28/13	Defendant, J-M Manufacturing Company, Inc.'s, Combined Motion to Dismiss Plaintiffs' Complaint and Memorandum of Law in Support Thereof
C529-C533	03/28/13	Entry of Appearance – SPX Cooling Technologies, Inc.
C534	03/28/13	Receipt# 5515387
C535-C543	03/28/13	Defendant, SPX Cooling Technologies, Inc.'s, Combined Motion to Dismiss Plaintiffs' Complaint and Memorandum of Law in Support Thereof
C544-C558	03/28/13	Defendant Kelsey-Hayes Company's Answer and Affirmative Defenses to Plaintiffs, Complaint
C559-C561	03/28/13	Affidavit of Service - Mannington Mills
C562-C570	03/28/13	Defendant, York International Corporation's Motion to Dismiss Plaintiffs' Complaint
C571-C578	03/28/13	Kaiser Gypsum Company, Inc.'s Special and Limited Appearance and Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction, to Quash Service of Process and Alternatively, to Dismiss on Other Grounds
C579	03/28/13	Entry of Appearance – Kaiser Gypsum Company
C580	03/29/13	Receipt # 5515410
C581-C587	03/29/13	Simpson Timber Company's Designation of Fact Witnesses
C588-C636	03/29/13	Defendant Simpson Timber Company, Expert Witness Disclosure
C637-C641	03/29/13	Notice of filing
C642-C646	03/29/13	Entry of Appearance - Simpson Timber Company
C647	03/29/13	Receipt# 5515417
C648-C665	03/29/13	Answer and Affirmative Defenses of Defendant Simpson Timber Company to Plaintiffs' Complaint

VOLUME 3

C935-C938	04/01/13	Defendant The Sherwin-Williams Company's Motion to Dismiss or Transfer for Improper Venue Pursuant to 735 ILCS 5/2-104
C939-C942	04/01/13	Entry of Appearance - Sprinkmann Sons Corporation
C943	04/01/13	Receipt # 5515423
C944-C953	04/01/13	Answer to Complaint with Affirmative Defenses and Counterclaims
C954-C957	04/01/13	Notice of Service of Discovery Documents
C958-C962	04/01/13	Sprinkmann Sons Corporation's Motion to Dismiss Counts 5 and 6 of Plaintiffs' Complaint
C963	04/01/13	Entry of Appearance - Crane Co.
C964	04/01/13	Receipt# 5515437
C965	04/01/13	Notice of Filing
C966-C973	04/01/13	Answer to Plaintiffs' Complaint at Law

VOLUME 4

NUMBER	DATE	DESCRIPTION
C974-C975	04/01/13	Motion to Strike Plaintiffs' Prayer for Punitive Damages Filed
C976-C978	04/01/13	Crane Co.'s Request for Production of Documents Filed
C979	04/01/13	Entry of Appearance filed - General Electric Co.
C980	04/01/13	Receipt# 5515433
C981	04/01/13	Notice of Filing
C982-C989	04/01/13	Motion to Dismiss Plaintiffs' Complaint
C990-C1027	04/01/13	Defendant General Electric Company's Designation of Fact and Expert Witnesses
C1028-C1033	04/01/13	Entry of Appearance - Certainteed Corp., Union Carbide Com. and Bechtel Corp.
C1034	04/01/13	Receipt #5515435
C1035-C1047	04/01/13	Bechtel Corporation's Answer to Plaintiffs' Complaint at Law
C1048-Cl054	04/02/13	Affidavit of Service – Cleaver Brooks, DeWitt Products and Duro Dyne
C1055	04/02/13	Appearance and Jury Demand - Karnak Corp.
C1056-C1057	04/02/13	Notice of Filing
C1058	04/02/13	Receipt #5515439
C1059-C1074	04/02/13	Karnak Corporation's Motion to Dismiss Complaint at Law
C1075-C1094	04/02/13	Karnak Corporation's Memorandum of Law in Support of Motion to Dismiss Plaintiffs' Complaint
C1095 - C1099	04/03/13	Notice of Filing
C1100	04/03/13	Receipt# 5515454
C1101	04/03/13	Appearance and Jury Demand - The Goodyear Tire and Rubber Co.
C1102-C1113	04/03/13	Answer and Affirmative Defenses of The Goodyear Tire and Rubber Company to Plaintiffs' Complaint
C1114-C1117	04/03/13	Defendant Ameren International Corporation's First Request for Production of Documents to Plaintiffs

C1118-C1120	04/03/13	Defendant Ameron International Corporation's First Requests for Admission to Plaintiffs
C1121-C1122	04/03/13	Defendant the Goodyear Tire and Rubber Company's Motion to Strike Prayer for Relief in Counts 5 and 6 of Plaintiffs' Complaint
C1123-C1126	04/04/13	Notice of Filing
C1127-C1132	04/04/13	Defendant Ameron International Corporation's First Interrogatories to Plaintiffs
C1133-C1138	04/04/13	Defendant Ameron International Corporation's Answer to All Counterclaims and Counterclaim for Contribution
C1139 C1143	04/04/13	Notice of Filing
C1144-C1161	04/04/13	Answer and Affirmative Defenses of Defendant Ameron International Corporation to Plaintiffs' Complaint
C1162-C1166	04/04/13	Notice of Filing
C1167-C1178	04/04/13	Affidavit of Service - J.P. Bushnell, General gasket and Ameron International
C1179-C1183	04/04/13	Entry of Appearance - Ameron International Corporation
C1184-C1185	04/05/13	Notice of Filing
C1186	04/05/13	Entry of Appearance - Duro Dyne Corp.
C1187	04/05/13	Receipt # 5515482
C1188-C1193	04/05/13	Notice of Filing
C1194-C1196	04/05/13	Defendant Owens-Illinois, Inc.'s Answer to Counterclaim for Contribution of Honeywell International Inc.
C1197-C1198	04/08/13	Notice of Filing
C1199	04/08/13	Notice of Filing
C1200	04/08/13	Receipt # 5515498
C1201-Cl212	04/08/13	Conwed Corporation's Answer and Affirmative Defenses to Plaintiffs' Complaint at Law

VOLUME 5

NUMBER	DATE	DESCRIPTION
C1213-C1216	04/08/13	Conwed Corporation's Motion to Dismiss Counts 5 and 6 of Plaintiffs' Complaint at Law and to Dismiss Plaintiffs' Complaint for Improper Venue
C1217 C1223	04/08/13	Conwed's Case Specific Interrogatories Directed to Plaintiff
C1224-1226	04/08/13	Conwed's Request for Production of Documents Directed to Plaintiff
C1227-C1241	04/08/13	Conwed Corp's Lay and Expert Witness Disclosure

C1242	04/08/13	Notice of Filing
C1243	04/08/13	Notice of Filing
C1244	04/08/13	Appearance – Mechanical Insulation
C1245	04/08/13	Receipt #5515497
C1246-C1254	04/08/13	Answer to Plaintiffs' Complaint at Law
C1255-C1256	04/08/13	Motion to Strike Plaintiffs' Prayer for Punitive Damages
C1257-C1259	04/08/13	Request for Production of Documents
C1260	04/08/13	Notice of Filing
C1261-C1270	04/08/13	Defendant Foster Wheeler Energy Corporation's Answer and Affirmative Defenses to Plaintiffs' Complaint
C1271-C1273	04/08/13	Defendant Foster Wheeler Energy Corporation's Counterclaim for Contribution
C1274-C1275	04/08/13	Defendant Foster Wheeler Energy Corporation's Motion to Strike and Dismiss Counts 5 and 6 of Plaintiffs' Second Amended Complaint
C1276	04/09/13	Receipt #5515499
C1277-Cl282	04/09/13	Notice of Filing
Cl283-C1284	04/09/13	Owens-Illinois, Inc.'s Motion to Strike Plaintiffs' Prayer for Punitive Damages
C1285-C1287	04/09/13	Notice of Filing
C1288	04/09/13	Appearance - Chicago Gasket Co.
C1289	04/09/13	Receipt #5515503
Cl290-C1297	04/09/13	Answer and Affirmative Defenses to Plaintiffs' Complaint
C1298-C1300	04/09/13	Notice of Filing
C1301-C1320	04/09/13	Chicago Gasket Company's Fact and Expert Witness Disclosure
C1321-Cl323	04/09/13	Notice of Filing
C1324-C1325	04/09/13	Motion to Strike Plaintiffs' Claims for Punitive Damages
C1326-C1328	04/09/13	Certificate of Service
C1329-C1346	04/I0/13	Notice of Service of Discovery - Owens-Illinois (x2)
C1347-C1354	04/10/13	Owens-Illinois Inc.'s Rule 213(f)(1)-(3) Disclosures
C1355-C1359	04/10/13	Notice of Filing
C1360	04/10/13	Appearance - Mannington Mills
C1361	04/10/13	Receipt #5515511
C1362-C1365	04/12/13	Notice of Motion

C1366	04/15/13	Proof of Service – Homasote
C1367-C1368	04/15/13	Notice of Filing
C1369-C1370	04/15/13	Entry of Appearance - General Gasket Corporation
C1371	04/15/13	Receipt #5515550
C1372-C1402	04/15/13	Defendant General Gasket Corporation's Answer and Affirmative Defenses to Plaintiffs' Complaint
C1403-C1413	04/15/13	Defendant General Gasket Corporation's Disclosure of Witnesses
C1414-C1419	04/15/13	Entry of Appearance - Tremco Incorporated
C1420	04/15/13	Receipt #5515551
C1421-C1422	04/15/13	Defendant Caterpillar Inc., Industrial Holdings Corporation f/k/a The Carborundum Company, and Trane U.S., Inc.'s Motion to Strike Plaintiffs' Prayer for Relief Requesting Punitive Damages Pursuant to 735 ILCS 5/2-604.1
C1423	04/15/13	Certificate of Service
C1424	04/15/13	Notice of Hearing
C1425-C1428	04/15/13	Notice of Filing
C1429-C1432	04/15/13	Notice of filing
C1433-C1436	04/15/13	Notice of Filing
C1437-C1440	04/15/13	Notice of Filing
C1441	04/15/13	Certificate of Service
C1442-C1454	04/15/13	Pneumo Abex LLC's Answer to Complaint
C1455	04/15/13	Certificate of Service
C1456-C1459	04/15/13	Pneumo Abex LLC's Answer to John Crane's Contribution Claim
C1460-C1463	04/15/13	Pneumo Abex LLC's Motion to Strike Plaintiffs' Prayer for Punitive Damages
C1464-C1467	04/15/13	Motion for Admission Pro Hac Vice of Raymond H. Modesitt and Reagan W. Simpson before the Circuit Court of McLean Co. IL
C1468	04/15/13	Receipt #5515561
C1469-C1471	04/15/13	Certificate of Service

C1472-C1477	04/17/13	Defendant Kelly-Moore's Motion to Dismiss for Lack of Personal Jurisdiction
C1478-C1526	04/17/13	Memorandum of Law in Support of Kelly-Moore's Motion to Dismiss for Lack of Personal Jurisdiction
C1527-C1533	04/22/13	Return of Service on National Service Industries
C1534	04/22/13	Notice of Hearing
C1535-C1537	04/22/13	Notice of Filing Weil-McLain's Appearance, Answer and Affirmative Defenses to Plaintiff's Complaint and Motion to Strike and Dismiss Count V and VI
C 1538	04/22/13	Appearance Weil-McClain
C1539	04/22/13	Receipt #5515599
C1540-C1549	04/22/13	Answer and Affirmative Defenses of Defendant Weil-McLain to Plaintiffs Complaint
C1550	04/22/13	Weil-McLain's Motion to Strike and Dismiss Counts V and VI of Plaintiffs' Complaint
C1551-C1553	04/22/13	Certificate of Service Weil-McLain's Request for Production of Documents and Special Interrogatories to Plaintiff
C1554-C1557	04/22/13	Special Interrogatories to Plaintiff on Behalf of Weil-McLain
C1558-C1560	04/22/13	Defendant Weil-McLain's Request for Production of Documents

VOLUME 6

NUMBER	DATE	DESCRIPTION
C1561-C1565	04/24/13	Pneumo Abex LLC's Answer to Honeywell International, Inc.'s Counterclaim for Contribution
C1566-C1569	04/24/13	Pneumo Abex LLC's Answer to CBS Corporation's Counterclaim for Contribution
C1570-C1574	04/24/13	Pneumo Abex LLC's Answer to Sprinkmann Sons Corporation's Counterclaim for Contribution
C1575 – C1578	04/24/13	Pneumo Abex LLC's Answer to Ameron International Corporation's Counterclaim for Contribution
C1579-C1583	04/24/13	Pneumo Abex LLC's Answer to Superior Boiler Works, Inc.'s Counterclaim for Contribution
C1584	04/24/13	Notice of Hearing
C1585-C1588	04/24/13	Certificate of Service
C1589-C1593	04/24/13	Notice of Filing
C1594-C1597	04/24/13	Entry of Appearance - DeWitt Products Company

C1598	04/24/13	Receipt# 5515633
C1599-C1615	04/24/13	Answer and Affirmative Defenses of Defendant DeWitt Products Company to Plaintiffs' Complaint
C1616-C1721	04/24/13	Defendant DeWitt Products Company's Master Designation of Fact and Expert Witnesses
C1722-C1728	04/24/13	Defendant DeWitt Products Company's Answer to All Counterclaims and Counterclaim for Contribution
C1729-C1741	04/24/13	Defendant DeWitt Products Company's Case Specific Interrogatories to Plaintiffs
C1742-Cl750	04/24/13	Defendant DeWitt Products Company's Requests to Produce Directed to Plaintiffs
C1751	04/25/13	Order on John Crane's Motion to Strike Plaintiffs' Prayer for Punitive Damages
C1752	04/25/13	Order on Various Defendants' Motion to Strike Plaintiffs' Prayer for Punitive Damages
C1753	04/25/13	Agreed Order
C1754	04/29/13	Notice of Filing
C1755	04/29/13	Additional Appearance - Zurn Industries
C1756-C1765	04/29/13	Defendant Zurn Industries, LLC's Answer and Affirmative Defenses to Plaintiffs Complaint
C1766	04/29/13	Notice of Filing
C1767	04/29/13	Additional Appearance - OAP, Inc.
C1768-C1776	04/29/13	Defendant, DAP Inc.'sAnswer and Affirmative Defenses to Plaintiffs' Complaint
C1777-C1782	04/29/13	Certificate of Service (x6)
C1783	04/29/13	Notice of Motion
C1784 C1785	04/29/13	Defendant, DAP., Inc's Motion to Strike and Dismiss Counts 5 and 6 of Plaintiffs' Complaint
C1786-C1787	04/29/13	Defendant, Zurn Industries, LLC's Motion to Strike and Dismiss Counts 5 and 6 of Plaintiffs' Complaint
C1788	04/29/13	Notice of Motion
C1789-C1795	04/29/13	Bechtel Corporation's, Certainteed Corporation's, Tremco Incorporated's and Union Carbide Corporation's Motion to Strike Plaintiffs' Prayer for Punitive Damages
C1796-C1802	04/29/13	Notice of Hearing
C1803-C1804	04/29/13	Notice of Filing

C1805-C1810	04/29/13	Defendant Duro Dyne Corporation's Answer and Affirmative Defenses
C1811-Cl812	04/29/13	Notice of Hearing
C1813-C1815	04/29/13	Defendant Duro Dyne Corporations Motion to Strike Plaintiffs' Prayer for Punitive Damages
C1816-C1818	04/29/13	Defendant General Electric Company's Answer to AH Counterclaims Now or Hereinafter filed and Counterclaim for Contribution
C1819-C1831	04/29/13	Defendant General Electric Company's Answer to Plaintiffs' Complaint
C1832-C1840	05/02/13	Motion for Order Authorizing Electronic Service
C1841-C1846	05/03/13	Certificate of Service

VOLUME 7

NUMBER	DATE	DESCRIPTION
C1847-C1902	05/03/13	Honeywell International Inc.'s Disclosure of Witnesses
C1903-C1908	05/03/13	Certificate of Service
C1909-C1910	05/06/13	Defendant Kimberly-Clark Corporation's Motion to File Amended Answer
C1911-C1912	05/06/13	Defendant Kimberly-Clark Corporation's Motion to Strike and Dismiss Counts 5 and 6 of Plaintiffs' Complaint
C1913-C1915	05/06/13	Defendant Kimberly-Clark Corporation's Counterclaim for Contribution
C1916-C1924	05/06/13	Defendant Kimberly Clark Corporation's Designation of Fact Witnesses
C1925-C1973	05/06/13	Defendant Kimberly-Clark Corporation's Designation of Expert Witnesses
C1974-C1977	05/06/13	Certificate of Service
C1978	05/06/13	Notice of Hearing
C1979-C1981	05/06/13	Motion for Order Authorizing Electronic Service
C1982-C1984	05/06/13	Certificate of Service
C1985-C1990	05/07/13	Affidavit of Service Thiem Corp.
C1991	05/08/13	Notice of Filing
C1992-C2009	05/08/13	Defendant Weil McLain's Witness Disclosure
C2010-C2012	05/09/13	Affidavit of Service - Bird Inc.
C2013	05/10/13	Plaintiffs Motion for Leave to Amend
C2014-C2017	05/10/13	Amendment to Complaint
C2018-C2021	05/13/13	Defendant Sprinkmann Sons Corporation's Answer to Any and All Counterclaims

C2022-C2025	05/13/13	Sprinkmann Sons Corporation's Joinder in Bechtel Corporation, CertainTeed Corporation, Tremco Incorporated and Union Carbide Corporation's Motion to Strike Plaintiffs' Prayer for Punitive Damages
C2026	05/13/13	Certificate of Service
C2027-C2031	05/15/13	Affidavit of Service - Welco Manufacturing
C2032- C2035	05/15/13	Certificate of Service
C2036-C2037	05/16/13	Defendant's Motion for Substitution of Counsel
C2038-C2039	05/16/13	Substitution of Counsel
C2040	05/16/13	Certificate of Service
C2041-C2044	05/21/13	Notice of Hearing
C2045-C2065	05/23/13	Amended Answer to Defendant Kimberly Clark Corporation to Plaintiffs' Complaint
C2066-C2067	05/23/13	Consent Order
C2068- C2070	05/23/13	Notice of Hearing
C2071-C2076	05/24/13	Defendants' Answer to Foster Wheeler Energy Corporation's Counterclaim for Contribution
C2077-C2082	05/24/13	Defendants' Answer to Ameron International Corporation Counterclaim for Contribution
C2083-C2088	05/28/13	Superior Boiler Works, Inc's Motion to Strike Plaintiffs' Claims for Punitive Damages Complaint
C2089-C2093	05/28/13	Notice of Hearing
C2094- C2097	05/28/13	Affidavit of Service - Homasote Company
C2098-C2100	05/28/13	Amended Notice of Motion
C2101-C2105	05/28/13	Notice of Filing
C2106-C2116	05/28/13	Defendant Mannington Mills, Inc.'s Answer and Affirmative Defenses to Plaintiffs' Complaint at Law
C2117-C2119	05/28/13	Counterclaim for Contribution and Answer to Any and All Counterclaims
C2120	05/31/13	Order on DAP, Zurn and Foster Wheeler's Motion to Dismiss Counts 5 & 6 and Motion to Strike Punitive Damages in Counts 5 & 6
C2121-C2125	05/31/13	Order for Electronic service
C2126	05/31/13	Order for Substitution of Counsel
C2127-C2128	05/31/13	Entry of Appearance - Homasote Company
C2129	05/31/13	Receipt #5515946
C2130-C2138	05/31/13	Defendant Homasote Company's Answer and Affirmative Defenses to Plaintiffs' Complaint at Law
C2139-C2143	05/31/13	Certificate of Service

C2144-C2149	05/31/13	Defendant Sherwin-Williams Company's Motion to Dismiss or, in the Alternative, to Transfer Based on the Doctrine of Forum Non Conveniens
C2150-C2152	06/04/13	Notice of Filing
C2153	06/04/13	Entry of Appearance - Bird Incorporated
C2154-C2168	06/04/13	Defendant Bird Incorporated Answer to Plaintiffs' Complaint
C2169-C2202	06/04/13	Bird's Disclosure of Fact and Expert Witnesses
C2202.1-C2202.6	06/05/13	Certificate of Service

VOLUME 8

NUMBER	DATE	DESCRIPTION
C2203-C2207	06/05/13	Plaintiffs' Motion to Default Azko Nobel Paints LLC f/k/a The Glidden Co.
C2208	06/05/13	Proof of Service
C2209-C22I4	06/05/13	Plaintiffs' Motion to Default J.P. Bushnell Packing Supply Company
C2215	06/05/13	Proof of Service
C2216-C2221	06/06/13	Ameron International Corporation's Motion to Strike Plaintiffs' Claims for Punitive Damages Complaint
C2222-C2226	06/06/13	Notice of Hearing
C2227-C2232	06/06/13	CBS Corporation's Motion to Strike Plaintiffs' Claims for Punitive Damages Complaint
C2233-C2236	06/06/13	Notice of Hearing
C2237-C2242	06/06/13	DeWitt Products Company's Motion to Strike Plaintiff's Claims for Punitive Damages
C2243-C2247	06/06/13	Notice of Hearing
C2248-C2253	06/06/13	Simpson Timber Company's Motion to Strike Plaintiffs' Claims for Punitive Damages Complaint
C2254-C2255	06/06/13	Notice of Hearing
C2259	06/10/13	Receipt #5516075
C2260	06/10/13	Entry of Appearance - Crown Cork & Seal Company, Inc.
C2261	06/10/13	Receipt #5516055
C2262-C2263	06/10/13	Notice of Hearing
C2264-C2266	06/10/13	Defendant The Sherwin-Williams Company's Reassertion of its Previously Filed Motions
C2267-C2271	06/10/13	Certificate of Service

C2272-C2276	06/10/13	Defendant Akzo Nobel Paints LLC, Formerly Known as The Glidden Company's Opposition to Plaintiffs' Motion to Default and Motion to File an Answer and Affirmative Defenses
C2277-C2311	06/10/13	Answer and Affirmative Defenses of Defendant Akzo Nobel Paints LLC, Formerly Known as The Glidden Company, to Plaintiffs' Complaint
C2312-C2314	06/11/13	Defendant Kimberly Clark Corporation's Answer to All Counterclaims
C2315-C2316	06/11/13	Entry of Appearance -Akzo Nobel Paints
C2317	06/11/13	Receipt #5516086
C2318	06/11/13	Entry of Appearance- Welco Mfg.
C2319	06/11/13	Receipt #5516093
C2320-C2322	06/11/13	Defendant Welco Manufacturing Company's Motion to Strike Plaintiffs' Prayer for Punitive Damages
C2323-C2327	06/11/13	Notice of Hearing
C2328-C2329	06/13/13	Notice of Hearing
C2330-C2340	06/13/13	Tremco Incorporated's Answer to Plaintiffs' Complaint, Affirmative Defenses, Counterclaim for Contribution and Answer to Any and All Counterclaims for Contribution
C2341	06/13/13	Receipt #5516127
C2342	06/13/13	Tremco's Motion to Vacate Any and AH Technical Defaults and for Leave to File Responsive Pleadings
C2343-C2345	06/14/13	Defendants' Answer to Mannington Mills, Inc.'s Counterclaim for Contribution
C2346	06/17/13	Certificate of Service
C2347	06/17/13	Notice of Hearing
C2348	06/17/13	Notice of Filing
C2349	06/17/13	Appearance and Jury Demand - McMaster-Carr Supply Company
C2350	06/17/13	Receipt #5516193
C2351-C2353	06/17/13	McMaster-Carr Supply Company's Motion to Dismiss Complaint at Law
C2354-C2364	06/17/13	McMaster-Carr Supply Company's Memorandum of Law in Support of Its Motion to Dismiss Plaintiffs' Complaint at Law
C2365-C2366	06/20/13	Affidavit of Kay Andrews

C2367 C2368	06/20/13	Notice of Hearing
C2369-C2370	06/20/13	Application for Admission of Counsel Pro Hac Vice
C2371-C2372	06/21/13	Certification of Counsel
C2373	06/24/13	Order Granting Application for Admission of Counsel Pro Hac Vice
C2374	06/24/13	Amendment to Complaint
C2375	06/24/13	Order on Motions to Dismiss
C2376-C2378	06/24/13	Motion to Strike Plaintiffs' Claim for Punitive Damages
C2379-C2383	06/24/13	Pneumo Abex LLC's Answer to KimberJy Clark Corporation's Counterc1aim for Contribution
C2384-C2388	06/24/13	Pneumo Abex LLC's Answer to General Electric Company's Counterclaim for Contribution
C2389-C2393	06/24/13	Pneumo Abex LLC's Answer to DeWitt Products Company's Counterclaim for Contribution
C2394-C2396	06/24/13	Defendant Bird Incorporated's Answer to All Counterclaims Now or Hereinafter Filed and Counterclaims for Contribution
C2397-C2399	06/24/13	Motion to Strike Plaintiffs' Claims for Punitive Damages
C2400-C2406	06/25/13	Honeywell International Inc.'s Motion to Compel Release of Pathology Slides
C2407-C2410	06/25/13	Revised Notice of Case Management Conference
C2411-C2413	06/26/13	Certificate of Service
C2414-C2415	06/26/13	Defendant General Electric Company's First Request for Admission to Plaintiff Deborah Jones
C2416-C2417	06/26/13	Defendant General Electric Company's First Request for Admission to Plaintiff John Jones
C2418-C2422	06/26/13	Defendant Oakfabco, Inc.'s Motion to Dismiss or, In the Alternative, to transfer Based on the Doctrine of Forum Non Conveniens
C2423	06/26/13	Notice of Deposition for Purpose of Copying Records
C2424	06/26/13	Certification of Counsel
C2425-C2428	07/01/13	Affidavit of Service-Cleaver Brooks
C2429-C2431	07/01/13	Certificate of Counsel
C2432-C2434	07/09/13	Notice of Filing
C2435-C2439	07/09/13	Chicago Gasket Company's Rule 187(b) Motion to Transfer or. In the Alternative, to Dismiss

C2440-C2445	07/09/13	Notice of Hearing
C2446	07/09/13	Plaintiff., Deborah Jones' Objections to General Electric Company's First Request for Admission
C2447-C2448	07/09/13	Plaintiff, John Jones' Response to General Electric Company's First Request for Admission
C2449-C2450	07/09/13	Plaintiff, John Jones' Response to Bird Incorporated's First Request for Admission
C2451	07/09/13	Plaintiff, Deborah Jones' Objections to Bird Incorporated's First Request for Admission
C2452-C2454	07/11/13	Order on Honeywell International Inc.'s Motion to Compel Release of Pathology Slides
C2455-C2456	07/15/13	Sprinkmann Sons Corporation's Answer to Bird Incorporated's Counterclaim for Contribution and Setoff
C2457	07/15/13	Pneumo Abex LLC's Answer to Mannington Mills. Inc.'s Counterclaim for Contribution
C2458-C2460	07/15/13	Amended Notice of Motion
C2461-C2463	07/15/13	Amended Notice of Routine Motion
C2464 C2465	07/16/13	Notice of Filing
C2466	07/16/13	Appearance and Jury Demand - Cleaver-Brooks. Inc.
C2467	07/16/13	Receipt #5516529
C2468-C2473	07/16/13	Cleaver-Brooks Inc.'s Motion to Dismiss Plaintiffs' Complaint Pursuant to 735 ILCS 5/2-615
C2474-C2479	07/16/13	Cleaver-Brooks Inc.'s Fact Witness Disclosure
C2480-C2525	07/16/13	Cleaver-Brooks Inc.'s 213(f) Expert Witness Disclosure
C2526- C2532	07/16/13	Cleaver-Brooks Inc.'s Exhibit List
C2533-C2534	07/16/13	Motion to Strike Plaintiffs' Claim for Punitive Damages
C2535-C2537	07/17/13	Pneumo Abex LLC's Answer to Amendment **to** Complaint

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NUMBER	DATE	DESCRIPTION
C2538-C2539	07/09/13	Re-Notice of Hearing
C2540	07/09/13	Notice of Filing
C2541	07/19/13	Notice of Adoption of Pleadings Previously Filed for Defendants

C2542-C2545	07/24/13	Affidavit of Service - Borg Warner Corporation
C2546 C2547	07/24/13	Defendant, American Biltrite, Inc.'s Notice of Adoption for its Previously Filed Pleadings
C2548-C2549	07/24/13	Defendant Draco Mechanical Supply, Inc.'s Notice of Adoption of Its Previously filed Pleadings
C2550-C2551	07/24/13	Defendant, J.M Manufacturing Company, Inc.[1] s Notice of Adoption of its Previously Fled Pleadings
C2552-C2553	07/24/13	Defendant, SPX Cooling technologies, Inc.'s Notice of Adoption of its Previously Filed Pleadings
C2554	07/25/13	Notice of Filing
C2555	07/25/13	Defendant Mannington Mills, Inc.'s Notice of Adoption of its Previously Filed Pleadings
C2556 C2557	07/25/13	Defendant York International Corporation's Motion to Dismiss Plaintiffs' First Amended Complaint
C2558 C2559	07/25/13	Defendant Karnak Corporation's Motion to Dismiss Plaintiffs' Complaint or Transfer Venue Under the Doctrine of Forum Non Conveniens
C2560	07/25/13	Certificate of Service
C2561-C2586	07/25/13	Defendant Industrial Holdings Corporation (Incorrectly Named as Industrial Holdings Corporation's) Answer and Affirmative Defenses to Amendment to Plaintiffs Complaint Answer to All Counterclaims and Counterclaim for Contribution and Setoff
C2587-C2611	07/25/13	Defendant Karnak Corporation (Incorrectly Named as Karnak Midwest, LLC)'s Answer and Affirmative Defenses to Amendment to Plaintiffs' Complain Answer to All Counterclaims and Counterclaim for Contribution and Setoff
C2612-C2635	07/25/13	Defendant Caterpillar Inc.'s Answer and Affirmative Defenses to Amendment to Plaintiffs' Answer to All Counterclaims and Counterclaim for Contribution and Setoff
C2636-C2659	07/25/13	Defendant Trane US. Inc.'s Answer and Affirmative Defenses to Amendment to Plaintiffs' Complaint, Answer to all Counterclaims and Counterclaim for Contribution and Setoff
C2660-C2664	07/26/13	Defendant Welco Manufacturing Company's Motion to Dismiss Plaintiffs' First Amended Complaint

C2665-C2671	07/29/13	Defendant's, Domco Products teas Inc., f/k/a Domco Products Texas, L.P., Motion to Dismiss Plaintiffs' Amendment to Complaint
C2672-C2674	08/02/13	Notice of Filing
C2660-C2664	07/26/13	Defendant Welco Manufacturing Company's Motion to Dismiss Plaintiffs' First Amended Complaint
C2665-C2671	07/29/13	Defendant's, Domco Products teas Inc., f/k/a Domco Products Texas, L.P., Motion to Dismiss Plaintiffs' Amendment to Complaint
C2672-C2674	08/02/13	Notice of Filing
C2675-C2676	08/02/13	Chicago Gasket Company's Answer to All Counterclaims Now or Hereinafter Filed and for Contribution
C2677-C2679	08/02/13	Notice of Filing
C2680	08/02/13	Defendant Chicago Gasket Company's Notice of Adoption of its Previously Filed Pleadings
C268l-C2682	08/02/13	Defendant Bird Incorporated's Notice of Adoption of its Previously Filed Pleading
C2683-C2684	08/02/13	Defendant General Electric Company's Notice of Adoption of its Previously filed Pleading
C2685-C2686	08/02/13	Defendant Sulzer Pumps (US) Inc.'s Notice of Adoption of its Previously Filed Pleadings
C2687-C2690	08/05/13	Defendant Homasote Company's Disclosure of Fact Witnesses
C2691-C2741	08/05/13	Defendant Homasote Company's Disclosure of Expert Witnesses
C2742-C2745	08/05/13	Sprinkmann Sons Corporation's Answer to Karnak Corporation's Counterclaim for Contribution and Setoff
C2746-C2747	08/06/13	Notice of Hearing
C2748-C2751	08/06/13	Defendant Oakfabco Inc.'s Motion to Strike Plaintiffs' Prayer for Punitive Damages
C2752	08/07/13	Notice of Filing
C2753	08/07/13	Notice of Hearing
C2754-C2758	08/07/13	Defendants Caterpillar Inc., Industrial Holdings Corporation, Karnak Corporation and Trane U.S., Inc.'s Motion for qualified HIPAA Protective Order
C2759-C2760	08/08/13	Notice of Hearing
C2761 C2763	08/08/13	Sprinkmann Sons Corporation's Answer to Chicago Gasket Company's Counterclaim for Contribution and Setoff

C2764	08/12/13	Notice of Filing
C2765	08/12/13	Appearance and Jury Demand- BorgWarner Morse TEC Inc.
C2766	08/12/13	Receipt #5516779
C2767-C2777	08/12/13	Answer to Plaintiffs' Complaint at Law
C2778	03/12/13	Certificate of Service
C2779	08/12/13	Notice of Motion
C2780-C2805	08/12/13	Motion of the Defendant, BorgWarner Morse TEC Inc., to Dismiss Counts 5 and 6 of the Plaintiffs, Complaint at Law
C2806-C2810	08/12/13	Memorandum of Law of the Defendant, BorgWarner Morse TEC Inc., in Support of Its Motion to Dismiss Counts 5 and 6 of the Plaintiffs' Complaint at Law
C2811	08/12/13	Notice of Motion
C2812 C2814	08/12/13	Routine Motion for HIPAA Qualified Protective Order
C2815-C2816	08/12/13	Notice of Adoption of Pleadings Previously Filed for Defendant Kelsey-Hayes Company
C2817-C2819	08/13/13	Notice of Hearing
C2820	08/15/13	Notice of Filing
C2821-C2836	08/15/13	Answer and Affirmative Defenses of The Goodyear Tire and Rubber Company to Plaintiffs' First Amended Complaint., Counterclaim for Contribution and Answer to Counterclaims
C2837-C2839	08/15/13	Motion to Strike Plaintiff's Claims for Punitive Damages
C2840	08/15/13	Order on Goodyear's Motion for Leave to File Its Answer
C2841-C2842	08/15/13	Order on Motions to Dismiss
C2843	08/15/13	Case Management Order
C2844	08/19/13	Notice of Filing
C2845	08/19/13	Notice of Motion
C2846-C2847	08/19/13	Defendant The Goodyear Tire and Rubber Company's Motion to Strike Prayer for Relief in Counts V and VI of Plaintiffs First Amended Complaint
C2848-C2850	08/19/13	Defendants' Answer to Trane U.S., Inc.'s Counterclaim for Contribution
C2851-C2854	08/19/13	Defendants' Answer to Industrial Holdings Corporation's Counterclaim for Contribution
C2855-C2857	08/19/13	Defendant's Answer to Caterpillar Inc.'s Counterclaim for Contribution

C2858-C2860	08/19/13	Defendants' Answer to Karnak Corporation's Counterclaim for Contribution
C2861-C2864	08/19/13	Defendant General Gasket Corporation's Answer to All Counterclaims and Counterclaim for Contribution
C2865-C2867	08/19/13	Defendants' Answer to Bird Incorporated's Counterclo.im for Contribution
C2868-C2870	08/19/13	Defendants' Answer to Tremco Incorporated s Counterclaim for Contribution
C287l-C2874	08/22/13	Notice of Filing
C2875-C2877	08/22/13	Defendant John Crane Inc.'s Answer to Karnak Corporation's Counterclaim for Contribution
C2878-C8880	08/22/13	Defendant John Crane Inc.'s Answer to Caterpillar Inc.'s Counterclaim for Contribution
C2881-C2883	08/22/13	Defendant John Crane Inc.'s Answer to Industrial Holdings Corporation's Counterclaim for Contribution
C2884-C2886	08/22/13	Defendant John Crone Inc.'s Answer to Trane U.S. Inc.'s Counterclaim for Contribution

VOLUME 10

NUMBER	DATE	DESCRIPTION
C2887	08/26/13	Notice of Filing
C2888-C2890	08/26/13	Defendant Cleaver-Brooks, Inc.'s Answer to All Counterclaims Now or Hereinafter Filed and Counterclaim for Contribution
C2891-C2894	08/26/13	Defendants American Biltrite Inc., SPX Cooling Technologies, Inc., Draco Mechanical Supply, lnc., J-M manufacturing Company, Jnc.'s Answer to Counterclaims for Honeywell International Inc.
C2895-C2897	08/26/13	Defendants American Biltrite Inc., SPX Cooling Technologies, Inc. Draco Mechanical Supply, Inc., J-M manufacturing Company, Inc. s Answer to Com1terclaims for Simpson Timber Company
C2898-C2900	08/26/13	Defendants American Biltrite Inc., SPX Cooling Technologies, Inc., Draco Mechanical Supply, Inc., J-M manufacturing Company, Inc.'s Answer to Counterclaims for Sprinkmann Sons Corporation
C2901-C2903	08/26/13	Defendants American Biltrite Inc., SPX Cooling Technologies, Inc., Draco Mechanical Supply, Inc., J-M manufacturing Company, Inc.'s Answer to Counterclaims for Superior Boiler Works, Inc.
C2904	08/28/13	Plaintiffs' Motion for Voluntary Dismissal
C2905	08/28/13	Plaintiffs' Motion for Voluntary Dismissal Without Prejudice and Substitution of Party

C2906-C2907	08/28/13	Pneumo Abex LLC's Answer to General Gasket Corporation's Counterclaim for Contribution
C2908	8/29/13	Entry of Appearance -J.P. Bushnell Packing Supply Company
C2909	08/29/13	Receipt #5516945
C2910-C2919	08/29/13	Defendant J.P. Bushnell, Packing & Supply Company's Answer to Plaintiffs' Complaint and Affirmative Defenses
C2920	08/30/13	Notice of Hearing
C2921-C2929	08/30/13	Honeywell International Inc.'s Answer and Affirmative Defenses to Plaintiffs' Amended Complaint
C2930	09/03/13	Certificate of Service
C2931	09/03/13	Certificate of Service
C2932	09/03/13	Certificate of Service
C2933 C2934	09/03/13	Correspondence from Appellate Court
C2935-C2940	09/04/13	Certificate of Service (x6)
C2941-C2943	09/05/13	Affidavit of Service - Mechanical Insulation Co. Inc.
C2944	09/09/13	Order on Plaintiffs' Motion for Voluntary Dismissal
C2945-C2946	09/09/13	Pneumo Abex LLC's Answer to Cleaver-Brooks, Inc.'s Counterclaim for Contribution
C2947-C2950	09/11/13	Defendant's, Domco Products Texas Inc. f/k/a Domco Products Texas, L. P., Motion to Join Co-defendant's Oakfabco, Inc.'s Motion to Dismiss or, In the Alternative, to Transfer Based on the Doctrine of Forum Non Conveniens
C2951-C2952	09/11/13	Notice of Hearing
C2953	09/12/13	Certificate of Service
C2954 C2955	09/16/13	Notice of Hearing
C2956 C2958	09/16/13	Notice of Discovery Deposition
C2959-C2960	09/17/13	Notice of Filing
C2961-C2970	09/17/13	Answer and Affirmative Defenses of Defendant Cleaver- Brooks to Plaintiffs' Complaint
C2971-C2972	09/17/13	Kaiser Gypsum's Motion to Strike Plaintiffs' Claims for Punitive Damages
C2973-C2974	09/17/13	Notice of Hearing
C2975-C2986	09/18/13	Defendant American Biltrite's Answer and Affirmative Defenses to Plaintiffs Complaint
C2987-C2998	09/18/13	Defendant Draco Mechanical Supply's Answer and Affirmative Defenses to Plaintiff's Complaint
C2999-C3010	09/18/13	Defendant J-M Manufacturing's Answer and Affirmative Defenses to Plaintiff's Complaint

C3011-C3022	09/18/13	Defendant SPX Cooling Technologies' Answer and Affirmative Defenses to Plaintiffs' Complaint
C3023-C3025	09/20/13	Defendant York International Corporation's Answer to Defendants' Counterclaims Now and Hereinafter Filed
C3026 C3028	09/20/13	Defendant Welco Manufacturing Company's Answer to Defendants' Counterclaims Now and Hereinafter Filed
C3029-C3031	09/23/13	Defendant Bird Incorporated's Motion to Strike Prayer for Relief in Counts V and VI of Plaintiffs, First Amended Complaint
C3032 C3034	09/23/13	Defendant General Electric Company's Motion to Strike Prayer for Relief in Counts V and VI of Plaintiffs' First Amended Complaint
C3035	09/23/13	Order on Defendant's Motion to Strike Prayer for Relief in Counts V and VI
C3036	09/23/13	Order on the Motion to Dismiss pursuant to the Doctrine of Forum Non Conveniens
C3037 C3038	09/27/13	Sprinkmann Sons Corporation's Answer to General Gasket Corporation's Counterclaim for Contribution
C3039-C3040	09/27/13	Sprinkmann Sons Corporation's Answer to Cleaver-Brooks' Inc.'s Counterclaim for Contribution
C3041-C3060	09/30/13	Certificate of Compliance

VOLUME 11

NUMBER	DATE	DESCRIPTION
C3061-C3108		Record Sheets
C3109	11/15/13	Proof of Transfer from McLean County
C3110-C3115	11/27/13	Notice of Hearing
C3116 C3122	11/27/13	Defendant Tremco Incorporated's Motion to Compel
C3123 C3124	12/02/13	Stipulation of Dismissal
C3125	12/03/13	Order of Dismissal
C3126-C3129	12/03/13	Notice of Hearing
C3130-C3131	12/03/13	Motion to Approve Settlement - Metropolitan Life insurance Company
C3132-C3135	12/06/13	Notice of Hearing
C3136-C3139	12/06/13	Certificate of Service
C3140	12/09/13	Entry of Appearance - Conwed Corporation
C3141-C3148	12/09/13	Conwed Corporation's Answer and Affirmative Defenses to Plaintiffs' Complaint at Law
C3149-C3152	12/10/13	Plaintiffs' Motion for Voluntary Dismissal

C3153-C3161	12/10/13	Motion for Order Authorizing Electronic Service
C3162- C3166	12/10/13	Order of Electronic Service
C3167	12/10/13	Agreed Order
C3168	12/10/13	Order on Plaintiffs' Motion for Voluntary Dismissal
C3169	12/10/13	Order Approving Settlement with Metropolitan Life Insurance
C3170	12/10/13	Case Management Order
C3171-C3174	02/13/14	Notice of Filing
C3175 C3182	02/13/14	John Crane Inc.'s Motion to Amend Order on Honeywell International Inc.'s Motion to Compel Release of Pathology Slides
C3183	02/13/14	Certificate of Compliance
C3184	02/13/14	Notice of Filing
C3185- C3191	02/13/14	Cleaver-Brooks Motion to Amend Order for Pathology
C3192	02/21/14	Notice of Hearing
C3193-C3200	02/21/14	Defendant Welco Manufacturing Company's Motion to Amend Order for Pathology
C3201	02/21/14	Notice of Hearing
C3202-C3209	02/21/14	Defendant York International Corporation's Motion to Amend Order for Pathology
C3210-C3212	02/21/14	Notice of Hearing
C3213-C3214	02/24/14	Notice of Hearing
C3215-C3221	02/24/14	Motion of Defendant American Biltrite., Inc. Amend Order for Pathology
C3222-C3228	02/24/14	Motion of Defendant Draco Mechanical Supply, Inc. to Amend Order for Pathology
C3229-C3235	02/24/14	Motion of Defendant J-M Manufacturing Company, Inc. to Amend Order for Pathology
C3236-C3242	02/24/14	Motion of Defendant SPX Cooling Technologies, Inc. to Amend Order tor Pathology
C3243-C3244	03/03/14	Joinder to John Crane's Motion to Amend Order on Honeywell International's Motion to Compel Release of Pathology Slides
C3245-C3246	03/03/14	Notice of Hearing
C3247	03/07/14	Notice of Cancellation of Hearing
C3248	03/10/14	Notice of Filing
C3249	03/10/14	Crane Co., Mechanical Insulation Co., Inc., and KCG, Inc.'s Motion to Join Defendants Industrial Holdings Corporation, Karnak Corporation and Trane U.S. Inc.'s Motion to Amend Order for Pathology

C3250-C3251	03/18/14	Notice of Filing
C3252-C3313	03/18/14	CBS Corporation, Successor to Westinghouse Electric Corporation's Initial Rule 213(f)(1)-(3) Disclosures
C3314-C3320	03/24/14	Defendants York International Corporation's and Welco Manufacturing Company's Objection to the Proposed Pathology Order, or In the Alternative, Motion to Amend the Case Management Order
C3321	03/24/14	Welco Manufacturing Company's Jury Demand
C3322 C3334	03/24/14	Defendant Welco Manufacturing Company's Answer to Plaintiff's Amended Complaint, Counterclaim and Affirmative Defenses
C3335	03/24/14	York International Corporation Jury Demand
C3336-C3348	03/24/14	Defendant York International Corporation's Answer to Plaintiff's Amended Complaint, Counterclaim and Affirmative Defenses
C3349-C3350	03/25/14	Agreed Order Re: Pathology
C3351-C3354	03/24/14	Letter to Judge Weber from William Swallow re: Agreed Pathology Order
C3355-C3356	01/16/14	Entry of Appearance - Ameron International Corporation
C3357-C3358	01/16/14	Entry of Appearance - DeWitt Products Company
C3359-C3360	01/16/14	Entry of Appearance - CBS Corporation
C3361-C3362	01/16/14	Entry of Appearance-Superior Boiler Works, Inc.
C3363-C3364	01/16/14	Entry of Appearance - Simpson Timber Company
C3365-C3375	12/20/13	Defendant's, Domco Products Texas Inc., f/k/a Domco Products Texas L.P., Answer and Affirmative Defenses to Plaintiffs, Complaint
C3376	12/31/13	Certificate of Service
C3377- C3380	01/09/14	Certificate of Service
C3381-C3382	01/16/14	Notice and Certificate of Service
C3383-C3385	12/20/13	Defendant's, Domco Products Texas 1nc., f/k/a Domco Products Texas, L.P., Motion to Strike Plaintiffs' Prayers for Punitive Damages
C3386-C3387	12/11/13	Substitution of Counsel for Akzo Nobel Paints LLC, Formerly Known As The Glidden Company

VOLUME 12

NUMBER	DATE	DESCRIPTION
C3388 C3392	03/26/14	Pneumo Abex LLC's Answer to Welco Manufacturing Companv's Counterclaim for Contribution
C3393-C3399	03/27/14	Union Carbide Corporation's Answer to Complaint, Counterclaim for Contribution, and Answer to Any and All Counterclaims for Contribution Which Have Been or Mav be Filed
C3400 C3406	03/27/14	CertainTeed Corporation's Answer to Complain4 Counterclaim for Contribution, and Answer to Any and All Counterclaims for Contribution Which Have Been or May be Filed
C3407-C3410	04/01/14	Certificate of Compliance
C3411-C3415	03/25/14	Agreed Order re: Pathology
C3416	04/02/14	Notice of Filing
C3417-C3422	04/02/14	Defendant Superior Boiler Works, Inc.'s Case Specific Fact Witness Disclosure
C3423-C3491	04/02/14	Defendant Superior Boiler Works Inc.'s Case Specific Expert Witness Designation
C3492-C3493	04/02/14	Notice of Filing
C3494-C3498	04/02/14	Ameron International Corporation's Case Designation of Fact Witnesses
C3499-C3524	04/02/14	Ameron International Corporation's Case Designation of Expert Witnesses
C3525	04/04/14	Notice of Hearing
C3526	04/04/14	Notice of Hearing
C3527-C3533	04/04/14	Defendants York International Corporation's and Welco Manufacturing Company's Objection to the Proposed Pathology Order or In the Alternative, Motion to Amend the Case Management Order
C3534-C3535	04/04/14	Defendant's Joinder in Co-Defendants' Objection to the Proposed Pathology Order, or in the Alternative, Motion to Amend the Case Management Order
C3536-C3537	04/04/14	Sprinkmann Sons Corporation's Answer to York International Corporation's Counterclaim for Contribution
C3538-C3539	04/04/14	Sprinkmunn Sons Corporation's Answer to Welco Manufacturing Company's Counterclaim for Contribution
C3540 C3541	04/04/14	Sprinkmann Sons Corporation's Answer to CertainTeed Corporation's Counterclaim for Contribution
C3542-C3543	04/04/14	Sprinkmann Sons Corporation's Answer to Union Carbide Corporation's Counterclaim for Contribution

C3544 C3547	04/07/14	Certificate of Service
C3548- C3539	04/04/14	Sprinkmann Sons Corporation's Answer to Welco Manufacturing Company's Counterclaim for Contribution
C3540 C3541	04/04/14	Sprinkmann Sons Corporation's Answer to CertainTeed Corporations' s Counterclaim for Contribution
C3542- C3543	04/04/14	Sprinkmann Sons Corporation's Answer to Union Carbide Corporation's Counterclaim for Contribution
C3544-C3547	04/07/14	Certificate of Service
C3548- C3550	04/10/14	Defendants' American Biltrite Inc., SPX Cooling Technologies, Inc., Draco Mechanical Supply, lnc., and J-M Manufacturing Company, lnc.'s Answer to Union Carbide Corporation's Counterclaim for Contribution
C3551- C3553	04/10/14	Defendants' American Biltrite Inc., SPX Cooling Technologies, Inc., Draco Mechanical Supply, Inc., and JM Manufacturing Company, Inc. s Answer to York International Corporation's Counterclaim for Contribution
C3554- C3556	04/10/14	Defendants, American Biltrite Inc.., SPX Cooling Technologies' Inc., Draco Mechanical Supply, Inc., and J-M Manufacturing Company, Inc.'s Answer to Welco Manufacturing Company's Counterclaim for Contribution
C3557- C3559	04/10/14	Mechanical Supply, Inc., and J-M Manufacturing Company, Inc.'s Answer to CertainTeed Corporation's Counterclaim for Contribution
C3560- C3563	04/10/14	Certificate of Service
C3564- C3565	04/11/14	Notice of Filing
C3566 - C3611	04/11/14	Defendant, Simpson Timber Company Expert Witness Disclosure
C3612- C3615	04/11/14	Simpson Timber Company's Designation of Fact Witnesses
C3616	04/11/14	Notice of Filing
C3617- C3713	04/11/14	Defendant DeWitt Products Company's Master Expert Designation of Fact and Expert Witnesses
C3714	04/14/14	Cancellation Notice of Hearing
C3715	04/14/14	Cancellation Notice of Hearing

C3716	04/15/14	Cancellation Notice of Hearing
C3717	04/15/14	Cancellation Notice of Hearing
C3718	04/16/14	Notice of Filing
C3719	04/16/14	Defendant Owens-Illinois, Inc.'s Answer to Counterclaim for Contribution of Union Carbide Corporation
C3721	04/21/14	Cancellation of Hearing
C3722-C3727	04/21/14	Defendant, Homasote Company's Motion to Amend the Case Management Order of December 10, 2013
C3728	04/23/14	Amended Notice of Hearing
C3729	04/23/14	Amended Notice of Hearing
C3730	04/23/14	Certificate of Service
C3731	04/30/14	Certificate of Service
C3732	04/23/14	Notice of Filing
C3733-C3734	04/30/14	Fact Witness Disclosure by Defendant Duro Dyne Corporation
C3735- C3752	04/30/14	Designation of Opinion Witnesses by Defendant Duro Dyne Corporation
C3753-C3754	04/30/14	Notice of Hearing
C3755-C3805	05/02/14	Designation of Witnesses by Defendant Pneumo Abex
C3806-C3807	05/05/14	Certificate of Mailing
C3808-C3809	05/09/14	Notice and Certificate of Service
C3810-C3811	05/12/14	Certificate of Mailing

VOLUME 13

NUMBER	DATE	DESCRIPTION
C3812- C3815	05/21/14	Certificate of Service
C3816-C3819	05/21/14	Certificate of Service
C3820-C3823	05/21/14	Certificate of Service
C3824-C3827	05/21/14	Certificate of Service
C3828-C3831	05/21/14	Certificate of Service
C3832-C3835	05/22/14	Certificate of Service

C3836-C3839	05/22/14	Certificate of Service
C3840-C3843	05/22/14	Certificate of Service
C3844-C3847	05/22/14	Certificate of Service
C3848-C3851	05/22/14	Certificate of Service
C3852- C3855	05/22/14	Certificate of Service
C3856-C3859	5/22/14	Certificate of Service
C3860	05/27/14	Cancellation of Notice of Hearing
C3861	05/27/14	Cancellation of Notice of Hearing
C3862-C3902	05/27/14	Bechtel Corporation's Rule 213(f)(2) and 213(f)(3) Witness Disclosure
C3903-C3906	05/29/14	Notice of Discovery Deposition
C3907-C3908	06/02/14	Motion to Approve Settlement - Georgia-Pacific
C3909-C3910	06/11/14	Certificate of Service
C3911 C3914	06/13/14	Notice of Cancellation
C3915	06/16/14	Plaintiffs' Motion for Voluntary Dismissal
C3916-C3917	06/16/14	Certificate of Service
C3918-C3933	06/16/14	Defendant Cleaver Brooks, Inc.'s Answers and Objections to Plaintiffs' First Set of Interrogatories to Defendant Cleaver-Brooks
C3934-C3946	06/16/14	Defendant Cleaver-Brooks, Inc.'s Answers to Plaintiffs' First Request for Production to Defendant, Cleaver-Brooks
C3947-C3949	06/16/14	Defendant Cleaver-Brooks, Inc.'s Answers and Objections to Plaintiffs' Rule 213 Interrogatories to Defendant, Cleaver-Brooks
C3950	06/16/14	Illinois Supreme court Rule 214 Affidavit of Document Completeness
C3951-C3956	06/17/14	Notice of Rule 206 Discovery Deposition of Homasote Company
C3957	06/18/14	Certification of Counsel
C3958-C3959	06/18/14	Certificate of Service
C3960 C3962	06/16/14	Notice of Hearing
C3963	06/20/14	Certification of Counsel
C3964-C3966	06/23/14	Notice of Hearing
C3967	06/23/14	Motion to Substitute Attorneys
C3968	06/23/14	Substitution of Attorneys
C3969	06/27/14	Substitution of Counsel
C3970-C3974	06/27/14	Notice of Filing

C3975-C3976	06/27/14	Certificate of Service
C3977	06/30/14	Certification of Counsel
C3978	06/30/14	Joinder to Homasote Company's Motion to Amend Case Management Deadlines
C3979	06/30/14	Notice of Hearing
C3980	06/30/14	Cross Notice of Telephonic Discovery Deposition
C3981-C3982	07/01/14	Joinder to Sherwin Williams Company's Motion for Extension of Time to Disclose Expert Witnesses
C3983-C3984	07/01/14	Joinder to Homasote Company's Motion to Amend Case Management Deadlines
C3985-C3986	07/01/14	Notice of Hearing
C3987-C3989	07/01/14	Defendant Sherwin-Williams Company's Motion for Extension of Time to Disclose Expert Witnesses and Joinder of Co-Defendant Homasote Company's Motion to Amend Case Management Order of December 10, 2013
C3990 C4014	07/01/14	Defendant Mannington Mills, Inc.'s Witness List
C4015	07/01/14	Notice of Service of Discover,
C4016	07/01/14	Notice of Filing/Certificate of Service
C4017-C4022	07/01/14	Defendant Oakfabco, Inc. f/k/a Kewanee Boiler Corporation's Designation of Fact and Lay Witnesses
C4023	07/01/14	Notice of Filing Certificate of Service
C4024-C4096	07/01/14	Defendant Oakfabco, Inc.'s Disclosure of Opinion and Expert Witnesses Pursuant to Illinois Supreme Court Rule 213(f)(3)
C4097	07/01/14	Order on Plaintiffs' Motion for Voluntary Dismissal
C4098	07/01/14	Order Approving Settlement with Georgia-Pacific
C4099	07/01/14	Stipulation to Dismiss
C4100	07/01/14	Agreed Order to Dismiss
C4101	07/01/14	Oder on Stipulation of Brand Insulations
C4102	07/02/14	Certificate of Service
C4103-C4104	07/03/14	Amended Notice of Hearing
C4105-C4167	07/03/14	Master opinion/Expert Witness List of Defendant, Kaiser Gypsum Company, Inc.
C4168-C4169	07/09/14	Memorandum to Clerk
C4170-C4171	07/11/14	Notice to Join and Adopt Expert Report of Dr. Peter Barrett
C4172	07/14/14	Certification of Counsel
C4173	07/14/14	Certification of Counsel
C4174	07/14/14	Certification of Counsel
C4175	07/14/14	Certification of Counsel

C4176	07/14/14	Certificate of Service
C4177	07/18/14	Notice of Adoption of Report of Dr. Peter Barrett
C4178-C4186	08/28/14	Notice of Adoption of Report of Dr. Peter Barrett
C4187	08/28/14	Notice of Cancellation
C4188	8/28/14	Notice of Cancellation
C4189-C4191	08/29/14	Defendant York International Corporation's and Welco Manufacturing Company's Joinder to Sherwin-Williams Company's Motion to Enlarge Time for Deposition Under Illinois Supreme Court Rule 206(D)
C4192	08/29/14	Certificate of Service
C4193	08/29/14	Defendant, Brand Insulation Inc.'s Notice to Adopt Expert Witness Report of Dr. Michael Warhol and Dr. Elliott Kagan
C4194-C4207	08/29/14	Defendants' Supplemental Disclosure of expert Witnesses

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NUMBER	DATE	DESCRIPTION
C4208-C4277	07/21/14	York International Corporation's Fact and Expert Witness Disclosure
C4278-C4358	07/21/14	Designation of fact and Expert Witnesses of Defendant Weico Manufacturing Company
C4359-C4360	07/22/14	Agreed Amended Case Management Order
C4361	07/29/14	Certificate of Service
C4362-C4363	07/31/14	Notice of Filing
C4364 - C4372	07/31/14	CBS, DeWitt and Superior Boiler Works' Notice to Adopt Expert Witness Report of Dr. Peter Barrett
C4373	07/31/14	Notice of Filing
C4374-C4382	07/31/14	Defendant Superior Boiler Works, Inc. s Supplemental Rule 213(F)(3) Witness Disclosure
C4383-C4394	08/01/14	Plaintiffs' Motion in Limine
C4395	08/04/14	Notice of Discovery Deposition
C4396	08/04/14	Notice of Discovery Deposition
C4397	08/07/14	Certificate of Service
C4398	08/11/14	Certificate of Service
C4399-C4400	08/13/14	Certification of Compliance
C4401	08/14/14	Notice of Filing
C4402-C4415	08/14/14	Owens-Illinois, Inc.'s Supplemental Rule 213 Disclosures

C4416-C4419	08/21/14	Defendant Sherwin-Williams Company's Motion to Enlarge Time for Deposition Under Illinois Supreme Court Rule 206(D)
C4420	08/25/14	Certification of Counsel
C4421	08/25/14	Notice of Filing
C4422-C4433	08/25/14	Defendant, Brand Insulations, Inc.'s Notice to Adopt Expert Witness Report of Dr. Elliott Kagan
C4434-C4435	08/25/14	Joinder to Sherwin-Williams Company's Motion to Enlarge Time for Deposition Under Illinois Supreme Court Rule 206(D)
C4436-C4437	08/26/14	Notice of Hearing
C4438-C4439	08/27/14	Notice of Heming
C4440-C4441	08/27/14	Amended Notice of Hearing
C4442-C4443	08/27/14	Notice to Adopt Co-Defendant's Supplemental Disclosure of Expert Witnesses
C4444-C4445	09/02/14	Motion to Join Co-Defendant's Motion to Enlarge Time for Deposition Under Illinois Supreme Court Rule 206(D)
C4446-C4447	09/02/14	Cancellation Notice of Hearing
C4448-C4453	09/02/14	Notice of Rule 206 Discovery Deposition of Bird Incorporated
C4454	09/04/14	Amended Notice of Discovery Deposition
C4455	09/04/14	Amended Notice of Discovery Deposition
C4456-C4462	09/08/14	Defendant Bird lncorporated's Objections to Notice of Rule 206 Discovery Deposition of Bird Incorporated
C4463-C4464	09/08/14	Cross-Notice of Telephonic Discovery Deposition
C4465-C4466	09/10/14	Notice of Filing
C4467-C4478	09/10/14	Defendant CBS Corporation's Supplemental Rule 213(F)(3) Witness Disclosure
C4479 C4480	09/10/14	Notice of Filing
C4481-C4493	09/10/14	Defendant DeWitt Products Company's Supplemental Rule 213(F)(3) Witness Disclosure
C4494-C4495	09/10/14	Notice of Filing
C4496-C4508	09/10/14	Defendant Superior Boiler Works, Inc.'s Second Supplemental Rule 213(F)(3) Witness Disclosure

C4509-C4510	09/10/14	Notice of Filing
C4511- C4523	09/10/14	Defendants CBS Corporation DeWitt Products Company and Superior Boiler Works, Inc's Notice to Adopt Expert Witness Disclosure and Report of Dr. Elliott Kagan
C4524-C4529	09/11/14	Amended Notice of Rule 206 Discovery Deposition of Bird Incorporated
C4530	09/12/14	Notice of Filing
C4531	09/12/14	Certificate of Service
C4532-C4577	09/12/14	Motion for Summary Judgment (Trane)
C4578-C4582	09/12/14	Memorandum in Support of Motion for Summary Judgment
C4583-C4594	09/12/14	Honeywell International Inc.'s Motion for Summary Judgment
C4595	09/16/14	Order on Trane U.S. Inc.'s Motion for Summary Judgment
C4596-C4597	09/18/14	Notice of Filing
C4598- C4612	09/18/14	Defendants CBS Corporation, DeWitt Products Company and Superior Boiler Works, Inc.'s Notice to Adopt Expert Witness Disclosure and Report of Dr. Elliott Kagan
C4613	09/24/14	Cancellation of Notice of Hearing
C4614	09/28/14	Letter to Judge Weber from Steve Wood Re: November 18, 2016 Hearing

VOLUME 15

NUMBER	DATE	DESCRIPTION
C4615 – C4616	09/22/14	Amended Notice of Hearing
C4617-C4618	09/25/14	Defendant's Supplemental Disclosure of Expert Witnesses and Notice lo Adopt the Reports of Dr. Peter Barrett and Dr. Expert Witness
C4619	09/26/14	Certificate of Service
C4620	09/26/14	Notice of filing
C4621	09/26/14	Notice of Motion
C4622-C4678	09/26/14	Motion to Amend Order Nunc Pro Tune
C4679	09/30/14	Amended Order on Trane's Motions
C4680-C4681	09/29/14	Notice of Hearing
C4682-C4704	10/01/14	Plaintiffs' Motion for Leave to File Disclosure of Witnesses Out of Time

C4705-C4726	10/01/14	Homasote Company ts Notice of Adoption of the Reports of Dr. Michael Warhol, Dr. Elliott Kagan, and Dr. Peter J. Barrett
C4727-C4729	10/03/14	Defendant Homasote Company's Amended Disclosure of Fact Witnesses
C4730	10/03/14	Certificate of Service
C4731	10/03/14	Certificate of Service
C4732	10/03/14	Certificate of Service
C4733-C4734	10/03/14	Notice of Hearing
C4735	10/03/14	Duro Dyne Corporation's Motion to Join Co-Defendant, Sherwin-Williams Company's Motion to Enlarge Time for Deposition
C4736-C4737	10/07/14	Amended Cross-Notice of Telephonic DiscoveryDeposition
C4738	10/08/14	Notice of Cancellation
C4739-C4740	10/09/14	Entry of Appearance - CBS Corporation
C4741	10/09/14	Entry of Appearance -DeWitt Products Company
C4742	10/09/14	Entry of Appearance - Superior Boiler Works, Inc.
C4743	10/14/14	Notice of Hearing
C4744-C4750	10/14/14	Motion for Summary Judgment and Memorandum in Support for York International Corporation
C4751-C4754	10/15/14	Certificate of Service
C4755-C4758	10/17/14	Defendant Welco Manufacturing Company's Notice of Adoption of the Report of Dr. Michael Warhol
C4759	10/24/14	Notice of Motion
C4760	10/28/14	Order on York Intenational's Motion for Summary Judgment
C4761	11/06/14	Certification of Counsel
C4762	11/17/14	Plaintiffs' Motion for Voluntary Dismissal of November 14, 2014
C4763-C4766	11/17/14	Plaintiffs' Motion to Extend Case Management Deadlines and Vacate Trial Date
C4767-C4785	11/18/14	Plaintiffs' First Motion to Compel Homasote Company
C4786-C4787	11/20/14	Memorandum to Clerk
C4788	11/24/14	Notice of Hearing
C4789	11/24/14	Certificate of Service
C4790-C4791	12/03/14	Supplement to Plaintiffs' Rule 213(f)(3) Witness Disclosures
C4792	12/18/14	Certificate of Service
C4793	12/18/14	Notice of filing
C4794	12/18/14	Notice of Hearing
C4795-C4847	12/18/14	Motion for Summary Judgment (Karnak)

C4848-C4851	12/18/14	Memorandum in Support of Motion for Summary Judgment
C4852-C4854	01/05/15	Amended Notice of Discovery Deposition (Michael Noone)
C4855-C4857	01/05/15	Cross-Notice of Telephonic Deposition
C4858	01/06/15	Certificate of Service
C4859-C4860	01/06/15	Order on Plaintiffs' Motion to Extend Case Management Deadlines
C4861 C4862	01/06/15	Order on Plaintiffs' Motion for Voluntary Dismissal
C4863	01/06/15	Cancellation of Hearing
C4864-C4867	01/16/15	Notice of Discovery Deposition (Michael Warhol)
C4868-C4871	01/28/15	Amended Notice of Discovery Deposition (Michael Warhol)
C4872-C4874	02/02/15	Cross-Notice of Telephonic Discovery Deposition
C4875-C4876	02/10/15	Notice of Filing
C4877	04/06/15	Notice of Deposition (Jim Harmon)
C4878	04/06/15	Notice of Deposition (Larry Kocher)
C4879	04/13/15	Notice of Cancellation
C4880	04/13/15	Notice of Cancellation
C4881-C4882	04/13/15	Plaintiffs' Rule 237(b) Request to Defendant, Sherwin- Williams
C4883-C4884	04/17/15	Plaintiffs' Rule 237(b) Request to Defendant Sherwin Williams
C4885	04/17/13	Notice of Deposition (Milton Strader)
C4886-C4891	04/22/15	Notice of Rule 206 Discovery Deposition of The Sherwin-Williams Company
C4892-C4893	04/22/15	Notice of Discovery Deposition (Dr. Frank)
C4894-C4895	04/23/15	Cross-Notice of Telephonic Discovery Deposition
C4896	04/27/15	Certificate of Service
C4897	04/27/15	Certificate of Service
C4898-C4927	05/04/15	Defendant The Sherwin Williams Company's Designation of General and Case Specific Expert Witnesses
C4928	05/04/15	Notice of Filing
C4929-C5005	05/04/15	DAP, Inc.'s Expert Witness Disclosure
C5006-C5008	05/04/14	DAP, Inc.'s Fact Witness Disclosures
C5009-C5010	05/07/15	Notice of Hearing

C5011	05/13/15	Certificate of Service
C5012	05/13/15	Certificate of Service
C5013-C5014	05/20/15	Certificate of Compliance
C5015	05/20/15	Certificate of Service
C5016-C5018	05/20/15	Defendant Karnak Corporation's Notice of Adoption of Report of Dr. Michael Graham
C5019	05/20/15	Certificate of Service
C5020-C5022	05/20/15	Defendant Karnak Corporation's Notice of Adoption of Report of Dr. Michael W
C5023	05/22/15	Certificate of Service
C5024- C5025	05/22/15	Notice of Deposition (Dr. Brian Taylor)
C5026	05/27/15	Certificate of Service
C5027	05/27/15	Jury Demand
C5028-C5029	05/29/15	Demand for a Jury of Twelve in Light of Public Act 98-1132
C5030-C5031	05/29/15	Demand for a Jury of Twelve in Light of Public Act 98-1132
C5032-C5033	05/29/15	Demand for a Jury of Twelve in Light of Public Act 98-1132
C5034	06/01/15	Welco Manufacturing Company's Jury Demand
C5035- C5036	06/01/15	Notice of Cancellation
C3037-C5040	06/01/15	Sprinkmann Sons Corporation's Motion for 12 Person Jury Demand
C5041-C5044	06/01/15	Pneumo Abex LLC's Motion for Leave to File a 12 Person Jury Demand
C5045-C5046	06/01/15	Honeywell International Inc.'s Supplemental Demand for Trial by Jury of Twelve
C5047-C5048	06/02/15	Amended Notice of Hearing
C5049	06/03/15	Notice of Filing
C5050-C5052	06/03/15	Motion for Leave to File a 12 Person Jury Demand
C5053-C5055	06/05/15	Supplement to Pneumo Abex LLC's Expert Witness List
C5056-C5058	06/08/15	Notice of Hearing
C5059	06/08/15	Notice of Cancellation
C5060	06/08/15	Notice of Cancellation
C5061	06/10/15	Notice of Hearing
C5062	06/10/15	Notice of Hearing
C5063	06/12/15	Notice of Motion

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NUMBER	DATE	DESCRIPTION
C5064- C5068	06/17/15	Certificate of Service
C5069-C5074	06/17/15	Notice of Motion

C5075-C5078	06/19/15	Pneumo Abex Motion for Summary Judgment on Civil Conspiracy
C5079-C5166	06/19/15	Abex's Memorandum in Support of Motion for Summary Judgment on Civil Conspiracy
C5167-C5176	06/22/15	Defendant Sherwin-Williams Company's Motion for Extension of Time to Depose Expert Witnesses
C5177-C5178	06/22/15	Notice of Hearing
C5179	06/23/15	Order Approving Settlement with Welco Manufacturing
C5180	06/23/15	Agreed Order
C5181-C5182	06/30/15	Notice of Cancellation of Hearing
C5183	06/30/15	Agreed Order
C5184	07/01/15	Certificate of Service
C5185-C5195	07/01/15	Plaintiffs' First Motion to Compel Sherwin Williams
C5196-C5198	07/06/15	Motion for Summary Judgment (Kaiser)
C5199-C5203	07/06/15	Memorandum of Law in Support of Summary Judgment
C5204-C5205	07/06/15	Formal Objection to Motion to Approve Settlement with Welco Manufacturing Company
C5206-C5238	07/13/15	Plaintiffs' Second Motion to Compel Sherwin-Williams
C5239	07/13/15	Amended Notice of Hearing
C5240-C5241	07/15/15	Notice of Cancellation of Hearing
C5242-C5243	07/16/15	Notice of Discovery Deposition (Dr. Graham}
C5244-C5245	07/17/15	Notice of Discovery Deposition (John Spencer)
C5246-C5247	07/20/15	Amended Notice of Discovery Deposition
C5248-C5250	07/20/15	CertainTeed Corporation, Union Carbide Corporation and Tremco Incorporated's Motion to Continue Trial and Amend Case Management Deadlines
C5251	07/23/15	Cancellation of Hearing
C5252-C5253	07/20/15	Defendant Bird Incorporated's Joinder in Co-Defendants Certainteed Corporation, Union Carbide Corporation and Tremco Incorporated's Motion to Continue Trial and Amend Case Management Deadlines
C5254-C5259	07/23/15	Defendant Bird Incorporated's Motion for Leave to File a 12 Person Jury Demand
C5260	07/24/15	Notice of Filing
C5261-C5351	07/24/15	DAP, Inc.'s Amended Expert Witness Disclosure
C5352-C5353	07/27/15	Notice of Discovery Deposition

C5354-C5355	07/27/15	Notice of Discovery Deposition
C5356	07/27/15	Notice of Cancellation of Hearing
C5357	07/29/15	Re-Notice of Hearing
C5358	07/29/15	Notice of Filing
C5359	07/29/15	Defendant DAP, Inc.'s Joinder in Co-Defendants CertainTeed Corporation, Union Carbide Corporation and Tremco Incorporated's Motion to Continue Trial and Amend Case Management Deadlines
C5360	07/29/15	Notice of Motion
C5361-C5362	07/29/15	Defendant DAP, Inc.'s Motion for Additional Time to Produce Corporate Representative for Deposition
C5363	07/30/15	Certificate of Service
C5364	07/30/15	Notice of Filing
C5365-C5414	07/30/15	Motion for Summary Judgment (Brand)
C5415-C5416	08/03/15	Notice of Filing
C5417-C5418	08/05/15	Formal Objection to Motion to Approve Settlement with Metropolitan Life Insurance
C5419-C5420	08/05/15	Second Amended Notice of Hearing
C5421-C5425	08/06/15	Notice of Rule 206 Discovery Deposition of PPG Industries
C5426	08/10/15	Notice of Cancellation
C5427	08/10/15	Notice of Cancellation
C5428	08/10/15	Notice of Cancellation of Hearing
C5429	08/10/15	Notice of Hearing
C5430-C5466	08/10/15	Defendant Bird Incorporated's Motion for Summary Judgment and Memorandum in Support
C5467-C5471	08/12/15	Notice of Suggestion of Bankruptcy for Defendant Oakfabco, Inc. f/k/a Kewanee Boiler Corporation and Automatic Stay of Proceedings

VOLUME 17

NUMBER	DATE	DESCRIPTION
C5472	08/13/15	Notice of Filing
C5473-C5625	08/13/15	Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment
C5626	8/14/15	Certificate of Service
C5627-C5528	08/14/15	Sprinkmann Sons Corporation's Joinder in CertainTeed Corporation, Union Carbide Corporation und Tremco Incorporated's Motion to Continue Trial and Amend Case Management Deadlines

C5629-C5630	08/14/15	Notice of Filing
C5631-C5666	08/14/15	Defendant The Sherwin-Williams Company's Motion for Summary Judgment
C5667-C5668	08/17/15	Notice of Filing
C5669	08/17/15	Defendant PPG Architectural finishes, Inc. As Successor-In-Interest to Akzo Nobel Paints LLC, f/k/a The Glidden Company's Motion for Summary Judgment
C5700	08/17/15	Certificate of Service
C5701	08/17/15	Certificate of Service
C5702	08/17/15	Certificate of Service
C5703	08/17/15	Certificate of Service
C5704	08/17/15	Certificate of Service
C5705	08/18/15	Order
C5706	08/19/15	Certificate of Service
C5707	08/19/15	Certificate of Service
C5708-C5709	08/19/15	Notice of Filing
C5710-C5811	08/20/15	CBS Corporation's Motion for Summary Judgment
C5812-C5820	08/24/15	Supplement to Honeywell International, Inc.'s Motion for Summary Judgment and Memorandum of Law in Support
C5821-C5826	08/24/15	Amended Notice of Rule 206 Discovery Deposition of PPG Architectural Finishes, Inc. As Successor-In-Interest to Akzo Nobel Paints LLC, f/k/a The Glidden Company ('Glidden")
C5827-C5828	08/24/15	Entry of Appearance - Honeywell International., Inc.
C5829-C5830	08/26/15	Notice of Hearing
C5831-C5832	08/26/15	Notice of Filing
C5833	08/26/15	Additional Appearance Sherwin-Williams Company
C5834	08/20/15	Certificate of Service
C5835-C5836	08/21/15	Cross-Notice of Telephonic Discovery Deposition
C5837- C5838	08/21/15	Cross-Notice of Telephonic Discovery Deposition
C5839. C5845	08/24/15	Motion for Summary Judgment and Supporting Memorandum of Law
C5846-C5850	08/27/15	Second Amended Notice of Rule 206 Discovery Deposition of PPG Architectural Finishes, Inc. As Successor In Interest to Akzo Nobel Paints LLC, f/k/a The Glidden Company ("Glidden")

C5851	08/27/15	Notice of Cancellation
C5852- C5853	08/31/15	Cross-Notice of Telephonic Discovery Deposition
C5854- C5855	08/31/15	Notice of Cancellation of Cross-Notice of Telephonic Deposition
C5856	09/01/15	Order Setting Briefing Schedule
C5857	09/01/15	Order Setting Briefing Schedule
C5858	09/03/15	Notice of Cancellation
C5859	09/08/15	Order
C5860- C5865	09/09/15	Third Amended Notice of Rule 206 Discovery Deposition of PPG Architectural Finishes, Inc. As Successor-In Interest to Akzo Nobel Paints LLC, f/k/a The Glidden Company ("Glidden")
C5866- C5869	09/10/15	Homasote Company's Responses to Plaintiffs' Request for Admission
C5870	09/14/15	Certification of Counsel

VOLUME 18

NUMBER	DATE	DESCRIPTION
C5871- C5881	09/14/15	Kaiser Gypsum Company, Inc.'s Objections and Answers to Plaintiffs, First Set of Interrogatories to Defendant Kaiser Gypsum
C5882- C5892	09/14/15	Kaiser Gypsum Company, Inc.'s Objections and Answers to Plaintiffs' First Request for Production to Kaiser Gypsum
C5893- C5989	09/14/15	Kaiser Gypsum Company, Inc.'s Objections and Answers to Plaintiffs' Rule 213 Interrogatories
C5990- C5991	09/16/15	Motion for Substitution of Attorney
C5992- C5993	09/18/15	Re-Notice of Hearing
C5994- C6590	09/21/15	Plaintiffs' Response to Honeywell's Motion for Summary Judgment (As to the Conspiracy Counts)
C6591- C7046	09/21/15	Plaintiffs' Opposition to Pneumo Abex's Motion for Summary Judgment
C7047- C7067	09/22/15	Plaintiffs' Disclosure of Witnesses
C7068	09/23/15	Certificate of Service
C7069- C7070	09/23/15	Notice of Discovery Deposition
C7071	09/25/15	Agreed Substitution of Counsel
C7072-C7073	09/28/15	Notice of Hearing

C7074	09/28/15	Certificate of Service
C7075	09/29/15	Order on J.P. Bushnell's Stipulation
C7076	09/30/15	Certificate of Service
C7077	10/05/15	Certificate of Service
C7078 C7203	10/05/15	Abex's Reply in Support of Summary Judgment on Conspiracy
C7204- C7205	10/13/15	Motion for Substitution of Attorney
C7206	10/13/15	Order on Karnak's Motion for Substitution of Attorney
C7207	10/13/15	Order on Sherwin-Willia.ms Motion for Summary Judgment
C7208 · C7209	10/13/15	Cancellation of Notice of Hearing
C7210- C7211	10/16/15	Cross Notice of Telephonic Discovery Deposition
C7212- C7213	10/16/15	Plaintiffs' Rule 237(b) Request to Defendant Homasote Companv
C7214- C7215	10/16/15	Plaintiffs' Rule 217(b) Request to Defendant CertainTeed Corporation
C7216- C7225	10/19/15	Plaintiffs' First Motion to Compel Tremco incorporated
C7226- C7234	10/21/15	Plaintiffs' Motion to Compel Karnak Corporation Re: Salazar Deposition
C7235- C7240	10/21/15	Fourth Amended Notice of Rule 206 Discovery Deposition of PPG Architectural Finishes, Inc. As Successor-In-Interest to Akzo Nobel Paints LLC, f/k/a The Glidden Company ("Glidden")
C7241	10/21/15	Notice of Cancellation
C7242	10/26/15	Notice of Hearing
C7243	11/02/15	Notice of Hearing
C7244- C7252	11/03/15	Honeywell International Inc.'s Reply in Support of Its Motion for Summarv Judgment
C7253- C7936	11/02/15	Plaintiffs' Opposition to Owens-Illinois' Motion for Summary Judgment as to Conspiracy (accordion folder)
C7937	11/04/15	Notice of Hearing
C7938	11/05/15	Notice of Filing
C7939- C7987	11/05/15	Defendant Owens-Illinois, Inc.'s Reply in Support of Its Motion for Summary Judgment

C7988- C7989	11/10/15	Notice of Cancellation of Hearing
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C7991	11/16/15	Amended Notice of Hearing
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C8033-C8042	12/10/15	Defendant Weil-McLain, Inc.'s Motion for Summary Judgment
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C8045-C8046	12/14/15	Notice of Hearing
C8047-C8048	12/16/15	Notice of Hearing
C8049-C8051	12/16/15	Plaintiff, John Jones' Response to Defendant Bird lncorporated's Second Request for Admission
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C8053-C8054	12/31/15	Notice of Hearing
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C8071	01/04/16	Notice of Hearing
C8072-C8081	01/04/16	Defendant Weil-McLain Inc.'s Motion for Summary Judgment
C8082	01/11/16	Notice of Hearing
C8083-C8086	01/11/16	Defendant Bird Incorporated s Supplemental Disclosure of Expert Witnesses and Notice to Adopt the Expert Reports of Michael Graham, M.D. and Alan Legasto, M.D.

C8087	01/12/16	Order on Kaiser's Motion for Summary Judgment
C8088	01/12/16	Order on Brand's Motion for Summary Judgment
C8089	01/12/16	Order on PPG's Motion for Summary Judgment
C8090	01/12/16	Order on Weil's Motion for Summary Judgment
C8091	01/12/16	Order on J.P. Bushnell's Motion for Leave to File
C8091.1-C8091.42	01/12/16	Additional Exhibit to Plaintiffs' Responses to Motions for Summary Judgment Filed by Defendants, Honeywell International, for, Owens-Illinois, and Pneumo Abex LLC
C8092-C8100	01/14/16	Sprinkmann Sons Corporation's Emergency Motion to Continue Hearing or In the Alternative to Allow Attendance by Telephone
C8101 · C8102	01/15/16	Motion to Approve Settlement - Union Carbide Corporation
C8103	01/19/16	Motion for Entry of Agreed Order
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C8107 C8115	01/21/16	Amended Answer and Affirmative Defenses to Plaintiffs' Complaint
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C8141-C8145	01/25/16	Plaintiffs' Rule 237(b) Request to Defendant, Honeywell International, Inc.
C8146- C8149	01/25/16	Plaintiffs' Rule 237(b) Request to Defendant, Owens-Illinois, Inc.
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C8160-C8162	01/25/16	Plaintiffs' Rule 237(b) Request to Defendant, KCG, Inc.
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C8275-C8276	02/09/16	Defendant Owens-lllinois, Inc.'s Answer to Counterclaim for Contribution of J.P. Bushnell Packing Supply Co.'s Re; Amendment to Complaint
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C8332-C8343	2/16/16	Honeywell International Inc.'s Motion in Limine to Preclude from Trial All References to and Testimony Regarding the Environmental Protection Agency's (EPA) Current Best Practices for Preventing Asbestos Exposure Among Break and Clutch Repair Workers
C8344-C8351	2/16/16	Honeywell International Inc.'s Motion in Limine to Preclude from Use of, or Reference to, Bendix Material Safety Data Sheets ("MSDS Sheets") by Plaintiffs at Trial
C8352-C8356	2/16/16	Honeywell International Inc.'s Motion in Limine to Exclude Evidence Relating to Plant Conditions and Employees.
C8357-C8358	02/16/16	Honeywell International Inc.'s Motion in Limine Regarding The Illinois Pollution Control board's Proposed Asbestos Ban
C8359 C8367	02/16/16	Honeywell International Inc.'s Motion in Limine to Bar Examination of Witnesses without Appropriate Foundation
C8368-C8372	02/16/16	Honeywell International Inc.'s Motion in Limine Re: Improper Arguments
C8373-C8479	02/16/16	Honeywell International Inc.'s Motion to Quash Rule 237(b) Request
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C8483-C8485	02/26/16	Sprinkmann Sons Corporation's Motion to Bar Testimony of Various Co-Workers
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C8490 C8492	02/26/16	Sprinknmnn Sons Corporation's Motion to Allow Admission of Plaintiff's E:q,osure to Asbestos from Non-parties and/or Settled Defendants
C8493-C8494	02/26/16	Sprinkmann Sons Corporation's Motion to Adopt Co-Defendants Motion in Limine and other Pretrial Motions
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C8694-C8876	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of its Motion in Limine to Admit Certain Prior Trial Testimony of Richard E. Grimmie
C8877-C8880	03/02/16	Owens-Jllinois, Inc.'s Memorandum in Support of Its Motion in Limine to Exclude Certain Prior Testimony of Drs. Joel Bender and Jon Konzen
C8881-C8900	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of Its Motion in Limine to Bar Introduction of the Affidavit of Paul J. Hanly, Jr.
C8901-C8903	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of its Motion in Limine to Bar Evidence or References to Pleadings o Arguments of Counsel from any Other Litigation
C8904-C8906	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of Its Motion in Limine to Bar References to Owens-Illinois Inc.'s Litigation Conduct
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C8946-C8947	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of Its Motion in Limine to Bar Evidence of the AAA Arbitration Involving Owens-Illinois, Inc. and Owens Corning Fiberglas Corp.

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C8951-C8953	03/02/16	Owens-Illinois Inc.'s Memorandum in Support of its Motion in Limine to Exclude Evidence Offered for Purposes of Showing Contemporaneous Agreement
C8954-C8972	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of lts Motion in Limine to Exclude Evidence of Post-OSHA Conduct
C8973-C9012	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of Its Motion in Limine to Bar Bony Castleman from Testifying
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C9043-C9046	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of Its Motion in Limine to Exclude Evidence of Any Alleged Conspiracies Not Involving Owens-Illinois
C9047-C9073	03/02/16	Owens-Illinois, Inc.'s Memoradum in Support of Its Motion in Limine to Prohibit References to Destruction of Documents or Other Evidence
C9074-C9076	03/02/16	Owens-Illinois Inc.'s Memorandum in Support of Its Motion in Limine to Bar References to Trade Organizations of Which Owens-Illinois Was Not a Member
C9077-C9079	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of Its Motion in Limine to Exclude Purchase Orders, lnvoices Building Specifications, or Abatement Records us Evidence of Exposure
C9080-C9082	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of Its Motion in Limine to Bar Testimony Referring to Alleged Asbestos Related Illnesses of Individuals Other than John Jones if Offered to Prove Exposure or Causation

C9083-C9085	03/02/16	Owens-Ilinois Inc.'s Memorandum in Support of Its Motion in Limine to Bar Evidence Regarding the Relationship Between Philip McWeeny or Joseph O'Hara and Schiff Hardin
C9086 C9092	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of Its Motion in Limine to Bar Evidence of Claims Made by Owens-Illinois, Inc. Employees Alleging Asbestos- Related Disease
C9093-C9095	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of its Motion in Limine to Bar the Testimony of Robert Mason
C9096-C9099	03/02/16	Owens-Illinois, Inc.'s Memorandum in Support of Its Motion in Limine to Bar Prohibit Questioning of Witnesses Absent Proper Foundation Demonstrating Witness's Personnel Knowledge
C9100-C9126	03/02/16	Owens-Illiois Inc.'s Memorandum in Support of Its Motion in Limine to Exclude Evidence of Alfred C. Hirth's Speech Titled "The Problem"
C9127-C9132	03/02/16	Owens-Illinois Inc.'s Memorandum in Support of Its Motion in Limine to Bar Evidence of Owens-Coming Fiberglas Stock Ownership
C9133-C9135	03/03/16	Homasote Company's Motion for Set-Off
C9136-C9166	03/02/16	Homasote Company's Initial Motions in Limine
C9167- C9176	03/14/16	Plaintiff's' Motion to Compel Homasote Re: Depositions of Pietras and Harned
C9177-C9179	03/28/16	Motion to Extend Cruse Management Deadlines
C9180-C9181	03/28/16	Notice of Hearing
C9182-C9187	04/05/16	Defendant Homasote Company's Response to Plaintiffs' Motion to Compel Re: Depositions of Pietras and Hamed
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C9191	04/11/16	Notice of Filing
C9192	04/12/16	Order on Motion for Substitution of Counsel
C9193-C9195	04/12/16	Order on Defendant Owens-Illinois Inc.'s Motion for Summary Judgment on Civil Conspiracy
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C9200-C9202	04/12/16	Order on Defendant Honeywell International Inc.'s Motion for Summary Judgment on Civil Conspiracy
C9203	04/13/16	Certification of Counsel
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C9205	04/19/16	Order J.P. Bushnell's Stipulation
C9206	04/19/16	Amended Substitution of Counsel
C9207	05/02/16	Notice of Hearing
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C9209	05/09/16	Plaintiffs' Motion for Rule 304(A) Finding as to Defendant Pneumo Abex. LLC
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C9220-C9222	05/31/16	Motion to Stay the Case Pending Appeal
C9223	05/31/16	Certification of Counsel
C9224-C9226	05/31/16	CertainTeed Corporation's Supplemental Disclosures of Expert Witnesses
C9227	06/02/16	Notice of Hearing
C9228	06/03/16	Certification of Counsel
C9229-C9230	06/06/16	Defendant Bird Incorporated's Joinder in Co-Defendants' Motion to Stay the Case Pending: Appeal
C9231	06/06/16	Notice of Hearing
C9232	06/10/16	Letter to Attorney Steve Wood from Appellate Court Re: Filing of Appeal

VOLUME 22

NUMBER	DATE	DESCRIPTION
C9233-C9321	07/27/16	Report of Proceedings of the Motion for Summary Judgment

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
RICHLAND COUNTY

JOHN JONES and DEBORAH JONES,	)	
Plaintiffs,	)	
vs.	)	No. 2013-L-21
AKZO NOBEL PAINTS, LLC, et al.,	)	
Defendants.	)	

ORDER ON DEFENDANT OWENS-IL'S MOTION FOR SUMMARY JUDGMENT ON CIVIL CONSPIRACY

This cause now coming on to be heard on this, the 12th day of January, 2016, on Defendant, OWENS-ILLINOIS's, Motion for Summary Judgment on Civil Conspiracy, and the Plaintiffs appearing by their attorney, and Defendant appearing by its attorney, and the Court, considering all the pleadings, exhibits, arguments of counsel, and case law cited, and now being fully advised, FINDS:

Jurisdiction

The Court has jurisdiction over the parties and subject matter.

Standard of Review for the Motion

The Illinois Supreme Court has provided guidance for the standard of review, "The United States Supreme Court has held that a ruling on a motion for a directed verdict or summary judgment 'necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits.'" *Reed v. Nw. Pub. Co.*,

124 Ill. 2d 495, 512, 530 N.E.2d 474, 481 (1988).

A conspiracy is almost never susceptible to direct proof. *Walsh v. Fanslow,* 123 Ill.App.3d 417, 422, 78 Ill.Dec. 846, 462 N.E.2d 965 (1984). Usually, it must be established "from circumstantial evidence and inferences drawn from evidence, coupled with common-sense knowledge of the behavior of persons in similar circumstances." *Adcock,* 164 Ill.2d at 66, 206 Ill.Dec. 636, 645 N.E.2d 888. If a civil conspiracy is shown by circumstantial evidence, however, that evidence must be clear and convincing. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 134, 720 N.E.2d 242, 258 (1999).

Under this clear and convincing standard, "if the facts and circumstances relied upon are as consistent with innocence as with guilt it is the duty of the court to find that the conspiracy has not been proved." *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 140-41, 720 N.E.2d 242, 261 (1999).

Facts

The Court was presented with a generous amount of pleadings, exhibits, and documents from Plaintiffs and Defendant. Counsel for Plaintiffs and Defendant readily admitted at argument that the body of evidence in the instant matter is the same as that in *Gillenwater v. Honeywell International, Inc.*, 2013 IL App (4th) 120929, 996 N.E.2d 1179.

Analysis

The Court in the instant matter, after reviewing the facts,

pleadings, and law, especially *Gillenwater*, finds that this matter is indistinguishable from *Gillenwater* on the material issues. There is no Fifth District case on these issues and this Court is persuaded by the Fourth District case of *Gillenwater*; therefore, this Court adopts the findings and analysis of *Gillenwater* and finds that summary judgment in favor of Defendant is proper.

IT IS HEREBY ORDERED AND ADJUDGED:

A. OWENS-ILLINOIS's Motion for Summary Judgment on Civil Conspiracy is GRANTED.

B. This is a final and appealable order.

ENTERED: April 12, 2016

CIRCUIT JUDGE

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
COUNTY OF RICHLAND

JOHN JONES and DEBORAH JONES,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 13-L-21
	)	
OWENS-ILLINOIS, INC., *et al.*,	)	
	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s previously-filed Motion for Summary Judgment, parties present by counsel, the Court having reviewed the submissions and having been fully advised in the premises, it is hereby agreed and ORDERED:

> Over Plaintiffs' objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED as to the Exposure Counts of Plaintiffs' Complaint. Summary Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiffs on all remaining counts.

Date: May 17, 2016

JUDGE

Order prepared by:
Matthew V. Chimienti
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant, Owens-Illinois, Inc.

Agreed as to form
Steve Lovik for
plaintiffs

CC9216

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

JOHN JONES and DEBORAH JONES)
Plaintiffs,)
)
v.)
)
AKZO NOBEL PAINTS, LLC, f/k/a THE)
GLIDDEN CO., AMERICAN BILTRITE, INC.,)
AMERICAN TAR PRODUCTS, INC., f/k/a)
KOPPERS PRODUCTS, INC., AMERON)
INTERNATIONAL CORPORATION,)
BECHTEL CORPORATION, BIRD)
INCORPORATED, BORG WARNER)
CORPORATION by its successor-in-interest,)
BORG WARNER MORSE TEC, INC., BRAND)
INSULATIONS, INC., CATERPILLAR, INC.,)
CBS CORPORATION, f/k/a VIACOM, INC.,)
Merger to CBS CORPORATION, f/k/a)
WESTINGHOUSE ELECTRIC CORPORATION,)
CSR, INC., CSR, LTD., CERTAINTEED)
CORPORATION, CHICAGO GASKET)
COMPANY, CLEAVER-BROOKS, a Division of)
AQUA-CHEM, INC., CONWED)
CORPORATION, CRANE COMPANY, CROWN)
CORK & SEAL USA, INC., DAP, INC., DE WITT)
PRODUCTS CO., DOMCO PRODUCTS TEXAS,)
L.P., DRACO MECHANICAL SUPPLY, INC.,)
DURO DYNE CORPORATION, FOSTER)
WHEELER ENERGY CORPORATION,)
GENERAL ELECTRIC COMPANY,)
GENERAL GASKET CORPORATION,)
GENERAL REFRACTORIES CO.,)
GEORGIA-PACIFIC CORPORATION,)
THE GOODYEAR TIRE & RUBBER COMPANY,)
HOMASOTE COMPANY, HONEYWELL)
INTERNATIONAL, INC., INDUSTRIAL)
HOLDING CORPORATION, J-M)
MANUFACTURING COMPANY, INC.,)
JOHN CRANE, INC., J.P. BUSHNELL PACKING)
SUPPLY CO., KAISER GYPSUM COMPANY,)
INC., KARNAK MIDWEST, LLC, KCG, INC.,)
KELLY MOORE PAINT COMPANY,)
KELSEY-HAYES COMPANY,)
KIMBERLY-CLARK CORPORATION,)

No. 13 L 24

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CLERK APPELLATE COURT
5TH DISTRICT MT. VERNON, IL
AUG 01 2016

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FILED
McLEAN COUNTY
FEB 08 2013
CIRCUIT CLERK

FIRST CASE MANAGEMENT CONFERENCE
BEFORE JUDGE FOLEY
SET ON 8.12.13 AT 11:00 AM/PM

FILED
AUG 01 2016
JOHN J. FLOOD
CLERK APPELLATE COURT, 5TH DIST.

5-16-0239

McMASTER-CARR SUPPLY CO.,)
MANNINGTON MILLS, INC.,)
MECHANICAL INSULATION CO. INC.,)
METROPOLITAN LIFE INSURANCE)
NATIONAL SERVICE INDUSTRIES, INC.,)
OAKFABCO, INC., OWENS-ILLINOIS, INC.,)
PNEUMO ABEX LLC, RAPID-AMERICAN)
CORPORATION, SHERWIN-WILLIAMS)
COMPANY, SIMPSON TIMBER COMPANY,)
SPRINKMANN SONS CORPORATION,)
SPX COOLING TECHNOLOGIES, INC.,)
SUPERIOR BOILER WORKS, INC., THIEM)
CORPORATION, TRANE U.S. INC.,)
TREMCO, INC., UNION CARBIDE)
CORPORATION, WEIL-MCLAIN COMPANY,)
WELCO MANUFACTURING COMPANY,)
YORK INTERNATIONAL CORPORATION)
ZURN INDUSTRIES LLC,)
Defendants.)

COMPLAINT

Count 1

Plaintiff, JOHN JONES complains of Defendants, PNEUMO ABEX LLC, OWENS-ILLINOIS, INC., METROPOLITAN LIFE INSURANCE COMPANY, and HONEYWELL INTERNATIONAL, INC., as follows:

1. JOHN JONES worked in the construction industry doing carpentry and other trades at locations throughout central Illinois from 1962 through the 1970's. His job sites include residential construction (remodeling and new construction).

2. JOHN JONES worked on his own vehicles, including brake jobs using brake linings manufactured by Bendix and Abex.

3. Asbestos was present, and rendered airborne, at the locations where JOHN JONES was employed and from his work on brakes from 1962 through 1979.

4. Unarco Industries, Inc., Raymark Industries, Inc. (formerly Raybestos-Manhattan, Inc.), Owens Corning, and Owens-Illinois, Inc. are corporations, and they, or their corporate predecessors, were during the time relevant to the allegations herein, in the business of manufacturing and distributing asbestos and asbestos containing products.

5. Defendants Pneumo Abex LLC, Owens-Illinois Inc., and Honeywell International, Inc. are corporations and were, during the times relevant to the allegations herein, themselves or through predecessors, in the business of manufacturing and distributing asbestos and asbestos containing products.

6. Defendant, Metropolitan Life Insurance Company, is a corporation.

7. Hereafter "Conspirators" refers to each of the corporations named in paragraphs 4 through 6.

8. JOHN JONES was exposed to asbestos, including asbestos from one or more of the conspirators.

9. Exposure to asbestos is a cause of serious disease and death, including pulmonary fibrosis (sometimes called asbestosis) and malignancies, including lung cancer and mesothelioma.

10. JOHN JONES contracted lung cancer as a result of his exposure to asbestos.

11. The lung cancer from which JOHN JONES suffers is an indivisible injury which resulted from the total and cumulative effect of all the asbestos to which he was exposed.

12. Before JOHN JONES' exposure to asbestos, the Conspirators knew that exposure to asbestos caused serious disease and death.

13. The Conspirators knew that individuals exposed to asbestos were ignorant of the hazardous properties of asbestos.

14. Before and during his exposure to asbestos, JOHN JONES was unaware that exposure to asbestos caused serious disease and death.

15. The knowledge of the Conspirators included the following:

a) two or more Conspirators had been in the asbestos business for years and had directed manufacturing operations;

b) each had actual knowledge of asbestos disease and death among workers exposed to asbestos as early as the 1940's.

16. The Conspirators knew that asbestos was inherently dangerous and knew that under the decisional law of Illinois and other states, each was under a duty not to sell asbestos without providing adequate warning of its harmful qualities.

17. Two or more Conspirators had employees who were exposed to asbestos dust and each of them had a statutory, regulatory, and decisional law duty to provide their employees with a safe place to work, or at the least, to warn the employees of the hazards presented by the presence of asbestos dust.

18. Each Conspirator knew that if it adequately warned its own employees and other persons who were at risk of asbestos disease, the publication of such warning would cause workers to leave the industries using asbestos and therefore reduce the sale and usage of asbestos and cause those who were exposed through neighborhood exposure to press for the cessation of such exposure.

19. The Conspirators knowingly conspired, implicitly agreed, or had a mutual understanding among themselves to, among others:

a) assert what was not true, that it was safe or non-toxic for people to be exposed to asbestos and asbestos-containing products;

b) fail to provide information about the harmful effects of asbestos to exposed persons.

20. One or more of the Conspirators performed the following overt acts in furtherance of the conspiracy:

a) sold asbestos products which were used at the locations where John Jones worked without warning of the hazards known to the seller, including the sale and use of products of Johns-Manville, Owens Corning, and Owens-Illinois, which exposed John Jones to asbestos;

b) refused to warn its own employees about the hazards of asbestos known to it, specifically included is the refusal of Unarco and Owens Corning to warn their employees at the Bloomington, Illinois plant during the years 1951-1972;

c) edited and altered the reports and drafts of publications initially prepared by Dr. Lanza concerning the hazards of asbestos during the 1930's;

d) agreed in writing not to disclose the results of research on the effects of asbestos upon health unless the results suited their interests;

e) obtained an agreement in the 1930's from the editors of ASBESTOS, the only trade magazine devoted exclusively to asbestos, that the magazine would never publish articles on the fact that exposure to asbestos caused disease, and sustained this agreement into the 1970's;

f) suppressed the dissemination of a report by Dr. Gardner in 1943 which was critical of the concept that there was a safe level of asbestos exposure;

g) through their control of the Asbestos Textile Institute (ATI), defeated further study of the health of workers when William Hemeon graphically demonstrated the need for such study and dissemination of information in the 1940's;

h) edited and altered the reports and drafts of publications regarding asbestos and health initially prepared by Dr. Vorwald during 1948- 1951;

i) suppressed the results of the Fibrous Dust Studies conducted during 1966-74 by the Industrial Health Foundation, Inc., Johns-Manville, Raybestos Manhattan, Owens Corning, Pittsburgh Corning Corporation and PPG Industries, which results demonstrated and confirmed that exposure to asbestos caused lung cancer and mesothelioma;

j) acting under the name of NIMA, published a pamphlet entitled "Recommended Health Safety Practices for Handling and Applying Thermal Insulation Products Containing Asbestos" in which they purported to inform readers about the health hazards of airborne asbestos, but withheld, among other facts, that asbestos caused serious disease and death, including cancer, that there was no cure for asbestos disease, and that there was no known safe level of exposure to asbestos;

k) purchased asbestos which did not contain warnings from co-conspirators, to which the purchaser then exposed its own employees without warning of the hazards known to the seller and purchaser, including the purchase of asbestos by Owens-Illinois from Unarco;

l) refused to warn its employees who had to use asbestos-containing materials in the manufacture of other products for the conspirator of the hazards of exposure to asbestos known to the conspirator, including the refusal of Owens-Illinois to warn its employees who were exposed to asbestos in connection with the manufacture of glass products of the hazards of asbestos known to Owens-Illinois;

m) purchased asbestos which did not contain warnings from co-conspirators, to which the purchaser then expected its own employees without warning of the hazards known to the seller and purchaser, including the purchase of asbestos by Bendix (n/k/a Honeywell) from Johns-Manville;

n) refused to warn its employees who had to use asbestos-containing materials in the manufacture of other products for the conspirator of the hazards of exposure to asbestos known to the conspirator, including the refusal of Bendix to warn its employees who were exposed to asbestos in connection with the manufacture of friction products of the hazards of asbestos known to Bendix; and

o) altered, including the deletion of all references to the association of asbestosis and lung cancer, the original report of the study performed by Braun of the Industrial Hygiene Foundation before the altered version was published in 1958.

21. The agreement or understanding and the acts done in furtherance of the agreement or understanding were proximate causes of JOHN JONES' injuries.

22. Mechanical Insulation Co. Inc. and John Crane, Inc., named in other counts of this complaint, have, or had, their principal places of business in the state of Illinois.

23. JOHN JONES did not know, nor could he have known, that his disease was wrongfully caused by exposure to asbestos until January of 2012, when he learned exposure to asbestos was a cause of lung cancer.

WHEREFORE, Plaintiff, JOHN JONES, requests damages from Defendants, jointly and severally with the other Defendants named in this cause, in an amount in excess of $50,000 and demands trial by jury.

Count 2

Plaintiff, DEBORAH JONES, complains of Defendants, PNEUMO ABEX LLC, OWENS-ILLINOIS, INC., METROPOLITAN LIFE INSURANCE COMPANY, and HONEYWELL INTERNATIONAL, INC., as follows:

1-20. Plaintiff repeats and realleges paragraphs 1-20 of Count 1.

21. Plaintiff is the spouse of John Jones.

22. As a result of the injury to her husband, Plaintiff suffered an injury to her husband/wife relationship and became obligated for the expense of the medical care received by her husband.

23. The agreements and acts done in furtherance of the agreement or understanding were proximate causes of Plaintiff's loss.

24. Plaintiff repeats and realleges paragraph 23 of Count 1.

WHEREFORE, Plaintiff, DEBORAH JONES, requests damages from Defendants, jointly and severally with the other Defendants named in this cause, in an amount in excess of $50,000 and demands trial by jury.

Count 3

Plaintiff, JOHN JONES, complains of Defendants, AKZO NOBEL PAINTS, LLC, f/k/a THE GLIDDEN CO., AMERICAN BILTRITE, INC., AMERICAN TAR PRODUCTS, INC., f/k/a KOPPERS PRODUCTS, INC., AMERON INTERNATIONAL CORPORATION, BECHTEL CORPORATION, BIRD INCORPORATED, BORG WARNER CORPORATION by its successor-in-

interest, BORG WARNER MORSE TEC, INC., BRAND INSULATIONS, INC., CATERPILLAR, INC., CBS CORPORATION, f/k/a VIACOM, INC., Merger to CBS CORPORATION, f/k/a WESTINGHOUSE ELECTRIC CORPORATION, CSR, INC., CSR, LTD., CERTAINTEED CORPORATION, CHICAGO GASKET COMPANY, CLEAVER-BROOKS, a Division of AQUA-CHEM, INC., CONWED CORPORATION, CRANE COMPANY, CROWN CORK & SEAL USA, INC., DAP, INC., DE WITT PRODUCTS CO., DOMCO PRODUCTS TEXAS, L.P., DRACO MECHANICAL SUPPLY, INC., DURO DYNE CORPORATION, FOSTER WHEELER ENERGY CORPORATION, GENERAL ELECTRIC COMPANY, GENERAL GASKET CORPORATION, GENERAL REFRACTORIES CO., GEORGIA-PACIFIC CORPORATION, THE GOODYEAR TIRE & RUBBER COMPANY, HOMASOTE COMPANY, HONEYWELL INTERNATIONAL, INC., INDUSTRIAL HOLDING CORPORATION, J-M MANUFACTURING COMPANY, INC., JOHN CRANE, INC., J.P. BUSHNELL PACKING SUPPLY CO., KAISER GYPSUM COMPANY, INC., KARNAK MIDWEST, LLC, KCG, INC.,KELLY MOORE PAINT COMPANY, KELSEY-HAYES COMPANY, KIMBERLY-CLARK CORPORATION, McMASTER-CARR SUPPLY CO., MANNINGTON MILLS, INC., MECHANICAL INSULATION CO. INC., METROPOLITAN LIFE INSURANCE COMPANY, NATIONAL SERVICE INDUSTRIES, INC., OAKFABCO, INC., OWENS-ILLINOIS, INC., PNEUMO ABEX LLC, RAPID-AMERICAN CORPORATION, SHERWIN-WILLIAMS COMPANY, SIMPSON TIMBER COMPANY, SPRINKMANN SONS CORPORATION, SPX COOLING TECHNOLOGIES, INC., SUPERIOR BOILER WORKS, INC., THIEM CORPORATION, TRANE U.S. INC., TREMCO, INC., UNION CARBIDE CORPORATION, WEIL-MCLAIN COMPANY, WELCO MANUFACTURING COMPANY, YORK INTERNATIONAL CORPORATION, and ZURN INDUSTRIES LLC, as follows:

1. Plaintiff repeats and realleges paragraphs 1-3 of Count 1.

4. Defendants, Akzo Nobel Paints, LLC, f/k/a The Glidden Co., American Bilrite, Inc., American Tar Products, Inc., f/k/a Koppers Products, Inc., Ameron International Corporation, Bechtel Corporation, Bird Incorporated, Borg Warner Corporation by its successor-in-interest, Borg Warner Morse Tec, Inc., Brand Insulations, Inc., Caterpillar, Inc., CBS Corporation, f/k/a, Viacom, Inc., merger to CVS Corporation, f/k/a Westinghouse Electric Corporation, CSR, Inc., CSR, Ltd., Certainteed Corporation, Chicago Gasket Company, Cleaver-Brooks, a Division of Aqua-Chem, Inc., Conwed Corporation, Crane Company, Crown Cork & Seal USA, Inc., DAP, Inc., DeWitt Products Co., Domco Products Texac, L.P., Draco Mechanical Supply, Inc., Duro Dyne Corporation, Foster Wheeler Energy Corporation, General Electric Company, General Gasket Corporation, General Refractories, Georgia-Pacific Corporation, The Goodyear Tire & Rubber Company, Homasote Company, Honeywell International, Inc., Industrial Holding Corporation, J-M Manufacturing Company, Inc., John Crane, Inc., J.P. Bushnell Packing Supply Co., Kaiser Gypsum Company, Inc., Karnak Midwest, LLC, KCG, Inc., Kelly Moore Paint Company, Kelsey-Hayes Company, Kimberly-Clark Corporation, McMaster-Carr Supply Co., Mannington Mills, Inc., Mechanical Insulation Co., Inc. Metropolitan Life Insurance Company, National Service Industries, Inc., Oakfabco, Inc., Owens-Illinois, Inc., Pneumo Abex LLC, Rapid-American Corporation, Sherwin-Williams Company, Simpson Timber Company, Sprinkmann Sons Corporation, SPX Cooling Technologies, Inc., Superior Boiler Works, Inc., Thiem Corporation, Trane U.S., Inc., Tremco, Inc., Union Carbide Corporation, Weil-McLain Company, Welco Manufacturing Company, York International Corporation, and Zurn Industries, LLC, were in the business of manufacturing and selling asbestos containing products or asbestos fiber.

5. Hereafter "Defendant" refers to each of the parties named in Paragraph 4.

6. Defendant manufactured and sold asbestos containing products which were used by JOHN JONES or others in his proximity at the locations where JOHN JONES worked.

7. Defendant's products gave off dust.

8. JOHN JONES was exposed to asbestos dust from Defendant's products, as listed in attachment A.

9. Pulmonary fibrosis (sometimes called asbestosis) and malignancies, including lung cancer and mesothelioma, are caused by exposure to asbestos.

10. JOHN JONES contracted lung cancer as a result of being exposed to asbestos from Defendant's products.

11. The lung cancer is a single, indivisible injury.

12. Before Defendant manufactured and sold the products to which JOHN JONES was exposed, Defendant knew, or should have known, that exposure to asbestos caused pulmonary fibrosis and malignancies.

13. Defendant was negligent in the following respects:

a) failed to warn that exposure to asbestos caused serious disease and death;

b) failed to warn that exposure to asbestos caused pulmonary fibrosis;

c) failed to warn that exposure to asbestos caused malignancies;

d) failed to provide instruction as to safe methods, if any existed, of handling and processing asbestos containing products.

14. Defendant's negligence was a proximate cause of JOHN JONES' injuries.

15. Plaintiff repeats and alleges paragraph 23 of Count 1.

WHEREFORE, Plaintiff, JOHN JONES, requests damages from Defendants, jointly and severally, in an amount in excess of $50,000 and demands trial by jury.

Count 4

Plaintiff, DEBORAH JONES, complains of Defendants, AKZO NOBEL PAINTS, LLC, f/k/a THE GLIDDEN CO., AMERICAN BILTRITE, INC., AMERICAN TAR PRODUCTS, INC., f/k/a KOPPERS PRODUCTS, INC., AMERON INTERNATIONAL CORPORATION, BECHTEL CORPORATION, BIRD INCORPORATED, BORG WARNER CORPORATION by its successor-in-interest, BORG WARNER MORSE TEC, INC., BRAND INSULATIONS, INC., CATERPILLAR, INC., CBS CORPORATION, f/k/a VIACOM, INC., Merger to CBS CORPORATION, f/k/a WESTINGHOUSE ELECTRIC CORPORATION, CSR, INC., CSR, LTD., CERTAINTEED CORPORATION, CHICAGO GASKET COMPANY, CLEAVER-BROOKS, a Division of AQUA-CHEM, INC., CONWED CORPORATION, CRANE COMPANY, CROWN CORK & SEAL USA, INC., DAP, INC., DE WITT PRODUCTS CO., DOMCO PRODUCTS TEXAS, L.P., DRACO MECHANICAL SUPPLY, INC., DURO DYNE CORPORATION, FOSTER WHEELER ENERGY CORPORATION, GENERAL ELECTRIC COMPANY, GENERAL GASKET CORPORATION, GENERAL REFRACTORIES CO., GEORGIA-PACIFIC CORPORATION, THE GOODYEAR TIRE & RUBBER COMPANY, HOMASOTE COMPANY, HONEYWELL INTERNATIONAL, INC., INDUSTRIAL HOLDING CORPORATION, J-M MANUFACTURING COMPANY, INC., JOHN CRANE, INC., J.P. BUSHNELL PACKING SUPPLY CO., KAISER GYPSUM COMPANY, INC., KARNAK MIDWEST, LLC, KCG, INC.,KELLY MOORE PAINT COMPANY, KELSEY-HAYES COMPANY, KIMBERLY-CLARK CORPORATION, McMASTER-CARR SUPPLY CO., MANNINGTON MILLS, INC., MECHANICAL INSULATION CO. INC.,

METROPOLITAN LIFE INSURANCE COMPANY, NATIONAL SERVICE INDUSTRIES, INC., OAKFABCO, INC., OWENS-ILLINOIS, INC., PNEUMO ABEX LLC, RAPID-AMERICAN CORPORATION, SHERWIN-WILLIAMS COMPANY, SIMPSON TIMBER COMPANY, SPRINKMANN SONS CORPORATION, SPX COOLING TECHNOLOGIES, INC., SUPERIOR BOILER WORKS, INC., THIEM CORPORATION, TRANE U.S. INC., TREMCO, INC., UNION CARBIDE CORPORATION, WEIL-MCLAIN COMPANY, WELCO MANUFACTURING COMPANY, YORK INTERNATIONAL CORPORATION, and ZURN INDUSTRIES LLC, as follows:

1-13. Plaintiff repeats and realleges paragraphs 1-13 of Count 3.

14-16. Plaintiff repeats and realleges paragraphs 21-22 of Count 2.

17. Defendant's negligence was a proximate cause of Plaintiff's loss.

18. Plaintiff repeats and realleges paragraph 23 of Count 1.

WHEREFORE, Plaintiff, DEBORAH JONES, requests damages from Defendants, jointly and severally, in an amount in excess of $50,000 and demands trial by jury.

Count 5

Plaintiff, JOHN JONES, complains of Defendants, AKZO NOBEL PAINTS, LLC, f/k/a THE GLIDDEN CO., AMERICAN BILTRITE, INC., AMERICAN TAR PRODUCTS, INC., f/k/a KOPPERS PRODUCTS, INC., AMERON INTERNATIONAL CORPORATION, BECHTEL CORPORATION, BIRD INCORPORATED, BORG WARNER CORPORATION by its successor-in-interest, BORG WARNER MORSE TEC, INC., BRAND INSULATIONS, INC., CATERPILLAR, INC., CBS CORPORATION, f/k/a VIACOM, INC., Merger to CBS CORPORATION, f/k/a WESTINGHOUSE ELECTRIC CORPORATION, CSR, INC., CSR, LTD., CERTAINTEED CORPORATION, CHICAGO GASKET COMPANY, CLEAVER-

BROOKS, a Division of AQUA-CHEM, INC., CONWED CORPORATION, CRANE COMPANY, CROWN CORK & SEAL USA, INC., DAP, INC., DE WITT PRODUCTS CO., DOMCO PRODUCTS TEXAS, L.P., DRACO MECHANICAL SUPPLY, INC., DURO DYNE CORPORATION, FOSTER WHEELER ENERGY CORPORATION, GENERAL ELECTRIC COMPANY, GENERAL GASKET CORPORATION, GENERAL REFRACTORIES CO., GEORGIA-PACIFIC CORPORATION, THE GOODYEAR TIRE & RUBBER COMPANY, HOMASOTE COMPANY, HONEYWELL INTERNATIONAL, INC., INDUSTRIAL HOLDING CORPORATION, J-M MANUFACTURING COMPANY, INC., JOHN CRANE, INC., J.P. BUSHNELL PACKING SUPPLY CO., KAISER GYPSUM COMPANY, INC., KARNAK MIDWEST, LLC, KCG, INC.,KELLY MOORE PAINT COMPANY, KELSEY-HAYES COMPANY, KIMBERLY-CLARK CORPORATION, McMASTER-CARR SUPPLY CO., MANNINGTON MILLS, INC., MECHANICAL INSULATION CO. INC., METROPOLITAN LIFE INSURANCE COMPANY, NATIONAL SERVICE INDUSTRIES, INC., OAKFABCO, INC., OWENS-ILLINOIS, INC., PNEUMO ABEX LLC, RAPID-AMERICAN CORPORATION, SHERWIN-WILLIAMS COMPANY, SIMPSON TIMBER COMPANY, SPRINKMANN SONS CORPORATION, SPX COOLING TECHNOLOGIES, INC., SUPERIOR BOILER WORKS, INC., THIEM CORPORATION, TRANE U.S. INC., TREMCO, INC., UNION CARBIDE CORPORATION, WEIL-MCLAIN COMPANY, WELCO MANUFACTURING COMPANY, YORK INTERNATIONAL CORPORATION, and ZURN INDUSTRIES LLC, as follows:

1-12. Plaintiff realleges paragraphs 1-12 of Count 3.

13. Defendant was wilful and wanton in the following respects:

a) failed to warn that exposure to asbestos dust caused serious disease and death;

b) failed to warn that exposure to asbestos dust caused pulmonary fibrosis;

c) failed to warn that exposure to asbestos dust caused malignancies;

d) failed to provide instruction as to safe methods, if any existed, of handling and processing asbestos.

14. The wilful and wanton conduct of Defendant was proximate cause of the injury to JOHN JONES.

15. Plaintiff realleges paragraph 23 of Count 1.

WHEREFORE, Plaintiff, JOHN JONES, requests damages, inclusive of punitive damages, from Defendants, jointly and severally, in an amount in excess of $50,000 and demands trial by jury.

Count 6

Plaintiff, DEBORAH JONES, complains of Defendants, AKZO NOBEL PAINTS, LLC, f/k/a THE GLIDDEN CO., AMERICAN BILTRITE, INC., AMERICAN TAR PRODUCTS, INC., f/k/a KOPPERS PRODUCTS, INC., AMERON INTERNATIONAL CORPORATION, BECHTEL CORPORATION, BIRD INCORPORATED, BORG WARNER CORPORATION by its successor-in-interest, BORG WARNER MORSE TEC, INC., BRAND INSULATIONS, INC., CATERPILLAR, INC., CBS CORPORATION, f/k/a VIACOM, INC., Merger to CBS CORPORATION, f/k/a WESTINGHOUSE ELECTRIC CORPORATION, CSR, INC., CSR, LTD., CERTAINTEED CORPORATION, CHICAGO GASKET COMPANY, CLEAVER-BROOKS, a Division of AQUA-CHEM, INC., CONWED CORPORATION, CRANE COMPANY, CROWN CORK & SEAL USA, INC., DAP, INC., DE WITT PRODUCTS CO., DOMCO PRODUCTS TEXAS, L.P., DRACO MECHANICAL SUPPLY, INC., DURO DYNE CORPORATION, FOSTER WHEELER ENERGY CORPORATION, GENERAL ELECTRIC COMPANY, GENERAL

GASKET CORPORATION, GENERAL REFRACTORIES CO., GEORGIA-PACIFIC CORPORATION, THE GOODYEAR TIRE & RUBBER COMPANY, HOMASOTE COMPANY, HONEYWELL INTERNATIONAL, INC., INDUSTRIAL HOLDING CORPORATION, J-M MANUFACTURING COMPANY, INC., JOHN CRANE, INC., J.P. BUSHNELL PACKING SUPPLY CO., KAISER GYPSUM COMPANY, INC., KARNAK MIDWEST, LLC, KCG, INC.,KELLY MOORE PAINT COMPANY, KELSEY-HAYES COMPANY, KIMBERLY-CLARK CORPORATION, McMASTER-CARR SUPPLY CO., MANNINGTON MILLS, INC., MECHANICAL INSULATION CO. INC., METROPOLITAN LIFE INSURANCE COMPANY, NATIONAL SERVICE INDUSTRIES, INC., OAKFABCO, INC., OWENS-ILLINOIS, INC., PNEUMO ABEX LLC, RAPID-AMERICAN CORPORATION, SHERWIN-WILLIAMS COMPANY, SIMPSON TIMBER COMPANY, SPRINKMANN SONS CORPORATION, SPX COOLING TECHNOLOGIES, INC., SUPERIOR BOILER WORKS, INC., THIEM CORPORATION, TRANE U.S. INC., TREMCO, INC., UNION CARBIDE CORPORATION, WEIL-MCLAIN COMPANY, WELCO MANUFACTURING COMPANY, YORK INTERNATIONAL CORPORATION, and ZURN INDUSTRIES LLC, as follows:

1-13. Plaintiff repeats and realleges paragraphs 1-13 of Count 3.

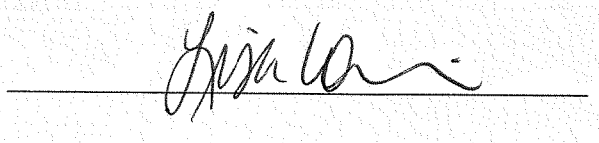
14-16. Plaintiff repeats and realleges paragraphs 21-22 of Count 2.

17. Defendant's willful and wanton conduct was a proximate cause of Plaintiff's loss.

18. Plaintiff repeats and realleges paragraph 23 of Count 1.

WHEREFORE, Plaintiff, DEBORAH JONES, requests damages, inclusive of punitive damages from Defendants, jointly and severally, in an amount in excess of $50,000 and demands trial by jury.

JOHN JONES and DEBORAH JONES
Plaintiffs,



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ATTACHMENT "A"

AKZO NOBEL PAINTS, LLC f/k/a THE GLIDDEN CO.

Glidden Glid Tile Blok Filler
Glidden Spred-Patch
Macco Blok-Aid
Macco Blok-Aid Sealer
Anti-Condensing Paint
Glid-Guard
Devoe
Devran 237 HR
Devran Nu-Coat
Glidden Spray Texture
Macco Master Mastic
Macco Ceramic Tile Adhesives
Macco Construction Adhesives
Maccothan Caulk Sealant
Maccolastic Caulk Sealant
Macco Drywall Adhesive
MAcco Til Mortar
Chemfast Maximill Epoxy Mastic
Devoe Breeching Coating

AMERICAN BILTRITE, INC.

asbestos-containing vinyl tile and sheet flooring
asbestos-containing asphalt tile and sheet flooring
asbestos felt backed vinyl sheet flooring

AMERICAN TAR PRODUCTS, INC. f/k/a KOPPERS PRODUCTS, INC.

asbestos-containing roof coating
asbestos-containing cellulose based roof coatings

AMERON INTERNATIONAL CORPORATION

Bondstrand series 4000 and 5000 pipe
RP-6A and RP-105 adhesives
Dimetcote
Somastic
NuKlad
Nu-Kem pipe coating
Tideguard 171 pipe coatings
Amercoat 42 mastic

BECHTEL CORPORATION

Thermal/electrical insulation
Flooring
Gaskets/Packing
asbestos-containing muds/cements

BIRD INCORPORATED

Standard Guage Linoleum
Armorlite
Bird Economy
Rug Border
Rubberlike Floor Runners
Rubberlike Stair Threads

Duotone Floor Tile
Armorlite Linoleum
Bird Heavy Weight Vinyl
Bird Para-Flex Inlaid Tile and Linoleum
Bird Futura Series
Bird Neponset Products
Bird Rubberized Coating
Bird Self-Sealing Tie Pads
asbestos-containing siding
asbestos-containing roofing
asbestos-containing shingles
asbestos-containing cements

BORG WARNER

asbestos-containing brakes
asbestos-containing clutches
asbestos-containing aluminum foil insulation
AL-FOL

BRAND INSULATIONS, INC./RUST INTERNATIONAL, INC.

Kaylo pipecovering and block
Unibestos pipecovering and block
asbestos-containing pipecovering
asbestos-containing block insulation

CATERPILLAR, INC.

asbestos-containing friction equipment
asbestos-ctontaining gasket equipment

CBS CORPORATION/VIACOM/WESTINGHOUSE

Electrical cable/wire
Turbines
asbestos-containing pads and blankets
Gaskets/Packing
Micarta insulation
asbestos-containing caulking, paste and mud

CSR, LTD./CSR, INC.

crocidolite asbestos fiber
asbestos-containing plasterboard

CERTAINTEED CORPORATION

asbestos cement sheets
CertainTeed asbestos roof coatings
CertainTeed asbestos cement pipe
CertainTeed cold process, plastic and sealing cements
CertainTeed joint treating compounds
Kalite Acounstical plaster

CHICAGO GASKET COMPANY

asbestos sheet packing/gasket material
asbestos packings
asbestos pipe covering

CLEAVER BROOKS

Asbestos-containing boilers, and associated gaskets and insulation

C00047

CONWED CORPORATION

Nuwood insulating, rollboard and flex boards
asbestos-containing insulating board
asbestos-containing rollboard
asbestos-containing flex board

CRANE COMPANY

Industrial valves, pumps and fittings
asbestos-containing gaskets/packings/seals
asbestos-containing insulations

CROWN CORK & SEAL

Mundet mineral wool finishing cement
Mundet mineral wool insulating cement
Mundet Cork 85% magnesia asbestos insulation
asbestos pipe covering and block insulation

DAP, INC.

white caulking compound
bowl setting compound
butyl gutter and lap sealer
roof cements, sealants
DAP33 Glazing compounds
Tharco Asbestos Boiler Putty

DOMCO PRODUCTS TEXAS, L.P

asbestos-containing floor tile

DRACO MECHANICAL SUPPLY, INC.

asbestos-containing sheets
asbestos-containing braided packing
asbestos-containing cloth tape
asbestos-containing gaskets
asbestos-containing wicks

DURO DYNE CORPORATION

Duro-Metal-Fab Flexible Duct Connectors
Econo-Fab Flexible Duct Connectors
duct connectors
duct sealer

GENERAL ELECTRIC COMPANY

asbestos-containing air conditioners and compressors
engines
boilers
heating units
wiring
motors
synthetic resin products
asbestos tape
asbestos cements
asbestos adhesives
asbestos sealing and filling compounds
turbines

GENERAL GASKET CORPORATION
asbestos-containing gaskets

GENERAL REFRACTORIES CO.
refractory block, muds and cements
Litecast 30 insulating cement

GEORGE P REINTJES CO., INC.
refractory block, muds and cements

GEORGIA-PACIFIC
Ready Mix & Best Wall joint compounds
Joint compounds and adhesives

THE GOODYEAR TIRE & RUBBER COMPANY
asbestos-containing gaskets
asbestos-containing packing
asbestos-containing brake assemblies
asbestos-containing burn shields/conveyor belts
asbestos floor tile
asbestos-containing furnace door hose
asbestos-containing hoses
Pliobond
Plio-Nail
Plio-Caulk
Plio-Seam
Style HD
Flexsteel 200 Steam
Flexsteel 150 Steam
Flexsteel Piledriver
Flexstell 250 Steam

HOMOSOTE COMPANY
structural fiberboard
roof sheathing
insulating board
acoustical sound-control panels

HONEYWELL
asbestos-containing brake linings/pads/clutches
Industrial valves/valve fittings and components
Bakelite thermostats and control panels

HUNTSMAN PETROCHEMICAL LLC (TEXACO CHEMICAL COMPANY)

INDUSTRIAL HOLDINGS CORP/CARBORUNDUM
grinding wheels
sandpaper and other abrasive/finishing products

J-M MANUFACTURING COMPANY, INC.
Transite sheet and pipe

JOHN CRANE
asbestos sheet packing/gasket material

asbestos packings
asbestos pipe covering

KAISER GYPSUM COMPANY, INC.
K-G dual purpose joint compound
K-G joint compound
K-G one-day joint compound

KCG, INC.
asbestos-containing drywall joint compounds
asbestos-containing wallboard
asbestos-containing acoustical plasters, cements and muds

KELLY-MOORE PAINTS
Paco All-Purpose Joint Compound
Paco Joint Compound
Paco Quik-Set Joint Compound
Paco Ready Mix Joint Compound
Paco Joint Cement

KELSEY-HAYES
asbestos-containing brake linings/pads

KIMBERLY-CLARK CORPORATION
Autotrim
asbestos-containing paper
asbestos-containing flooring material

MANNINGTON MILLS, INC.
asbestos-containing felt backing
asbestos-containing flooring products

McMASTER-CARR SUPPLY CO.
asbestos blankets and textiles
asbestos-containing millboard

MECHANICAL INSULATION, CO., INC.,
J-M pipe covering and block
Kaylo pipe covering and block
Unibestos pipe covering and block
asbestos cloth
asbestos paper
asbestos tape
asbestos wicking
asbestos containing pipe covering and block insulation

NATIONAL SERVICE INDUSTRIES, INC.
asbestos fiber
asbestos cements/muds
asbestos pipe covering and block insulations

OWENS-ILLINOIS, INC.
Kaylo pipecovering and block

PNEUMO ABEX CORPORATION/PNEUMO ABEX LLC
asbestos-containing brake linings and pads

RAPID-AMERICAN CORP.

85% Magnesia pipe covering, block and cement
Super Light 85% Magnesia pipe covering and block
All Temp pipe covering and block
CareyTemp pipe covering and block
Aircel pipe covering and block
Careycel pipe covering and block
Carocel pipe covering
Defender pipe covering
Excel pipe covering and block
Glosscell pipe covering and block
Multi-Ply pipe covering and block
Asbestos Sponge pipe covering and block
Fyrex pipe covering
Tempcheck pipe covering, block and cement
Hi-temp pipe covering, block and cement
Careytemp 2000 block and cement
Dual Careytemp pipe covering
Spraycraft
707 Cement
Super 606 Cement
100 Cement
303 Cement
Careytemp Finishing Cement
MW-40 Cement
MW-50 Cement
LF-20 Asbestos Cement
Vitricel Cement
A-101 Cement
7M-90 Asbestos Shorts Cement
45-pound Asbestos Waterproof Jacket
asbestos Rope & Wick
asbestos Papers & Roll Boards
asbestos Tank Jackets
Thermalite
Firefoil Board & Panel
Vitricel Asbestos Sheets
Thermotax-B
2i28 Fibrated Emulsion
Insulation Seal
fire resistant Insul Seal
fibrous Adhesive
BTU Cement
Careytemp Adhesive
Thermo-bord
Industrial A-C Boards
Cemesto Board
Marine Panel
millboards
Careyduct
Carey Asphalt Floor Tiles
Careyduct Adhesive
Ceiling Tiles
Celotex asbestos board
Celotex cement and muds

Celotex floor and ceiling tiles
Celotex adhesives
Carey (Canada) chrysotile fiber

SHERWIN-WILLIAMS CO.
cement block fillers
Fibrasal roof coating

SIMPSON TIMBER COMPANY
asbestos-containing ceiling tile

SPRINKMANN SONS CORPORATION
Pabco pipe covering and block
Kaylo pipe covering and block
J-M pipe covering and block
"Sprink-Cote"
asbestos cloth
asbestos paper
asbestos tape
asbestos wicking
asbestos containing pipe covering and block insulation

SPX COOLING TECHNOLOGIES, INC.
Marley asbestos honeycomb eliminators
M-67 Fill
M-109 Fill
asbestos cement board

SUPERIOR BOILER WORKS
Scotch marine package firetube boilers
asbestos-containing pipe-covering/block insulation/gaskets/packing

THEIM CORPORATION
refractory block, muds and cements

TRANE U.S. INC. (AMERICAN STANDARD/KEWANNEE/TRANE)
American Standard boilers, furnaces and heat exchangers
Kewanee commercial boilers
Trane chillers and absorbers
pipe & block insulation
asbestos gasket/packing/seals/valves

TREMCO
asbestos-containing caulk and joint materials
asbestos tapes

UNION CARBIDE CORPORATION
Calidria asbestos Fiber
asbestos containing floor and ceiling tiles
Amchem asbestos containing adhesive products
gasket material
asbestos resins
bakelite
drywall/spackle products
plastic resins/molding compounds

WEIL-MCLAIN COMPANY
Asbestos-containing boilers, and associated gaskets and insulation

WELCO MANUFACTURING COMPANY
Asbestos-containing joint compound

YORK INTERNATIONAL CORPORATION
air conditioners, chillers and absorbers
pipe & block insulation
asbestos gasket/packing/seals/valves

ZURN INDUSTRIES, INC.
industrial boilers
asbestos pipe covering and block
asbestos gaskets/packing/seals

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

JOHN JONES and DEBORAH JONES)
Plaintiffs,)
)
v.) No. 13 L 24
)
AKZO NOBEL PAINTS, LLC, f/k/a THE)
GLIDDEN CO., et al.,)
Defendants.)

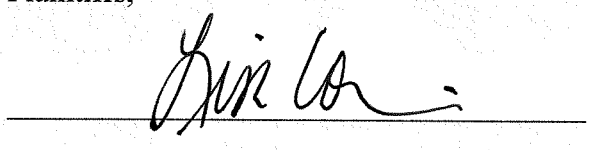
AMENDMENT TO COMPLAINT

Plaintiffs, JOHN JONES and DEBORAH JONES, hereby amend paragraphs 4 and 5 of Counts 1 – 2 of their complaint as follows:

4. Unarco Industries, Inc., Raymark Industries, Inc. (formerly Raybestos-Manhattan, Inc.), Owens Corning, and Johns-Manville Corporation are corporations, and they, or their corporate predecessors, were during the time relevant to the allegations herein, in the business of manufacturing and distributing asbestos and asbestos containing products.

5. Defendants Pneumo Abex, LLC, Owens-Illinois Inc., and Honeywell International, Inc. are corporations and were, during the times relevant to the allegations herein, themselves or through predecessors, in the business of manufacturing and distributing asbestos and asbestos containing products.

JOHN JONES and DEBORAH JONES
Plaintiffs,



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C02374

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

JOHN JONES and DEBORAH JONES,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 13-L-24
	)	
AKZO NOBEL PAINTS, LLC, f/k/a THE GLIDDEN CO., *et al.*,	)	
	)	
Defendants.	)	

OWENS-ILLINOIS, INC.'S ANSWER AND AFFIRMATIVE AND OTHER DEFENSES TO PLAINTIFFS' COMPLAINT

Owens-Illinois, Inc. ("Owens-Illinois"), as its Answer and Affirmative and Other Defenses to Plaintiffs' Complaint, states as follows:

COUNT 1

1-4. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 1 through 4.

5. Owens-Illinois, Inc. is a Delaware Corporation having its principal place of business in Ohio. Owens-Illinois further answers Paragraph 5 by stating that, at some time in the past, it manufactured and sold asbestos-containing products. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5.

6. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6.

7. Owens-Illinois denies that it conspired with any of the alleged "Conspirators," and therefore denies the allegations in Paragraph 7. To the extent that Paragraph 7 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities.

8. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8.

9. Owens-Illinois admits that exposure to asbestos in excess of certain quantities can, in some individuals, cause serious disease, including asbestosis and certain malignancies. Answering further, Owens-Illinois states that, at the time it participated in the manufacture and sale of asbestos-containing insulation, individuals exposed to Kaylo were exposed to levels of asbestos that were well below levels then recognized as safe by the American Conference of Governmental Industrial Hygienists ("ACGIH"). Owens-Illinois denies all remaining allegations set forth in Paragraph 9.

10-11. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 10 and 11.

12. To the extent Paragraph 12 contains allegations against Owens-Illinois, during the time that Owens-Illinois manufactured and sold Kaylo, asbestosis was a disease recognized to be caused by high levels of exposure to asbestos. During the time that Owens-Illinois manufactured and sold Kaylo, Owens-Illinois expected that individuals exposed to Kaylo under normal use

conditions were exposed to levels of asbestos that were below levels then recognized as safe by the American Conference of Governmental Industrial Hygienists ("ACGIH"). During the time that Owens-Illinois manufactured and sold Kaylo, Owens-Illinois denies that it knew that asbestos could cause mesothelioma or that household exposure to asbestos could cause serious disease or death. To the extent that Paragraph 12 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities. Owens-Illinois denies the remaining allegations set forth in Paragraph 12.

13. To the extent that Paragraph 13 contains allegations against Owens-Illinois, Owens-Illinois denies the allegations set forth in Paragraph 13. To the extent that Paragraph 13 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities.

14. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14.

15. To the extent that Paragraph 15 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities. With respect to Owens-Illinois's conduct and knowledge, Owens-Illinois answers as follows:

(a) At some time in the past, Owens-Illinois manufactured and sold asbestos-containing products. Owens-Illinois denies

that it was in the "asbestos business" or that its manufacture and sale of Kaylo is fairly characterized as being an "asbestos business."

(b) Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15(b).

16-18. To the extent that Paragraphs 16 through 18 contain allegations against Owens-Illinois, Owens-Illinois denies those allegations and further states any duty owed to the Plaintiffs is a conclusion of law and an improper allegation and thus no response is required. To the extent a response is deemed to be required, the allegations are denied. To the extent that Paragraphs 16 through 18 contain allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities.

19. Owens-Illinois denies the allegations set forth in Paragraph 19:

(a) Owens-Illinois denies the allegations set forth in Paragraph 19(a);

(b) Owens-Illinois denies the allegations set forth in Paragraph 19(b).

20. Owens-Illinois denies that it conspired with any of the alleged "Conspirators," and therefore denies that any acts alleged in Paragraph 20 were in furtherance of any alleged conspiracy involving Owens-Illinois:

(a) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(a) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(b) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts

alleged in Paragraph 20(b) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(c) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(c) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(d) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(d) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(e) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(e) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(f) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(f) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(g) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(g) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(h) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(h) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(i) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(i) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(j) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(j) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(k) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(k) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(l) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(l) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(m) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(m) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(n) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(n) were in furtherance of any alleged conspiracy involving Owens-Illinois.

(o) Owens-Illinois denies that it conspired with any of the alleged "Conspirators" and therefore denies that any acts alleged in Paragraph 20(o) were in furtherance of any alleged conspiracy involving Owens-Illinois.

21. Owens-Illinois denies that it entered into the alleged "agreement" or "understanding" with any of the alleged conspirators and therefore denies any acts were in furtherance of the alleged "agreement" or "understanding." Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21.

22-23. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 22 and 23.

WHEREFORE, Owens-Illinois denies that Plaintiffs are entitled to joint and several compensatory damages and further requests that Plaintiffs' claims be dismissed with prejudice and any other relief this Honorable Court deems just.

COUNT 2

1-20. Owens-Illinois restates its answers to Paragraphs 1 through 20 of Count 1 as its answers to Paragraphs 1 through 20 of Count 2.

21-22. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 21 and 22.

23. Owens-Illinois denies that it entered into the alleged "agreement" or "understanding" with any of the alleged conspirators and therefore denies any acts were in furtherance of the alleged "agreement" or "understanding." Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23.

WHEREFORE, Owens-Illinois denies that Plaintiffs are entitled to joint and several compensatory damages and further requests that Plaintiffs' claims be dismissed with prejudice and any other relief this Honorable Court deems just.

COUNT 3

1. Owens-Illinois restates its answers to Paragraphs 1 through 3 of Count 1 as its answers to Paragraph 1 of Count 3.

4[1]. Owens-Illinois, Inc. is a Delaware corporation having its principal place of business in Ohio. Owens-Illinois further answers Paragraph 4 by stating that, at some time in the past, it manufactured and sold asbestos-containing products. Owens-Illinois is without knowledge or information

[1] Defendant Owens-Illinois Inc. is adhering to Plaintiffs' numbering sequence.

sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4.

5-8. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 5 through 8.

9. Owens-Illinois admits that exposure to asbestos in excess of certain quantities can, in some individuals, cause serious disease, including asbestosis and certain malignancies. Answering further, Owens-Illinois states that, at the time it participated in the manufacture and sale of asbestos-containing insulation, individuals exposed to Kaylo were exposed to levels of asbestos that were well below levels then recognized as safe by the American Conference of Governmental Industrial Hygienists ("ACGIH"). Owens-Illinois denies all remaining allegations set forth in Paragraph 9.

10-11. Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 10 and 11.

12. To the extent Paragraph 12 contains allegations against Owens-Illinois, during the time that Owens-Illinois manufactured and sold Kaylo, asbestosis was a disease recognized to be caused by high levels of exposure to asbestos. During the time that Owens-Illinois manufactured and sold Kaylo, Owens-Illinois expected that individuals exposed to Kaylo under normal use conditions were exposed to levels of asbestos that were below levels then recognized as safe by the American Conference of Governmental Industrial

Hygienists ("ACGIH"). During the time that Owens-Illinois manufactured and sold Kaylo, Owens-Illinois denies that it knew that asbestos could cause mesothelioma or that household exposure to asbestos could cause serious disease or death. To the extent that Paragraph 12 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities. Owens-Illinois denies the remaining allegations set forth in Paragraph 12.

13. To the extent that Paragraph 13 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13. To the extent Paragraph 13 contains allegations against Owens-Illinois, Owens-Illinois denies the allegations and further answers as follows:

(a) Owens-Illinois denies the allegations set forth in Paragraph 13(a).

(b) Owens-Illinois denies the allegations set forth in Paragraph 13(b).

(c) Owens-Illinois denies the allegations set forth in Paragraph 13(c).

(d) Owens-Illinois denies the allegations set forth in Paragraph 13(d).

14. To the extent that Paragraph 14 contains allegations against Owens-Illinois, Owens-Illinois denies the allegations set forth in Paragraph 14. To the extent that Paragraph 14 contains allegations against entities other than

Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities.

15. Owens-Illinois restates its answer to Paragraph 23 of Count 1 as its answer to Paragraph 15 of Count 3.

WHEREFORE, Owens-Illinois denies that Plaintiffs are entitled to joint and several compensatory damages and further requests that Plaintiffs' claims be dismissed with prejudice and any other relief this Honorable Court deems just.

COUNT 4

1-13. Owens-Illinois restates its answers to Paragraphs 1 through 13 of Count 3 as its answers to Paragraphs 1 through 13 of Count 4.

14-16.Owens-Illinois restates its answer to Paragraphs 21 and 22 of Count 2 as its answers to Paragraphs 14 through 16 of Count 4.[1]

17. To the extent that Paragraph 17 contains allegations against Owens-Illinois, Owens-Illinois denies the allegations set forth in Paragraph 17. To the extent that Paragraph 17 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities.

18. Owens-Illinois restates its answer to Paragraph 23 of Count 1 as its answer to Paragraph 18 of Count 4.

WHEREFORE, Owens-Illinois denies that Plaintiffs are entitled to damages and requests that Plaintiffs' claims be dismissed with prejudice.

[1] Defendant Owens-Illinois, Inc. is adhering to Plaintiffs' numbering sequence.

C00313

Owens-Illinois further requests any other relief this Honorable Court deems just.

COUNT 5

1-12. Owens-Illinois restates its answers to Paragraphs 1 through 12 of Count 1 as its answers to Paragraphs 1 through 12 of Count 5.

13. To the extent that Paragraph 13 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13, and therefore denies the same. To the extent Paragraph 13 contains allegations against Owens-Illinois, Owens-Illinois denies the allegations and further answers as follows::

(a) Owens-Illinois denies the allegations set forth in Paragraph 13(a).

(b) Owens-Illinois denies the allegations set forth in Paragraph 13(b).

(c) Owens-Illinois denies the allegations set forth in Paragraph 13(c).

(d) Owens-Illinois denies the allegations set forth in Paragraph 13(d).

14. To the extent that Paragraph 14 contains allegations against Owens-Illinois, Owens-Illinois denies the allegations set forth in Paragraph 14. To the extent that Paragraph 14 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities.

15. Owens-Illinois restates its answer to Paragraph 23 of Count 1 as its answer to Paragraph 15 of Count 5.

WHEREFORE, Owens-Illinois denies that Plaintiffs are entitled to joint and several compensatory damages, punitive damages, and further requests that Plaintiffs' claims be dismissed with prejudice and any other relief this Honorable Court deems just.

COUNT 6

1-13. Owens-Illinois restates its answers to Paragraphs 1 through 13 of Count 3 as its answers to Paragraphs 1 through 13 of Count 6.

14-16. Owens-Illinois restates its answers to Paragraphs 21 and 22 of Count 3 as its answers to Paragraphs 14 through 16 of Count 6.

17. To the extent that Paragraph 17 contains allegations against Owens-Illinois, Owens-Illinois denies the allegations set forth in Paragraph 17. To the extent that Paragraph 17 contains allegations against entities other than Owens-Illinois, Owens-Illinois is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth against those entities.

18. Owens-Illinois restates its answers to Paragraph 23 of Count 1 as its answer to Paragraph 18 of Count 6.

WHEREFORE, Owens-Illinois denies that Plaintiffs are entitled to joint and several compensatory damages, punitive damages, and further requests that Plaintiffs' claims be dismissed with prejudice and any other relief this Honorable Court deems just

AFFIRMATIVE AND OTHER DEFENSES

First Defense

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

Second Defense

Plaintiffs' Complaint is barred by the applicable statute of repose or statute of limitations.

Third Defense

Plaintiffs allege that damages were negligently caused in whole or in part by persons, firms, corporations, or entities other than those parties before this Court, and such negligence either bars or comparatively reduces any possible recovery by the Plaintiffs.

Fourth Defense

The sole proximate cause of Plaintiffs' alleged injuries was the acts or omissions of persons, corporations or entities other than Owens-Illinois.

Fifth Defense

If Plaintiffs or Plaintiffs suffered damages as a result of the allegations set forth in the Complaint, then those damages were the result of intervening or superseding acts or omissions of persons other than Owens-Illinois.

Sixth Defense

If any of Plaintiffs' allegations with respect to the defective condition of asbestos or asbestos-containing products are proven, then Plaintiffs are barred from any recovery due to the fact that at all relevant times there was no known substitute for asbestos or asbestos products.

Seventh Defense

The state of the medical and scientific knowledge at all relevant times was such that Owens-Illinois neither knew nor could have known that its asbestos-containing insulation products presented a foreseeable risk of harm to any person in the normal and expected use of those products.

Eighth Defense

If Plaintiffs or Plaintiffs' sustained injuries as a result of exposure to any product manufactured by Owens-Illinois, the degree of such damage attributable to Owens-Illinois's products is negligible and hence, de minimis.

Ninth Defense

Owens-Illinois is not liable for any damages alleged to have resulted from exposure to any of its products which were manufactured pursuant to government specifications.

Tenth Defense

If Plaintiffs or Plaintiffs' suffered injuries as a proximate result of a condition of Owens-Illinois's products, any of Owens-Illinois's products would have been supplied to the Plaintiffs' employer. Such employer was a knowledgeable and sophisticated user of said products, and thus Owens-Illinois had no further legal duty to warn or instruct Plaintiffs.

Eleventh Defense

If the Plaintiff smoked tobacco products, any damages awarded should be reduced in whole or in part by the amount of damages caused by smoking.

Twelfth Defense

Plaintiffs fail to state a claim against Owens-Illinois. Plaintiffs do not allege a relationship with Owens-Illinois nor any other facts supporting the imposition of an independent duty to warn on Owens-Illinois. Accordingly, Owens-Illinois cannot be liable for a conspiracy to suppress or a conspiracy not to warn. Moreover, Plaintiffs have not alleged that the ever received, reviewed or relied on any false statement, so there can be no liability for a conspiracy to misrepresent. Further, Plaintiffs have not alleged that Owens-Illinois agreed with another to perform unlawful acts. Rather, Plaintiffs' Complaint contains nothing more than mere allegations of "parallel conduct." As held by the Illinois Supreme Court in McClure v. Owens-Illinois, Inc., 188 Ill.2d 102, 720 N.E.2d 242 (1999), allegations must raise more than mere "parallel conduct" as the basis of a civil conspiracy action.

Thirteenth Defense

In the event that there has been a prior release executed by Plaintiffs in favor of Owens-Illinois as part of a settlement of a prior action brought by Plaintiffs against Owens-Illinois, said release bars Plaintiffs' claims against Owens-Illinois.

Fourteenth Defense

In the event that Plaintiffs previously accepted valuable consideration from Owens-Illinois because of current or prior claims against Owens-Illinois, Plaintiffs' claims against Owens-Illinois are barred by the doctrine of accord and satisfaction.

Fifteenth Defense

This Court lacks personal jurisdiction over Owens-Illinois.

Sixteenth Defense

Venue is improper in this Court and this action should be dismissed based on forum non conveniens.

Seventeenth Defense

Defendant adopts and asserts any defenses raised or asserted by other defendants to this action.

Dated: March 21, 2013

Respectfully submitted,

Matthew J. Fischer
mfischer@schiffhardin.com
Stephen Copenhaver
scopenhaver@schiffhardin.com
Attorneys for Defendant Owens-Illinois, Inc.

SCHIFF HARDIN LLP
233 South Wacker Drive
Chicago IL 60606
(312) 258-5500
(312) 258-5600 (facsimile)

AFFIDAVIT

I, Stephen Copenhaver, being first duly sworn on oath, depose and state that I am an attorney for Owens-Illinois, Inc. in the above-entitled cause; that I am informed as to the allegations for which Owens-Illinois, Inc. has answered that there is insufficient knowledge to form a belief as to the truth or falsity of the allegations of the Complaint, Owens-Illinois, Inc. in fact lacks such information, and that I believe said allegations of insufficient knowledge are true.

Stephen Copenhaver
scopenhaver@schiffhardin.com

Subscribed and sworn to
before me this 21st day
of March, 2013.

Notary Public

OFFICIAL SEAL
LUANNE A. RILEY
Notary Public - State of Illinois
My Commission Expires Apr 14, 2014

23000-1900
CH2\12582753.1

C00320

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
COUNTY OF RICHLAND

JOHN JONES and DEBORAH JONES)
Plaintiffs,)
)
v.) No. 13 L 21
)
AKZO NOBEL PAINTS, LLC, f/k/a THE)
GLIDDEN CO., et al.,)
Defendants.)

FILED
MAY 17 2016
Zachary R. Tuleker
CIRCUIT CLERK RICHLAND CO. IL

AGREED ORDER

This cause coming up for hearing on Plaintiffs' Motion for Rule 304(a) Finding as to Defendant, Owens-Illinois, the parties having agreed and the court being advised in the premises, IT IS HEREBY ORDERED:

Plaintiffs' motion is allowed and request for Rule 304(a) finding is granted. The court finds there is no just reason for delaying the appeal of the court's order allowing Owens-Illinois' motion for summary judgment on Plaintiffs' conspiracy counts.

Dated: May 17, 2016 Entered: _____

Agreed By:

_____ 5/9/2016
attorney for Plaintiffs Date

_____ 5/9/16
attorney for Defendant, Owens-Illinois Date

C09215

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
COUNTY OF RICHLAND

JOHN JONES and DEBORAH JONES)
Plaintiffs-Appellants,)
)
v.) No. 13 L 21
)
PNEUMO ABEX LLC, and OWENS-ILLINOIS, INC.)
Defendants-Appellees.)

NOTICE OF APPEAL

Plaintiffs-Appellants, John Jones and Deborah Jones, appeal to the Appellate Court of Illinois for the Fifth District from the following orders entered in this matter in the Circuit Court of Richland County.

1. The order of April 12, 2016, granting Pneumo Abex LLC's motion for summary judgment on Plaintiffs' conspiracy claims, and for which the court entered a 304(a) finding on May 10, 2016.

2. The order of April 12, 2016, granting Owens-Illinois, Inc.'s motion for summary judgment on Plaintiffs' conspiracy claims, and for which the court entered a 304(a) finding on May 17, 2016.

By this appeal, Plaintiffs-Appellants will ask the Appellate Court to reverse the orders of April 12, 2016 and remand this cause with direction to reinstate Plaintiffs' conspiracy counts as to Pneumo Abex LLC and Owens-Illinois, Inc. for trial on the merits, or for such other and further relief as the Appellate Court may deem proper.

C09217

JOHN JONES and DEBORAH JONES,
Plaintiffs-Appellants,

Steve Wood

JAMES WYLDER
STEVE WOOD
CHIP CORWIN
WYLDER CORWIN KELLY LLP
Attorneys for Plaintiffs
207 E. Washington, Suite 102
Bloomington, IL 61701
309/828-5099

I certify that a copy of this document was served upon all Counsel of Record via LexisNexis File&Serve Xpress on 5-27, 2016. Steve Wood

C09218

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

CAROLYN GARRELTS,)
)
Plaintiff,)
)
v.) No. 11-L-121
)
HONEYWELL INTERNATIONAL,)
INC., et al.,)
)
Defendants.)

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF ADAMS

VIRGINIA BOWLES, Individually,)
and as Independent Executor)
of the Estate of JERALD)
BOWLES, Deceased,)
) No. 09-L-65
Plaintiff,)
)
v.)
)
PNEUMO ABEX CORPORATION,)
et al.,)
)
Defendants.)

DISCOVERY DEPOSITION OF DR. BARRY CASTLEMAN
JANUARY 4, 2012

Reported By:
Susan E. Smith, RPR

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Deposition of Dr. Barry Castleman
January 4, 2012

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The deposition of DR. BARRY CASTLEMAN, taken on Wednesday, January 4, 2012, commencing at 10:10 a.m., at the Rockville Hilton Hotel, 1750 Rockville Pike, Rockville, Maryland 20852, before Susan E. Smith, a Notary Public.

APPEARANCES:

PRESENT, for the Plaintiffs in the Garrelts matter and the Bowles matter, James Wylder, Esquire, of the law firm of Wylder Corwin Kelly, LLP, 207 East Washington Street, Suite 102, Bloomington, Illinois 61701
(309) 828-4099

APPEARING TELEPHONICALLY, for the Defendant Sprinkmann Sons Corporation, in the Garrelts matter and the Bowles matter, Robert Everett, Esquire, of the Carter Law Offices, 416 Main Street, Suite 529, Peoria, Illinois 61602
(309) 673-3518

APPEARING TELEPHONICALLY, for the Defendant Union Carbide Corporation, in the Garrelts matter and the Bowles matter, Tobin J. Taylor, Esquire, of the law firm Heyl Royster Voelker & Allen, 124 S.W. Adams Street, Suite 600, Peoria, Illinois 61602
(309) 676-0400

APPEARING TELEPHONICALLY, for the Defendant John Crane, Inc., in the Garrelts matter and the Bowles matter, William C. Swallow, Esquire, of the law firm of O'Connell, Tivin, Miller & Burns, LLC, 135 South LaSalle Street, Suite 2300, Chicago, Illinois 60603
(312) 256-8800

APPEARING TELEPHONICALLY, for the Defendant Honeywell International, in the Garrelts matter and the Bowles matter, Luke J. Mangan, Esquire, of the law firm Polsinelli Shughart, 100 South Fourth Street, Suite 1000, St. Louis, Missouri 63102
(314) 552-6869

APPEARANCES (Continued):

PRESENT, for the Defendant Owens-Illinois, in the Garrelts matter and the Bowles matter, Matthew J. Fischer, Esquire, of the law firm Schiff Hardin, LLP, 6600 Sears Tower, Chicago, Illinois 60606
(312) 258-5591

APPEARING TELEPHONICALLY, for the Defendant Brand Insulations, in the Garrelts matter and the Bowles matter, Tom Cahill, Esquire, of the law firm of Schoen Mangan & Smith, 200 West Adams, Suite 1005, Chicago, Illinois 60606
(312) 726-0884

PRESENT, for the Defendant Pneumo Abex, LLC, successor in interest to Abex Corporation, in the Garrelts matter and the Bowles matter, Raymond H. Modesitt, Esquire, of the law firm Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP, 333 Ohio Street, Terre Haute, Indiana 47807
(812) 232-4311

STIPULATION

It is stipulated and agreed by and between counsel for the respective parties that the reading and signing of this deposition by the witness is hereby waived.

DR. BARRY I. CASTLEMAN,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

MR. WYLDER: Just for the record, it's 10:10 and this is the -- we're doing Garrelts first, right, Ray?

MR. MODESITT: Pardon?

MR. WYLDER: We're doing Garrelts first?

MR. MODESITT: Yeah. Well, they're going to kind of blend together. Do you want to do them --

MR. WYLDER: Do you want to do them both together or do you -- is there any -- off the record.

(Discussion off the record.)

MR. WYLDER: It will be in both cases at once, Madam Reporter.

EXAMINATION BY MR. MODESITT:

Q. Good morning, Dr. Castleman.

Dr. Castleman, as you know, my name is Ray

Modesitt. I represent Pneumo Abex in this litigation. Pneumo Abex is a defendant in both the case of Carolyn Garrelts and the case of Virginia Bowles as the executor of the estate of Jerald Bowles.

The notice for each have been for today. The initial notice was to schedule Garrelts first, to be followed by Bowles. And after discussing with Mr. Wylder, we've elected to run them both simultaneously inasmuch as 95 percent of the questions will more likely than not be applicable to both cases. And we'll go from there. So with that understanding, we will proceed.

The first questions I have has to do with the Garrelts case. Do you have any information that you have produced relative to the notice of deposition?

MR. WYLDER: Well, I'll respond to that. We have a CV from March 2010. There may be a more recent one, and we'll supply that. I think the riders are the same for both and the response is the same for both, which is -- that's paragraph 1. Paragraph 2, there hasn't been any new supplied by my office, other than that which we supplied at the Legate deposition when we last met. We supplied all the records. We haven't sent any new since Legate, to the doctor.

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Q. And I take it that you've seen -- there's no citation there. What's the support for that statement?
A. Well, the citation is at the end of the paragraph, and it contains a large number of reference documents.
Q. Okay. And which documents support the notion that Manville considered and rejected applying health warning labels on sacks of asbestos in Canada in '52 and '65?
A. I think that -- I know that Kenneth Smith testified about that in his deposition. I don't know if that's one of the documents cited here. There are some 1952 documents where the Johns Manville officials were discussing Illinois law, it was, and considering whether or not that imposed upon them the obligation of putting health warnings on sacks of asbestos.
Q. So that is -- you're making reference then to --
A. The documents at the end are --
Q. Beginning Rules and Regulations Relating?
A. Right.
Q. And going through the end of footnote or reference No. 1?
A. Right.

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MR. WYLDER: It looks like the reference right above that, Matt, is February of '65.
MR. FISCHER: That's going to be my next question.
Q. Is the February '65 reference to Manville considering and rejecting a health warning label on sacks of asbestos?
A. It may be. Again, it's been a long time since I wrote this section of the book. I don't recall that memo now.
Q. When Manville considered and rejected putting a warning labeling on sacks of asbestos, did they consult with any other company in making that determination?
A. I don't know. I mean, I just don't know to the extent that these documents have anything to say about that or not.
Q. At least as you sit here today, you're not aware that they did?
A. No.
Q. That's a correct statement that I made?
A. That's correct.
Q. You also indicate that they considered and rejected putting a warning on Maronite in 1958 --

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A. Right.
Q. -- and J Spray in 1960; is that correct?
A. Right.
Q. I'll ask you the same question. Did Manville, as far as you know, consult with any other company as it determined whether or not to put a warning on Maronite and J Spray?
A. I don't think that the documentation I've seen suggests that they did have such discussions. They may have, but I don't think I've seen any evidence of that.
Q. They may have, they may not have. You don't know one way or the other; is that right?
A. Right. I'm limited in knowledge to what the documents themselves convey, or, in the case of Dr. Smith, his own testimony.
Q. Smith's testimony I don't believe is cited here in reference No. 1. Can you give me any help with regard to where I might find Smith's testimony on that subject?
A. There were only two depositions of Kenneth Wallace Smith before, as I understand, he was killed by a hit-and-run driver. And I think they may be cited in the Johns Manville section of the book, in Chapter 9.
Q. As you point out earlier, when Manville does

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put a warning on its asbestos fibers, it sends out a message to its customers that it intends to do so, correct?
A. That seemed to be the practice of the company, that they would send out some advance notice before they would put warnings on asbestos products. At least they did that with some products, I should say. I can't really say that that was the case later on. But in the earliest occasions with the -- I think they must have done that with insulation. They certainly did that with asbestos fiber from the mine.
Q. Well, that's why I wanted to specifically, at least for this question, limit it to the fiber. With regard to the fiber, they certainly did send out an indication --
A. Yes.
Q. -- that they were going to put out a warning?
A. There's a letter dated I think October 1, 1968 where they tell their commercial customers we're going to start putting these labels on the products.
Q. And different customers had different reactions to that message from Johns Manville, right?
A. Well, I suppose so.
Q. When Manville put a warning on Thermobestos in

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1964, different competitors of Manville had different reactions to that warning appearing as well, right?
A. Yes, in the sense that one of them, Eagle-Picher, adopted a similar program in June of 1964, although they did not shout caution from the rooftops, to quote an Eagle-Picher memorandum. They did put some kind of labels on their product. Other companies had a different reaction, not even doing that much.
Q. Owens Corning, for example, had internal memorandum in which they discussed whether or not to follow Johns Manville's lead, right?
A. Right.
Q. Would you agree that Johns Manville would have been the market leader with regard to asbestos-containing insulation products in the 1960s?
A. They probably sold more insulation than anybody else, but I don't really know.
Q. Would you consider Johns Manville to be the market leader with regard to the supply of asbestos fibers in the United States in the 1960s?
A. Again, I don't really know, but probably they were.
Q. On page 318 you say a pivotal year was 1964

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when some, but not all, of the manufacturers of asbestos insulation products began to affix the first generation of caution labels, right?
A. Right.
Q. You mentioned Eagle-Picher as one and Johns Manville as another who placed a caution label in '64. Are there any others?
A. No others come to mind as to 1964.
Q. Mr. Modesitt asked you, you indicated that you didn't know when Pittsburgh Corning placed a label on. Are you aware of the date of any other manufacturers of insulation products -- I'm sorry. Let me ask that again. Are you aware of the date of other manufacturers' warnings on insulation products?
A. Well, I thought that the GAF people had talked about warnings in 1970, but I didn't see that in the GAF section of the book, so maybe my recollection is wrong. Maybe I'm confusing them with another company.
Q. At the top -- are you aware of any others, Dr. Castleman?
A. No others come to mind.
Q. At the top of page 319 in the book, you say, Most asbestos insulation workers swear they never saw a warning label until the late '60s or early '70s. Would

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it be fair to read that sentence to say that most asbestos insulation workers swear they did see a warning by the late '70s -- I'm sorry, late '60s or early '70s?
A. Yeah, that was my impression that that was what the workers were saying in their depositions.
Q. And you have reviewed those depositions to draw that conclusion, correct?
A. I was probably mainly relying on plaintiff and defendant -- on plaintiffs' counsel for that information. But it seemed very consistent that that's what they were telling me. And generally I was dealing with lawyers who were not so stupid as to misrepresent factual matters of that kind to their own expert witnesses.
Q. So you would agree that by the late '60s and early '70s information about the health risks of asbestos is reaching most asbestos insulation workers?
A. No, it was -- before that time the workers didn't see the warnings. Just when they did notice the warnings, I really -- I'm not so sure. You know, I don't know when they acknowledge, oh, yeah, I remember seeing warnings on the product in 1973. I mean, I just really don't know what the record would say on that.

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I just have the impression that, at least in the first years where some of the companies started putting these excessive exposure for long periods of time, may be harmful type of warnings, that these understandably were not noticed by the worker under the larger print of things like Do Not Drop and other kinds of admonitions to product-users that appeared on the same cartons.
Q. I want to make sure I am understanding what you're saying. Is it your understanding from your work as a researcher, investigator in the litigation, that those warnings were being seen by asbestos insulation workers in the late 1960s and early 1970s?
MR. WYLDER: At least by some insulation workers?
A. They were probably noticed by some workers. Most of them apparently didn't -- at least that's my impression -- didn't notice these. Didn't take any kind of -- didn't register with the workers that the products were dangerous, because of the language in these labels, or the size of the print, or the placement of the labels. It didn't make any impression that the workers could recall when they were asked about this years later by the lawyers for Johns

about asbestos health effects was futile?
A. Well, at least with respect to Selikoff. They knew Selikoff wasn't going away. They could see that Selikoff -- to the extent that the Asbestos Textile Institute had contacted the New York Academy of Sciences and the Mount Sinai medical institution where Selikoff worked, to no avail in 1964, and to the extent that other companies, perhaps Owens Corning for one in 1965, made note of its inability to shut Selikoff up, I think it just became clear. Selikoff was continuing to do media interviews and stuff like that. And I think that the Johns Manville people kind of did a recalculation of how they were going to manage to deal with Dr. Selikoff between 1964 and 1968.
Q. Selikoff was at that point in time the leading researcher on asbestos-related disease in the world, right?
A. Well, certainly in the United States he was.
Q. Was there anybody in the other parts of the world outside the United States who competes for the title of leading researcher into asbestos-related disease?
A. I don't think so.
Q. Are you aware, Dr. Castleman, of any documents

or other evidence showing that any company ever solicited Owens-Illinois' view about whether or not they should put a warning label on asbestos-containing materials?
A. No.
Q. Are you aware of any document or evidence of any kind showing that any company ever solicited Owens-Illinois' view about what warnings or cautions about asbestos health effects should appear or should not appear on asbestos-containing products?
A. No.
Q. Did Owens-Illinois ever, to your knowledge, participate in any other company's decision about whether or not to put a warning on an asbestos-containing product?
A. Not as far as I'm aware.
Q. Did Owens-Illinois, to your knowledge, ever participate in any other company's decision about the content of any warning or caution about the health risks of asbestos?
A. No. I mean, nobody was -- the whole industry was getting away with not warning people during the period of the 1940s and the 1950s, so I don't think the subject ever came up between companies. There was no

outside pressure, there was no OSHA, there was no EPA. The unions were, as far as I can tell, unaware of any real danger associated with asbestos in the period prior to 1958. So companies had no outside pressure. Conscience has not figured in these kinds of histories as a factor in guiding corporate conduct.
Q. I don't mean to limit my questions to 1958. I would also want to know about any evidence or documents of any kind after 1958 that you may or may not be aware of involving Owens-Illinois' participation in other companies' decision-making about warnings on asbestos-containing products?
A. Well, as far as I know, Owens Corning was out of the asbestos business after 1958.
MR. WYLDER: Owens-Illinois.
THE WITNESS: Pardon?
Q. You said Corning.
A. I'm sorry. I meant Owens-Illinois. Thank you.
So it wouldn't -- I don't see why it would have come up after 1958.
Q. To your knowledge, did Owens-Illinois ever lobby the government with regard to any of the asbestos standards?

A. No. Again, there were no government regulatory agencies back in the day when they were making asbestos products.
Q. Are you aware, Doctor, from your review of Owens-Illinois' internal documents, of any consideration of asbestos after 1958 by Owens-Illinois?
A. No, not until they got involved in litigation.
Q. Are you aware of internal documents by Owens-Illinois over the course of litigation that reflects on Owens-Illinois' knowledge or beliefs about asbestos-containing products?
A. I can't recall. I mean, there is the -- not Owens-Illinois documents, but, for example, the affidavit by Paul Hanley of Turner & Newall that reflects on Owens-Illinois' involvement in the defense of lawsuits in the 1980s. So, I mean, there are probably some things like that floating around that don't really -- well, I don't know. Maybe they do relate to this case.
Q. You'd agree that the Hanley affidavit, whatever it is, it's not an internal Owens-Illinois document, right?
A. It's not.
Q. Okay. Have you ever talked with Mr. Hanley

about that affidavit?
A. I think so.
Q. How long ago?
A. It's been a long time. Whenever that cockamamie case came up in Texas -- I don't remember -- what, ten to 15 years ago, if memory serves, where Owens-Illinois sued Turner & Newall for not telling them asbestos was dangerous.
Q. Did Hanley repeat any of things in the affidavit to you?
A. I don't recall. The only thing I recall from our discussions was that I agreed to testify in the case, and I remember saying to Mr. Hanley, Now, you don't expect me to say anything nice about Turner & Newall, do you? And he said, No, I just want you to testify about knowledge of asbestos hazards by Owens-Illinois.
Q. You never did testify, though, did you?
A. No. As far as I know, the case was thrown out. But there was never any deposition or trial testimony of me in that case.
Q. You have never done, Dr. Castleman, what you would consider to be a comprehensive investigation about organized labor's knowledge of asbestos related

over time, right?
A. Right.
Q. Have you read any of Dr. Selikoff's publications on whether he believed there was a conspiracy amongst asbestos product manufacturers to hide the risks of asbestos?
MR. WYLDER: I object. That assumes there are such publications.
Q. I'll ask it differently.
Are you aware of any instances in which Dr. Selikoff has written about his views about whether or not there was a conspiracy or some concerted effort to suppress information about the asbestos health hazards?
A. I can't recall him writing anything about that.
Q. Were any manufacturers of asbestos-containing products keeping track of Dr. Selikoff's speeches and publications during the 1960s?
A. Probably, but I can't give you a chapter-and-verse accounting of even what I have in my files about that. Some of it's reflected in the book in different sections of Chapter 9, where different companies were invited to some presentation he was

doing or other, or they made note of the fact that they were there and they observed certain things.
Q. And some companies were keeping track of what Dr. Selikoff was saying and reporting it inside their corporations, right?
A. I think so.
Q. Would you expect the companies would have known about Dr. Selikoff's address to the Asbestos Workers Union in 1967?
A. I don't know. I mean, that's not the kind of thing that was cited in other literature. It kind of existed separate and apart unto itself, kind of like the, you know, company doctors' annual meetings of the railroad industry. It's not a body of literature that gets cited by other sources.
Q. The Asbestos Workers Journal was provided not only to members of the Asbestos Workers Union, but for some period of time was also provided to contractors who employed people from the Asbestos Workers Union, right?
A. Probably. I don't really know, but I wouldn't be surprised if some of the insulation contracting companies also received it. I really don't know.
Q. Owens-Illinois never had any contracting

units, is that correct, to your knowledge?
A. Not to my knowledge, correct.
Q. You indicated that over the course of your research and investigation as it applies to the litigation, you noticed that companies had different operations and policies with regard to their own plant environments, right?
A. Yes.
Q. Was the Unarco plant in Patterson, New Jersey a plant that stood out to you as having particularly poor industrial hygiene practices?
A. Well, the years in which that plant operated were way, way back in time, and it may have been typical of what went on in the industry at that time. I don't really know how to compare them with other companies.
Q. So you don't have an opinion, then, about whether or not that plant was good, bad, or average with regard to industrial hygiene?
A. Well, it was bad. But how it compared with the other companies, I don't know, because none of them was making them be good. Nobody was making them behave in terms of informing them about the problem, informing the workers about their possibility of getting

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compensation for disability, and all the other things that external actors might do to prompt a little bit of morality in terms of protecting workers from health hazards on the job.

Q. In your review of the Owens Corning documents from the time that they purchased the Kaylo Division in 1958 throughout the time that they manufactured Kaylo, have you ever seen any indication that Owens Corning considered the views of Owens-Illinois in their management of Kaylo?

A. I'm sorry. Maybe I'm a little tired. I didn't quite get that.

Q. That's probably a bad question. Let me ask it a different way.

In your review of Owens Corning internal documents as it relates to the Kaylo Division, during the period of time that Owens Corning manufactured Kaylo, have you ever seen any documents in which Owens Corning considered, solicited, thought about what Owens-Illinois' view might be as to any aspect of the Kaylo business?

MR. WYLDER: What the view might be during the time Owens Corning was making it?

MR. FISCHER: That's correct.

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A. What, during the time Owens Corning was manufacturing the product?

Q. Yes.

A. No. I mean, probably whatever interaction there was would have gone on during the years when Owens Corning was the principal seller and Owens-Illinois was the principal -- was the manufacturer of Kaylo.

Q. So let me ask you the question now: During the time Owens-Illinois was the manufacturer, have you ever seen anything about Owens Corning's management of asbestos or asbestos-containing production, during the time Owens-Illinois was the manufacturer of Kaylo, in which Owens Corning considered or solicited an Owens-Illinois viewpoint about asbestos?

MR. WYLDER: Maybe I missed that one, but I think you start off with during the time OI is making it.

MR. FISCHER: Right.

MR. WYLDER: Then you say when Owens Corning was manufacturing it also, and Owens Corning is not manufacturing it.

MR. FISCHER: Oh, I misspoke, then.

Q. During the time Owens-Illinois was manufacturing Kaylo, have you ever seen any Owens Corning Fiberglass documents, or testimony, or related matter that would indicate to you that Owens Corning considered, solicited, thought about what Owens-Illinois' view might be as it relates to asbestos or the health effects of asbestos, in any Owens Corning decision-making?

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A. Well, it appears that with respect to the advertising or promotion of the products, the phrase nontoxic and easy on the hands appears first in a 1952 Owens-Illinois advertisement in Petroleum Engineer. And then subsequently Owens Corning is the principal distributor the next year of Kaylo, and in 1956 the one-page brochure uses the same language. So it appears to me that the language used by the two companies or by Owens Corning -- it's a little hard for me to say -- in the 1956 marketing document draws from the advertising language that had originally been adopted by Owens-Illinois in promoting the product prior to the involvement of Owens Corning as the principal distributor.

Q. Anything else?

A. Nothing else comes to mind.

Q. Do you know in 1952 whether or not Owens-Illinois employed an ad agency with regard to that end?

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A. No, I don't.

Q. Do you know in 1956 whether OC employed an ad agency with regard to the ad that it published in '56?

A. No, I don't. And even if they did, I don't know to what extent the advertisements would reflect on something that the companies weren't approving of.

Q. And other than the fact the '52 and '56 ads both contained that phrase, nontoxic and easy on the hands, are you aware of any communication between Owens-Illinois and Owens Corning about the language to be used in the ad?

A. No.

Q. Are you aware of any communication between OI and Owens Corning about advertisement of Kaylo generally?

A. No. I haven't seen -- at least I can't recall having seen anything where they exchange views about that particular subject.

Q. Any reason to believe that Owens-Illinois retained any control over how Owens Corning would advertise Kaylo after 1953?

MR. WYLDER: Object to the form, no reason to

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believe.
Q. I'll ask it -- Doctor, are you aware of any documents, testimony, or other evidence that would indicate that Owens-Illinois retained any control over the manner in which Owens Corning would advertise Kaylo after 1953?
A. It seems obvious that they would be involved in that, but I haven't seen any documents establishing that.
Q. And why do you think it seems -- why does it seem obvious to you?
A. Because Owens-Illinois was basic -- Owens Corning was basically being employed as the agent of Owens-Illinois to maximize the sales of its product. And Owens-Illinois had a very strong interest in making sure that that was done in a way that Owens-Illinois thought was best, certainly in terms of the choice of language in advertising a product. That would have, it seems to me, be the kind of thing that Owens-Illinois would have been paying attention to and not just delegating to its agents at Owens Corning to do for them. But I've seen no documentation on that.
Q. Are you suggesting that the distribution agreement between Owens-Illinois and Owens Corning was

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somehow unusual in that Owens Corning was the agent of Owens-Illinois, or do you consider all distributors to be agents of the manufacturer?
A. I'm considering that all distributors are agents of manufacturers. I'm not using the term in a legal sense, I'm using it in the everyday English sense.
Q. That's why I asked.
MR. FISCHER: Those are all the questions I have for you. Thank you.
MR. WYLDER: Do you want to finish up, Ray?
THE WITNESS: What have we got on the phone, any more questions?
MR. WYLDER: Mr. Mangan, Luke, you got any questions?
MR. MANGAN: Yeah. Less than a minute, though.
EXAMINATION BY MR. MANGAN:
Q. Doctor, can you hear me okay?
A. Sure. Go ahead.
Q. We talk earlier about the deposition you last gave in these cases in May of 2011 in the Legate case. Since giving that deposition, have you seen any additional information or documents concerning Bendix

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or Honeywell?
A. Nothing comes to mind.
Q. Okay. Have your opinions with respect to Bendix or Honeywell changed in any respect since that deposition?
A. No.
Q. Okay.
MR. MANGAN: Thank you, Doctor. That's all I have.
MR. WYLDER: Bill Swallow?
EXAMINATION BY MR. SWALLOW:
Q. Doctor, this is Bill Swallow from John Crane. In the last 12 months have you been given any documents or any piece of information from any source that you have not discussed at trial --
A. I don't think so.
Q. -- in regards to John Crane.
A. I don't think so.
Q. Okay. Thank you, sir.
A. I mean, I may have been given something that didn't come up in trial, and that would be in my John Crane file that might include such things as product sales catalogs from the 1930s. But you can order the file from Albert Donnay, if you want to get it. And

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Albert's number is (410) 889-6666.
MR. WYLDER: Anything else, Bill?
MR. SWALLOW: No, that was it. Thanks.
MR. WYLDER: Rob?
MR. EVERETT: No questions.
MR. WYLDER: And is there a fourth person on?
MR. TAYLOR: Yeah, Tobin Taylor.
MR. WYLDER: I'm sorry, Tobin. Go ahead. Anything?
MR. TAYLOR: Yeah, very briefly.
EXAMINATION BY MR. TAYLOR:
Q. Dr. Castleman, I represent Union Carbide. And I understand you've given testimony with regard to Union Carbide over the last year?
A. Yeah, but I haven't done that since yesterday.
Q. All right. My questions are very similar. Have you been given any information or documents that would change any of the testimony that you've given over the past year as it relates to Union Carbide?
A. No.
Q. Do you expect in any way that your testimony in Garrelts will be anything different than the testimony that you've given over the past year with respect to Union Carbide?

A. No.
MR. TAYLOR: Thank you, Doctor. That's all I have.
MR. WYLDER: You said you have one follow-up?
MR. MODESITT: Yeah, I've just got a couple.
THE WITNESS: Come on. A couple means two.
EXAMINATION BY MR. MODESITT:
Q. Doctor, with regard to United States naval vessels, in your review of any information, whether it's from the U.S. Navy or otherwise, do you have any information to suggest that the signs on board a U.S. Navy ship have been controlled by anyone other than the U.S. Navy?
A. No.
Q. So you would agree that whatever the signage regulations are, they're U.S. governmental regulations?
A. Well, as to regulations, I'm sure the regulations that apply would have been U.S. government regulations. But of course that didn't prevent contractors from putting up signs warning people to stay out of dangerous areas and things like that, whether or not these were provided for by government regulations.
Q. Are you saying that a company could put up a

sign on a U.S. Navy ship, that was not approved by the U.S. Navy?
A. I think they could have if there were hazardous conditions there, and they probably did if there were slippery floors, or painting going on, or scaffolds with the possibility of falling objects. I think they might well have chosen to do some kind of an effort at warning, even if it wasn't required by some government regulation.
Q. Do you know whether there are actual U.S. Navy regulations governing the signages that may be permitted on a U.S. naval vessel?
A. I don't.
Q. Okay. Next question, last question I have, the Exhibit 10 group, being the Green Sheets -- I can't remember. I think we may have covered that, but just very generally. Do you agree that within those Green Sheets there are articles that concern asbestos, diseases of asbestosis, lung cancer, and mesothelioma, and also discuss the various needs to suppress dust and respirator usage?
A. The documents say what they say. I believe that those diseases are mentioned.
Q. Okay.

MR. MODESITT: That's all I have.
MR. WYLDER: All right. A show of signature waived, and that's it.
(Examination concluded at 2:31 p.m.)

STATE OF MARYLAND) ss
COUNTY OF BALTIMORE)
I, Susan Smith, RPR, a Notary Public of the State of Maryland, do hereby certify that the within named, DR. BARRY CASTLEMAN, personally appeared before me at the time and place herein set out, and after having been duly sworn by me, was interrogated by counsel.
I further certify that the examination was recorded stenographically by me, and this transcript is a true record of the proceedings.
I further certify that the stipulations contained herein were entered into by counsel in my presence.
I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.
As witness my hand and notarial seal this 12th day of January, 2012.

My commission expires
November 29, 2014

Susan E. Smith
Notary Public

Sales Agreement

Owens-Illinois Glass Company, hereinafter referred to as "Seller", and Owens-Corning Fiberglas Corporation, hereinafter referred to as "Buyer", have this day agreed as follows:

1. During the term of this Agreement, Buyer will purchase from Seller and Seller will sell to Buyer, subject to the provisions of this Agreement, the following amounts of Kaylo Heat Insulating Products:

$ 750,000	during the period April 1, 1953 to December 31, 1953, and
$1,000,000	during each calendar year subsequent to 1953;

provided, however, that in the event that at any time or times the prices for Kaylo Heat Insulating Products shall be increased or decreased in accordance with the provisions of paragraph 4 hereof, the amounts hereinabove specified will be increased or decreased in the same proportion as such prices shall have been increased or decreased, prorated for the portion of the current period unexpired at the date of such price change. On or before the first day of each calendar quarter, Buyer will notify Seller in writing of the total amount of Kaylo Heat Insulating Products which it intends to purchase from Seller during such quarter.

2. As used in this Agreement the term "Kaylo Heat Insulating Products" means only those heat insulating products listed in Exhibit A, attached hereto and made a part hereof.

3. The prices for Kaylo Heat Insulating Products set forth in Exhibit A will remain in effect until October 1, 1953, and thereafter until increased or decreased in accordance with the provisions of paragraph 4 hereof.

4. Seller may increase or decrease the prices to Buyer for Kaylo Heat Insulating Products on October 1, 1953, and on the first day of any subsequent calendar quarter, by giving notice in writing to Buyer of such increase or decrease at least fifteen (15) days prior thereto. Buyer may, by giving notice in writing to Seller at any time within thirty (30) days after receipt of notice from Seller of a price increase terminate this Agreement six (6) months after the effective date of such price increase.

5. All orders for Kaylo Heat Insulating Products placed by Buyer and accepted by Seller will be at the prices in

effect at the time of shipment by Seller and will be subject to the terms set forth in Exhibit A and the following terms and conditions:

(a) Prices shall be F.O.B. plant of manufacture. In the event that Seller prepays the freight on any shipment, Buyer will reimburse Seller the full amount thereof. Title and possession shall pass to Buyer on delivery of product to the carrier consigned to Buyer or Buyer's customer.

(b) In the event of a price increase, the Buyer may, within thirty (30) days after receipt of notice thereof, request price protection on specific outstanding contracts and outstanding contract proposals. Shipments with protected prices must be made within sixty (60) days of effective date of price increase.

(c) Orders and shipping instructions will be given by Buyer reasonably in advance of desired delivery dates and, subject to the other provisions herein stated, Seller will make shipments as nearly as possible in accordance with such shipping instructions as shipping facilities and Seller's scheduling and facilities of manufacture permit. Seller's failure to meet shipping instructions will not be deemed a breach of this Agreement.

(d) Seller warrants that all Kaylo Heat Insulating Products sold to Buyer pursuant to this Agreement will meet Seller's performance specifications in effect at the time of sale. Seller will furnish Buyer a copy of said performance specifications currently in effect and of each revision thereof.

(e) Buyer shall, within ninety (90) days after shipment of any products covered by this Agreement, give written notice to Seller of any claim for errors, shortages, imperfections, deficiencies or any failure of the products to conform with the terms of this Agreement. Buyer's failure to give such notice within such time or Buyer's failure to give Seller an opportunity to make an adequate investigation, either by on the spot inspection or by having the products returned to Seller, shall constitute a waiver by Buyer of all claims with respect thereto. Any advice or assistance furnished by Seller in respect of installation or use of the products are purely gratuitous and without consideration, and Seller shall have no liability by reason thereof. Seller shall not be liable for any breach of this Agreement in any amount in excess of the agreement price for the products with respect to which such breach occurs and Seller shall not be liable in any event for special or consequential damages; and Buyer

shall include this same limitation upon the amount of Seller's liabilities in contracts effecting all resales by Buyer to third persons and Buyer shall indemnify and save Seller harmless from any liabilities arising from Buyer's failure so to contract in making resales.

(f) All claims made by Buyer against Seller in accordance with subparagraph (e) hereof shall be subject to approval by Seller. In the event that Buyer disagrees with Seller's disposition of any such claim, Buyer may by giving notice in writing to Seller within thirty (30) days after receipt of notice of Seller's disposition of such claim, require the same to be submitted to arbitration in Lucas County, Ohio, in accordance with the Ohio Arbitration Act, by three (3) arbitrators appointed as follows: Seller and Buyer shall each appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall appoint a third arbitrator. In the event that the arbitrators appointed by Seller and Buyer shall be unable within thirty (30) days to agree upon the appointment of the third arbitrator, the Court of Common Pleas of Lucas County, Ohio, may, upon application of either party hereto, appoint the third arbitrator. The decision in writing of a majority of the arbitrators will be final and binding upon both parties.

6. If, by reason of fire, earthquake, flood, explosion, accident, difference with or inability to secure workmen, lack of material, lack of facilities, Act of God or of any public enemy, voluntary or involuntary compliance with any valid or invalid order, regulation, request or recommendation of any government agency or authority, lack of transportation facilities or other cause beyond the control of Seller or Buyer, respectively, whether or not of the kind hereinbefore specified, Seller or Buyer shall be unable to perform, or is delayed in the performance of, any obligation under this Agreement, such nonperformance or delay shall be excused.

7. In the event that Seller shall be unable to fill all orders for Kaylo Heat Insulating Products placed both by Buyer and by other customers of Seller, Seller shall prorate shipments to Buyer and such other customers on an equitable basis.

8. Orders placed by Buyer for Kaylo insulating products not specifically listed and priced in Exhibit A will be subject to approval by Seller in each case and will be subject to such prices and shipping dates as may be set forth in such approval.

9. All sales and advertisements of Kaylo Heat Insulating Products shall be under Seller's trade name and trade mark "Kaylo". In using Seller's trade name and mark, Buyer will indicate that the products sold or advertised are manufactured by Seller and

will give notice that Seller's trademark is registered by displaying with the mark as used the letter "R" enclosed within a circle. Buyer's right to use Seller's trade name and mark shall be limited to the advertisement and sale of products manufactured by Seller and sold to Buyer pursuant to this Agreement and such right shall terminate upon the termination of this Agreement.

10. Unless sooner terminated in accordance with the provisions of paragraphs 4, 11, or 12 hereof, this Agreement shall remain in full force and effect until January 1, 1959. Except as otherwise provided in paragraph 13 hereof, the giving of any notice of termination shall not, prior to the effective date of such termination, relieve Buyer from its obligation to purchase, or relieve Seller from its obligation to sell, the amount of Kaylo Heat Insulating Products set forth in paragraph 1 hereof, and any termination shall be without prejudice to any other remedy or remedies which either party may have against the other for any breach of this Agreement.

11. Either party may at its option terminate this Agreement effective at the end of any calendar month by giving notice in writing to the other party at least one (1) year prior to the effective date of such termination.

12. In the event that Seller determines to discontinue the manufacture of Kaylo Heat Insulating Products, Seller may terminate this Agreement effective at the end of any calendar month by giving notice in writing to Buyer at least six (6) months prior to the effective date of such termination.

13. In the event that Buyer shall give notice to Seller of termination of this Agreement pursuant to the provisions of paragraph 4 hereof, or in the event that Seller shall give notice to Buyer of termination of this Agreement pursuant to the provisions of paragraph 12 hereof, Buyer, at its option, may elect to be relieved of its obligation to purchase, during the six (6) months immediately preceding the effective date of such termination, Kaylo Heat Insulating Products in the amounts prescribed in paragraph 1 hereof, by giving notice of such election within thirty (30) days after notice of such termination. In the event that Buyer elects, as herein provided, to be relieved of its obligation to purchase the amounts so prescribed, Seller shall be relieved of its obligation to sell the amounts so prescribed.

14. The right of each party to require strict performance of the other party's obligations hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing.

15. Any civil action against Seller arising out of this Agreement or by reason of any sale hereunder, or by reason of any federal or state statutory provision relating thereto,

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shall be commenced within one (1) year from the date such cause of action arises; otherwise the same shall be barred, notwithstanding any statutory period of limitations to the contrary.

16. This Agreement is not assignable by Buyer except with the written consent of Seller.

17. The entire agreement of the parties is contained herein. There is no warranty, agreement, or understanding, express, statutory or implied, either in fact or in law, with reference to or a part of this Agreement, except such as is set forth herein. Except as otherwise provided herein, no change or alteration of this Agreement shall be effective unless the same is in writing and signed by both parties.

18. This Agreement shall be binding upon the parties, their successors and assigns, and shall be construed in accordance with the laws of the State of Ohio applicable to contracts made and to be performed in the State of Ohio.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of April 1, 1953, this 20th day of March, 1953.

OWENS-ILLINOIS GLASS COMPANY

By _____
Exec. Vice Pres.

Attest:

By _____

OWENS-CORNING FIBERGLAS CORPORATION

By _____
Vice-Pres.

Attest:

By _____

C07295

EXHIBIT "A" OF SALES AGREEMENT

OWENS-ILLINOIS GLASS COMPANY

KAYLO SECTIONAL PIPE INSULATION

Net Billing Prices - F.O.B. Berlin, N.J.

Terms Net 30 Days

Nominal Pipe Sizes-Inches	Nominal Thickness of Insulation & Prices per Lineal Foot				
	1"	1-1/2"	2"	2-1/2"	3"
1/2	$ .142	$ .297	$ .485	$ .646	$ .775
3/4	.155	.317	.517	.679	.873
1	.175	.336	.550	.711	.904
1-1/4	.194	.362	.581	.743	.937
1-1/2	.214	.388	.614	.775	1.00
2	.233	.413	.646	.808	1.06
2-1/2	.256	.452	.679	.873	1.13
3	.291	.491	.743	.969	1.23
3-1/2	.323	.530	.808	1.06	1.32
4	.388	.568	.873	1.16	1.42
4-1/2	.420	.607	.937	1.26	1.52
5	.452	.646	1.00	1.36	1.62
6	.517	.711	1.10	1.45	1.75
7	x	.775	1.19	1.55	1.88
8	x	.873	1.29	1.65	2.04
9	x	.969	1.42	1.81	2.20
10	x	1.06	1.55	1.97	x
11	x	1.13	1.65	x	x
12	x	1.19	x	x	x

Note:

(1) Prices listed are for single layer only.
(2) Double layer prices are the sum of the prices for the two single layer sizes used.
(3) Prices include standard canvas jackets and 2-1/2 aluminum bands per 3 ft. section up to and including 2-1/2" thicknesses. No allowance is made for omission of canvas jackets or bands.
(4) Extra charge for special canvas jackets.
(5) Extra charge for any canvas jackets on covering over 2-1/2" thickness.

(1)

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EXHIBIT "A" OF SALES AGREEMENT

OWENS-ILLINOIS GLASS COMPANY

KAYLO BEVELED LAG PIPE INSULATION

Net Billing Prices - F.O.B. Berlin, N.J.

Terms Net 30 Days

Nominal Pipe Sizes-Inches	Nominal Thickness of Insulation & Prices per Lineal Foot			
	1-1/2"	2"	2-1/2"	3"
10	$1.02	$1.48	$1.88	$2.25
11	1.08	1.57	1.97	2.41
12	1.14	1.66	2.10	2.53
14	1.29	1.85	2.35	2.84
15	1.39	1.94	2.47	3.00
16	1.45	2.04	2.59	3.14
17	1.54	2.13	2.72	3.30
18	1.60	2.22	2.84	3.45
19	1.70	2.35	2.97	3.58
20	1.76	2.47	3.09	3.70
21	1.85	2.56	3.20	3.86
22	1.91	2.66	3.33	4.01
23	1.97	2.72	3.45	4.17
24	2.04	2.78	3.55	4.32
26	2.19	3.00	3.82	4.63
27	2.25	3.11	3.95	4.75
28	2.32	3.17	4.10	4.91
30	2.47	3.39	4.29	5.18
32	2.66	3.64	4.57	5.61
33	2.72	3.73	4.69	5.67
34	2.61	3.86	4.82	5.86
36	2.97	4.04	5.06	6.14

Note:

(1) Prices listed are for single layer only.
(2) Double layer prices are the sum of the prices for the two single layer sizes used.
(3) Extra charge for any canvas or bands.

CC7297

EXHIBIT "A" OF SALES AGREEMENT

OWENS-ILLINOIS GLASS COMPANY

KAYLO HEAT INSULATING BLOCK

Net Billing Prices - F.O.B. Berlin, N.J.

Terms Net 30 Days

Thickness-Inches	Prices per Square Foot
1	$.173
1-1/4	.219
1-1/2	.260
1-3/4	.305
2	.346
2-1/4	.392
2-1/2	.433
2-3/4	.478
3	.519

EXHIBIT "A" OF SALES AGREEMENT

OWENS-ILLINOIS GLASS COMPANY

KAYLO HEAT INSULATION EXTRA CHARGES
Additions to Net Billing Prices

	% Addition to Billing Price
Standard Canvas for Sectional Covering Over 2-1/2" Thickness	4.5%
6 oz. Canvas for All Sizes and Thicknesses	9.0
8 oz. Canvas for All Sizes and Thicknesses	13.5
Laminated Products	7.5
LCL Orders	$2.00 each
Special Shapes, Sizes and Thicknesses	Quotation
Weathercoating	Quotation

AMENDMENT OF SALES AGREEMENT

Owens-Illinois Glass Company and Owens-Corning Fiberglas Corporation have this day agreed that the Sales Agreement between them relating to Kaylo Heat Insulating Products, executed as of April 1, 1953 on March 20, 1953, shall be amended as follows:

(1) The schedule marked Exhibit A and attached hereto shall be substituted for the schedule marked Exhibit A attached to said Sales Agreement, and all references to Exhibit A in said Sales Agreement shall be deemed to refer to Exhibit A attached hereto.

(2) This amendment shall be effective as of April 1, 1953.

IN WITNESS WHEREOF, the parties have caused this amendment to be executed this 17th day of April, 1953.

OWENS-ILLINOIS GLASS COMPANY

By _____
Executive Vice President

Attest:

_____
Assistant Secretary

OWENS-CORNING FIBERGLAS CORPORATION

By _____
Vice President

Attest:

_____
Secretary

C07300

Exhibit A

April 13, 1953

OWENS-ILLINOIS GLASS COMPANY

Net Billing Prices F.O.B. Berlin, N. J. Terms Net 30 Days

KAYLO SECTIONAL PIPE INSULATION

Nominal Pipe Sizes-Inches	Nominal Thickness of Insulation & Prices per Lineal Foot				
	1"	1-1/2"	2"	2-1/2"	3"
1/2	$ .142	$ .297	$ .485	$ .646	$ .775
3/4	.155	.317	.517	.679	.873
1	.175	.336	.550	.711	.904
1-1/4	.194	.362	.581	.743	.937
1-1/2	.214	.388	.614	.775	1.00
2	.233	.413	.646	.808	1.06
2-1/2	.258	.452	.679	.873	1.13
3	.291	.491	.743	.969	1.23
3-1/2	.323	.530	.808	1.06	1.32
4	.388	.568	.873	1.16	1.42
4-1/2	.420	.607	.937	1.26	1.52
5	.452	.646	1.00	1.36	1.62
6	.517	.711	1.10	1.45	1.75
7	x	.775	1.19	1.55	1.88
8	x	.873	1.29	1.65	2.04
9	x	.969	1.42	1.81	2.20
10	x	1.06	1.55	1.97	x
11	x	1.13	1.65	x	x
12	x	1.19	x	x	x

Note:
(1) Prices listed are for single layer only.
(2) Double layer prices are the sum of the prices for the two single layer sizes used.
(3) Prices include standard canvas jackets and 2-1/2 aluminum bands per 3 ft. section up to and including 2-1/2" thicknesses. No allowance is made for omission of canvas jackets or bands.
(4) Extra charge for special canvas jackets.
(5) Extra charge for any canvas jackets on covering over 2-1/2" thickness.

EXHIBIT A

April 13, 1953

OWENS-ILLINOIS GLASS COMPANY

Net Billing Prices F.O.B. Berlin, N. J. Terms Net 30 Days

KAYLO TRI-SEGMENTAL PIPE INSULATION

Nominal Pipe Sizes-Inches	Nominal Thickness of Insulation & Prices per Lineal Foot			
	1-1/2"	2"	2-1/2"	3"
8	x	Sectional Pipe Insulation		x
9	x	for These Sizes	x	x
10	x	x	x	$2.36
11	x	x	$2.07	2.52
12	x	$1.74	2.20	2.65
14	$1.36	1.94	2.45	2.97
15	1.45	2.03	2.58	3.13
16	1.52	2.13	2.71	3.29
17	1.62	2.23	2.84	3.46
18	1.68	2.33	2.97	3.62
19	1.99	2.76	3.48	4.21
20	2.07	2.90	3.63	4.35
21	2.18	3.01	3.77	x
22	2.25	3.12	x	x
23	2.32	x	x	x

Note:
(1) Prices listed are for single layer only.
(2) Double layer prices are the sum of the prices for two single layer sizes used.
(3) Extra charge for any canvas jackets or bands.

C07302

EXHIBIT A

April 13, 1953

OWENS-ILLINOIS GLASS COMPANY

Net Billing Prices F.O.B. Berlin, N. J. Terms Net 30 Days

KAYLO BEVELED LAG PIPE INSULATION

Nominal Pipe Sizes-Inches	Nominal Thickness of Insulation & Prices per Lineal Foot			
	1-1/2"	2"	2-1/2"	3"
20	x	x	Tri-segmental pipe insulation	
21	x	x	for these sizes	3.86
22	x	x	3.33	4.01
23	x	2.72	3.45	4.17
24	2.04	2.78	3.55	4.32
26	2.19	3.00	3.82	4.63
27	2.25	3.11	3.95	4.75
28	2.32	3.17	4.10	4.91
30	2.47	3.39	4.29	5.18
32	2.66	3.64	4.57	5.61
33	2.72	3.73	4.69	5.67
34	2.81	3.86	4.82	5.86
36	2.97	4.04	5.06	6.14

Note:
(1) Prices listed are for single layer only.
(2) Double layer prices are the sum of the prices for the two single layer sizes used.
(3) Extra charge for any canvas or bands.

EXHIBIT A — April 13, 1953

OWENS-ILLINOIS GLASS COMPANY

Net Billing Prices — F.O.B. Berlin, N. J. — Terms Net 30 Days

KAYLO HEAT INSULATING BLOCK

Thickness-Inches	Prices per Square Foot
1	$ .173
1-1/2	.260
2	.346
2-1/2	.433
3	.519

Note:

Block in these thicknesses can be furnished in 6", 12" and 18" widths.

C07304

EXHIBIT A

OWENS-ILLINOIS GLASS COMPANY

April 13, 1953

Net Billing Prices F.O.B. Berlin, N. J. Terms Net 30 Days

KAYLO HEAT INSULATION EXTRA CHARGES

	% Addition to Billing Price
Standard Canvas for Sectional Covering Over 2-1/2" Thickness	4.5%
6 oz. Canvas for All Sizes and Thicknesses	9.0
8 oz. Canvas for All Sizes and Thicknesses	13.5
Lamination of Sectional Pipe Covering to Provide Greater Thicknesses. (This addition to sum of the prices of the two thicknesses used)	7.5
All orders for less than carload quantity	$2.00 each
Special Shapes, Sizes and Thicknesses	Quotation
Weathercoating	Quotation

C07305

Memorandum of Agreement

Owens-Illinois Glass Company, hereinafter referred to as "Seller", and Owens-Corning Fiberglas Corporation, hereinafter referred to as "Buyer", have this day agreed as follows:

1. During the term of this Agreement, Buyer will purchase from Seller and Seller will sell to Buyer, in accordance with the terms and provisions of paragraphs 5 and 9 and Exhibit A of the Sales Agreemer this day executed by the parties, a copy of which is attached hereto as Exhibit I and made a part hereof, and subject to the provisions of this Agreement, the following amounts of Kaylo Heat Insulating Products:

$1,800,000	during the period April 1, 1953 to December 31, 1953, and
$2,400,000	during each calendar year subsequent to 1953;

provided, however, that in the event that at any time or times the prices for Kaylo Heat Insulating Products shall be increased or decreased in accordance with the provisions of paragraph 6 hereof, the amounts hereinabove specified will be increased or decreased in the same proportion as such prices shall have been increased or decreased, prorated for the portion of the current period unexpired at the date of such price change. On or before the first day of each calendar quarter, Buyer will notify Seller in writing of the total amount of Kaylo Heat Insulating Products which it intends to purchase from Seller during such quarter.

2. The amounts of Kaylo Heat Insulating Products specified in paragraph 1 hereof are in addition to the amounts specified in paragraph 1 of the Sales Agreement of which Exhibit I is a copy.

3. Seller reserves the right to sell Kaylo Heat Insulating Products to other purchasers; and the amount of Kaylo Heat Insulating Products sold by Seller to such other purchasers during any calendar year may, at option of Seller, be credited, in whole or in part, against Seller's obligation to sell during that period the amount specified in paragraph 1 hereof.

4. As used in this Agreement the term "Kaylo Heat Insulating Products" means only those heat insulating products listed in Exhibit A of Exhibit I hereto.

C07306

5. The prices for Kaylo Heat Insulating Products set forth in Exhibit A of Exhibit I will remain in effect until October 1, 1953, and thereafter until increased or decreased in accordance with the provisions of paragraph 6 hereof.

6. Seller may increase or decrease the prices to Buyer for Kaylo Heat Insulating Products on October 1, 1953, and on the first day of any subsequent calendar quarter, by giving notice in writing to Buyer of such increase or decrease at least fifteen (15) days prior thereto. Buyer may, by giving notice in writing to Seller at any time within thirty (30) days after receipt of notice from Seller of a price increase terminate this Agreement six (6) months after the effective date of such price increase.

7. If, by reason of fire, earthquake, flood, explosion, accident, difference with or inability to secure workmen, lack of material, lack of facilities, Act of God or of any public enemy, voluntary or involuntary compliance with any valid or invalid order, regulation, reques or recommendation of any government agency or authority, lack of transportation facilities or other cause beyond the control of Seller or Buyer, respectively, whether or not of the kind hereinbefore specified, Seller or Buyer shall be unable to perform, or is delayed in the performance of, any obligation under this Agreement, such nonperformance or delay shall be excused.

8. Buyer will offer its standard form of distributor-applicator contract to all of Seller's existing distributor-applicators. Where such a standard form of contract is accepted by any such distributor-applicator, Buyer will service all orders, unfilled at the time of such acceptance, placed with Seller by such distributor-applicator, and will, within thirty (30) days after receipt of notice from Seller of shipment on any such order, remit to Seller one hundred seven and one-half per cent (107-1/2%) of the purchase price set forth in Exhibit A of Exhibit I hereto, together with the amount of freight, if any, prepaid by Seller on said shipments.

9. Unless sooner terminated in accordance with the provisions of paragraphs 6, 10, 11 or 13 hereof, this Agreement shall remain in full force and effect until January 1, 1959. Except as otherwise provided in paragraph 12 hereof, the giving of any notice of termination shall not, prior to the effective date of such termination, relieve Buyer from its obligation to purchase, or relieve Seller from its obligation to sell, the amount of Kaylo Heat Insulating Products set forth in paragraph 1 hereof, and any termination shall be without prejudice to any other remedy or remedies which either party may have against the other for any breach of this Agreement.

10. Either party may at its option terminate this Agreement effective at the end of any calendar month by giving notice in writing to the other party at least one (1) year prior to the effective date of such termination.

11. In the event that Seller determines to discontinue the manufacture of Kaylo Heat Insulating Products, Seller may terminate this Agreement effective at the end of any calendar month by giving notice in writing to Buyer at least six (6) months prior to the effective date of such termination.

12. In the event that Buyer shall give notice to Seller of termination of this Agreement pursuant to the provisions of paragraph 6 hereof, or in the event that Seller shall give notice to Buyer of termination of this Agreement pursuant to the provisions of paragraph 11 hereof Buyer, at its option, may elect to be relieved of its obligation to purchase, during the six (6) months immediately preceding the effective date of such termination, Kaylo Heat Insulating Products in the amounts prescribed in paragraph 1 hereof, by giving notice of such election within thirty (30) days after notice of such termination. In the event that Buyer elects, as herein provided, to be relieved of its obligation to purchase the amounts so prescribed, Seller shall be relieved of its obligation to sell the amounts so prescribed.

13. In the event that the Sales Agreement, copy of which is attached hereto as Exhibit I, is terminated by either party thereto, this Agreement shall automatically be terminated effective the same date

14. The right of each party to require strict performance of the other party's obligations hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing.

15. Any civil action against Seller arising out of this Agreement or by reason of any sale hereunder, or by reason of any federal or state statutory provision relating thereto, shall be commenced within one (1) year from the date such cause of action arises; otherwise the same shall be barred, notwithstanding any statutory period of limitation to the contrary.

16. This contract is not assignable by Buyer except with the written consent of Seller.

17. The entire agreement of the parties is contained herein. There is no warranty, agreement, or understanding, express, statutory or implied, either in fact or in law, with reference to or a part of this Agreement, except such as is set forth herein. Except as otherwise provided herein, no change or alteration of this Agreement shall be effective unless the same is in writing and signed by both parties.

18. This Agreement shall be binding upon the parties, their successors and assigns, and shall be construed in accordance with the laws of the State of Ohio applicable to contracts made and to be performed in the State of Ohio.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Agreement to be executed as of April 1, 1953, this 20th day of March, 1953.

OWENS-ILLINOIS GLASS COMPANY

Attest:

By _____
Asst. Secy

By _____
Exec. Vice Pres.

OWENS-CORNING FIBERGLAS CORPORATION

Attest:

By _____
Secy

By _____
Vice Pres.

C07309

AMENDMENT OF MEMORANDUM OF AGREEMENT

Owens-Illinois Glass Company and Owens-Corning Fiberglas Corporation have this day agreed that the Memorandum of Agreement between them relating to Kaylo Heat Insulating Products, executed as of April 1, 1953 on March 20, 1953, shall be amended as follows:

(1) The schedule marked Exhibit A and attached hereto shall be substituted for the schedule identified as Exhibit A of Exhibit I attached to said Memorandum of Agreement, and all references to Exhibit A of Exhibit I in said Memorandum of Agreement shall be deemed to refer to Exhibit A attached hereto.

(2) This amendment shall be effective as of April 1, 1953.

IN WITNESS WHEREOF, the parties have caused this amendment to be executed this 13th day of April, 1953.

OWENS-ILLINOIS GLASS COMPANY

By _____
Executive Vice President

Attest:

_____
Assistant Secretary

OWENS-CORNING FIBERGLAS CORPORATION

By _____
Vice President

Attest:

_____
Secretary

AGREEMENT made this 9th day of May, 1958, with an effective date as of the close of business on April 30, 1958, between OWENS-ILLINOIS GLASS COMPANY, an Ohio corporation, hereinafter called "O-I," and OWENS-CORNING FIBERGLAS CORPORATION, a Delaware corporation, hereinafter called "OCF."

In consideration of the mutual promises herein contained, the parties agree as follows:

1. O-I hereby sells to OCF certain of the properties, hereinafter more particularly described, of the Kaylo Division of O-I on the following terms and conditions.

2. The term "Products" wherever it appears in this Agreement means hydrous calcium silicate products of the type heretofore manufactured by O-I at Berlin, New Jersey, and commonly referred to as "Kaylo." OCF hereby purchases the inventories of raw materials for the production of Products, Products in process of manufacture, finished Products in warehouse, and the manufacturing supplies and repair parts at the Kaylo plant at Berlin, New Jersey, all as of the close of business on April 30, 1958, for an aggregate consideration of $633,661.41, which OCF agrees to pay in Toledo funds upon the execution of this Agreement.

3. OCF hereby purchases all trademarks relating exclusively to Kaylo owned by O-I, including trademarks set forth on the attached Schedule A, for an aggregate consideration of $17,500.00, which OCF agrees to pay in Toledo funds upon the execution hereof.

4. OCF hereby purchases as of the close of business on April 30, 1958, the land, buildings, machinery and equipment, including

facilities under construction, office furniture, fixtures and equipment and automotive equipment, all located at Berlin, New Jersey; equipment at other locations used solely for testing Products or research in connection therewith, for an aggregate consideration of $3,600,000.00, which OCF agrees to pay in Toledo funds upon the execution hereof.

5. OCF hereby purchases all inventions, patents and patent applications, both domestic and foreign, owned by O-I at the close of business on April 30, 1958, defining Products, or processes or apparatus for the manufacture thereof, including but not limited to the patents and applications listed on the attached Schedule B, for an aggregate consideration of $2,650,000.00, which OCF agrees to pay in Toledo funds upon the execution hereof.

6. O-I hereby assigns to OCF all of the executory contracts as of May 1, 1958, of the Kaylo Division, including those for the purchase or sale of goods, materials, equipment, supplies and capital assets, agreements with labor unions, consultant agreements and all other contracts having to do with the conduct of its business (excepting, however, accounts receivable arising from goods supplied, services rendered or other transactions prior to May 1, 1958) and OCF agrees to perform and discharge all executory obligations under such contracts (excepting, however, any obligation for goods supplied or services rendered prior to that date, these obligations remaining the responsibility of O-I and excepting the obligation, if any, of O-I to pay compensation to any salaried employee of its Kaylo Division by reason of the termination of his employment by O-I), and will save O-I harmless from any and all claims of any third person or persons for any breach, after assignment

thereof, of any agreement so assigned. O-I will save OCF harmless from any and all claims for any breach, prior to assignment thereof, of any agreement so assigned, and for the breach of all warranties and agreements relating to goods delivered prior to May 1, 1958.

7. O-I will permit OCF to have such access as OCF may desire to the books, records, contracts, orders, files and properties of the Kaylo Division, and as promptly as practicable O-I will deliver to OCF all books, records, contracts, orders and files of the Kaylo Division, except such as O-I desires to retain, and as to these, O-I will make and deliver to OCF copies of any OCF desires.

8. O-I will turn over to OCF as promptly as practicable the files and records relating to all domestic and foreign patents, applications and inventions transferred to OCF. O-I will cooperate in making available other pertinent files and records, and O-I will cooperate in assisting OCF to prosecute pending applications and to file and prosecute additional applications on inventions transferred as OCF may elect.

9. O-I will deliver to OCF as promptly as practicable all deeds, bills of sale, assignments, and any other documents that are necessary or advisable to carry out the purposes of this Agreement. All titles to be conveyed by O-I hereunder shall be free, clear and unencumbered, except for the lien of taxes and assessments not due and payable on May 1, 1958, and except for defects in title to real estate which do not and will not substantially interfere with the use of real estate for the purpose for which it is presently used, and transfers thereof shall be made by deeds and bills of sale of general warranty, accompanied by appropriate abstract, report of title or title insurance policy showing

real estate titles to be good and merchantable in O-I, free, clear and unencumbered except as aforesaid. O-I makes no representation or warranty whatsoever, except as to title, as to personal property sold to OCF, nor as to the validity or scope of any patent or patent application, nor as to the rights OCF will acquire under any trademark or trade name. All documents contemplated hereby and all necessary corporate action shall be subject to the reasonable approval of respective counsel. O-I and OCF will each pay its own expenses in connection with the transaction herein contemplated.

10. The possession, use and disposition by O-I of the assets sold to OCF from the close of business on April 30, 1958, until the consummation of the sale herein contemplated shall be at the risk, and for the account, of OCF; O-I will account to OCF for any excess of its receipts therefrom over its disbursements in connection therewith or OCF will reimburse O-I for any excess of such disbursements over such receipts, as the case may be, as promptly as the balance can be determined.

11. Any controversy or dispute arising out of this Agreement shall be settled by arbitration conducted in accordance with the rules, in effect at the time the controversy or dispute arises, of the American Arbitration Association.

12. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio applicable to contracts made and to be performed in the State of Ohio.

13. The several rights and obligations hereunder shall extend to and be binding on O-I, OCF and their respective successors and

assigns, but no third person, except for such successors and assigns, shall have or acquire any right hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement and affixed their corporate seals by their duly authorized officers on the day and year first above written.

OWENS-ILLINOIS GLASS COMPANY

By _____
President

ATTEST

_____
Secretary

OWENS-CORNING FIBERGLAS CORPORATION

By _____
President

ATTEST

_____
Secretary

C09054

EXHIBIT A

LIST OF TRADE-MARKS

Trade-Mark	United States Registration No.	Date
Kaylo	421,786	6/18/46
Kaylo	563,443	8/26/52
Kaylo 20	619,220	1/ 1/57

Trade-Mark	Foreign Registration No.	Date
Kaylo	Great Britain 710,267	12/31/56
Kaylo	Great Britain 710,268	12/31/56

SCHEDULE B

RADIO BEACONS AIR RACING APPLICATIONS

1. United States Patents

Patent No.	Inventor	Issue Date
2,425,610	Finley	8-12-47
2,439,724	Finley	4-13-48
Re.23,228	Fraser	5-9-50
2,534,303	Sertnix	12-19-50
2,540,354	Selden	2-6-51
2,547,127	Kalousek	4-3-51
2,570,835	Mooney, et al	10-9-51
2,574,667	Sharon	11-13-51
2,665,996	Kalousek	1-12-54
2,748,008	Kalousek	5-29-56
2,787,345	Scubier, et al	4-2-57
2,788,304	Scowcroft	4-9-57

2. Pending United States Applications

Serial No.	Inventor	Filing Date
679,092	Kalousek	8-19-57
691,543	Bishop	10-22-57
497,645	Scubier	3-29-55
501,705	Taylor	4-15-55
504,310	Kendall	4-27-55
515,447	Scubier	6-14-55
518,580	Sharon	6-28-55
522,014	Pio	7-14-55
523,727	Sharon	7-22-55
526,830	Kalousek	8-8-55
528,717	Bowers	8-16-55
538,939	Kendall	10-6-55
553,764	Bowers	12-19-55
560,403	Simpson	1-20-56
620,795	Taylor	11-7-56
624,053	Taylor	11-23-56
632,012	Kalousek	1-2-57
643,261	Scubier	3-1-57
705,772	Taylor	12-20-57
692,112	Denny	4-11-57
702,061	Hatbert	10-11-57
692,209	Sharon	10-23-57
723,784	Sharon	3-25-58
345,066	Zink, et al	3-27-53

3. Foreign Patents and Applications

	Serial No.	Filing Date	Patent No.	Issue Date
(a) Australia:			163,619	7-3-53
(b) Belgium:			485,599	11-13-48
			522,357	8-25-53
			531,912	9-17-54
			531,857	9-15-54
			531,591	9-2-54
			530,264	12-26-50
			479,612	1-14-48
(c) Canada:			502,677	5-18-54
			540,321	4-30-57
	669,588	7-12-54		
	669,580	7-12-54		
			540,322	4-30-57
			499,208	1-12-54
			458,579	12-8-32
(d) France:			974,332	10-26-48
			1,081,310	7-15-55
			1,112,408	9-14-54
			1,112,398	11-16-55
			1,111,210	8-31-54
			1,026,567	2-4-53
			959,797	1-9-48
(e) Germany:			897,825	8-18-53
	3034 IVb/121	6-10-53		
			1,005,435	9-7-54
			1,012,857	11-12-57
	3720 IVb/121	8-24-54		
(f) Great Britain:			638,427	10-5-43
			742,145	6-29-55
			769,030	2-30-54
			775,582	3-13-57
			767,761	8-20-54
			702,057	10-18-50
			646,820	11-29-50
(g) Holland:			85,222	8-16-57
	190,556	9-4-54		
			82,230	6-15-56
	190,253	8-24-54		

C09057

	Serial No.	Filing Date	Patent No.	Issue Date
(h) Italy:			531,559	8-21-54
			543,519	8-30-54
			533,117	8-24-54
(i) Sweden:	6157/53	6-30-53		
	7621/54	8-28-54		
	7715/54	8-27-54		
			160,529	7-11-57

United States Environmental Protection Agency | Solid Waste and Emergency Response (5502G) | EPA 520-F-94-014 Summer 1994

EPA

Superfund At Work

Hazardous Waste Cleanup Efforts Nationwide

Ambler Asbestos Site Profile

Site Description: Former asbestos manufacturing facility

Site Size: 23 acres

Primary Contaminants: Asbestos

Potential Range of Health Risks: Respiratory disorders and lung cancer

Nearby Population: 6,000 people within a half mile

Ecological Concerns: Birds, animals, and aquatic species in Wissahickon Creek

Year Listed on the NPL: 1986

EPA Region: III

State: Pennsylvania

Congressional District: 13

Success in Brief

Cooperative Efforts Abate Asbestos Hazards

In the 1930s, without realizing the potential hazard,a pharmaceutical company started dumping asbestos manufacturing wastes on its property in Ambler, Pennsylvania. Subsequent landowners continued in a similar fashion until more than 1.5 million cubic yards of contaminated waste towered above the community in three huge piles, one as high as 70 feet.

When asked for help by the state, the U.S. Environmental Protection Agency (EPA) faced a serious dilemma: removing that much asbestos would send an enormous amount of dangerous fibers airborne to be spread by the wind in all directions. A solution was reached to immobilize and cover the asbestos, minimizing the threat of exposure.

Following emergency actions to stabilize the site, EPA located the parties responsible for the site and negotiated two agreements to conduct the cleanup. Cooperative efforts ensured community input and steady construction progress. Trees and other vegetation now cover Ambler's three steep "mountains" which stand out in otherwise flat surroundings. Birds and small animals come and go freely to the site from an adjacent nature preserve.

Photo courtesy of Jim Feeney, U.S. EPA Region 3

An abandoned playground on Locust Street next to the "white mountains" of asbestos wastes.

A Site Snapshot

This 23-acre waste site is in Ambler, Pennsylvania. Asbestos manufacturing facilities operated there for almost a century. Improper asbestos waste disposal most likely commenced on the property in the 1930s.

About 6,000 people live within a half mile of the site but the closest residence is only 200 feet from the property's perimeter. A public playground was on the site but closed in 1984. The site is surrounded by a mix of residential, industrial, and undeveloped areas.

Until the 1970s, asbestos was considered non-toxic and manufacturing wastes were simply dumped outside, exposed to the elements. A total of 1.5 million cubic yards of asbestos-contaminated wastes were abandoned on the site in three hugh piles still remembered by some local residents as, "the white mountains".

Notable levels of asbestos also were also found in Wissahickon Creek which borders the property. Although the creek does not supply drinking water, the Four Hills Nature Preserve is directly adjacent to the site and supports birds, small animals, and aquatic species (see page 5). *For a discussion of the health effects, see "Asbestos in America" on page 6.*

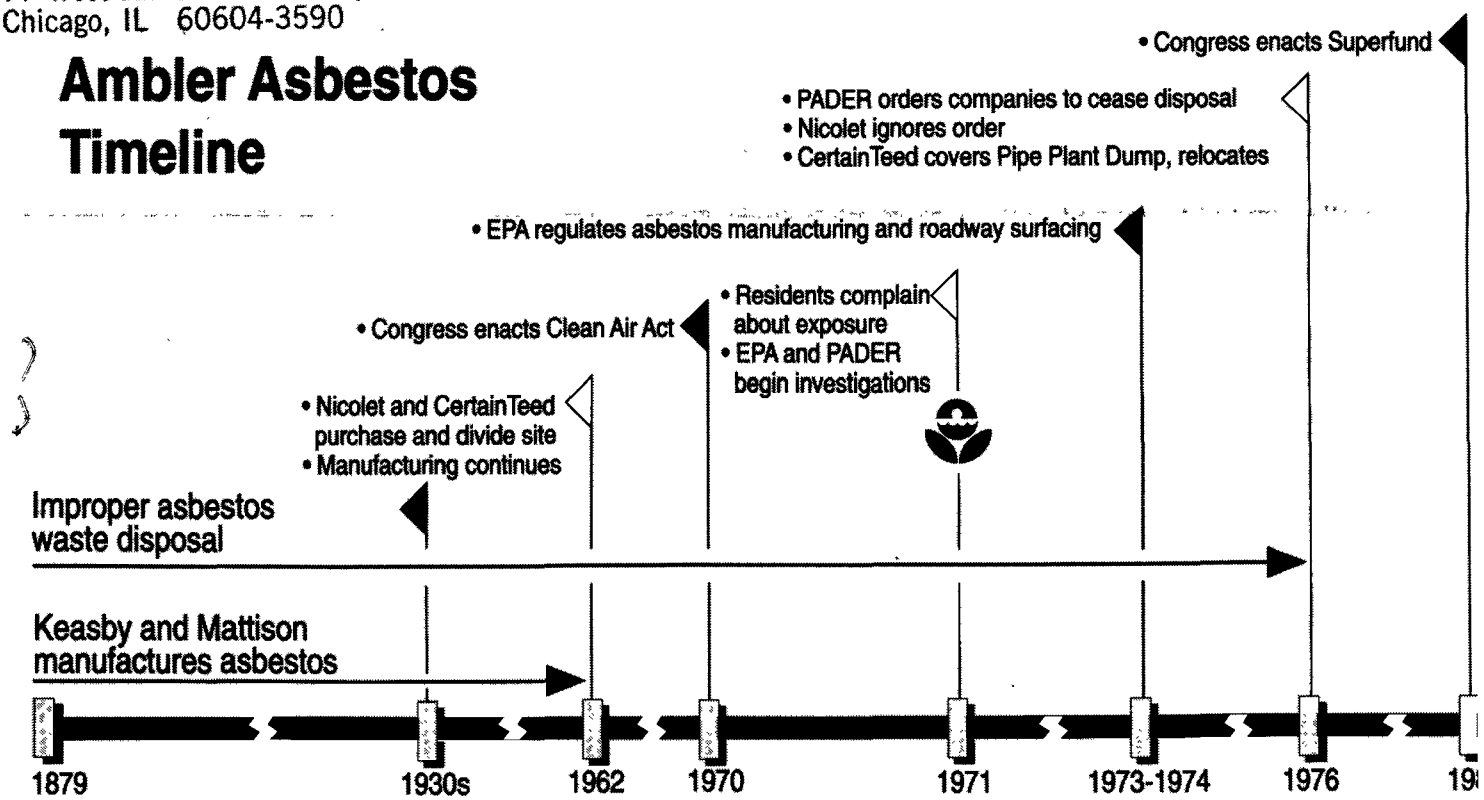
White Asbestos M

Asbestos Wastes Mount

As an extension of a pharmaceutical business, the Keasby and Mattison Company began manufacturing asbestos products at Ambler in 1897. During the 1930s, the company dumped the contaminated manufacturing wastes in ever-growing, unprotected piles on the property.

In 1962, two corporations, Nicolet and CertainTeed, purchased portions of the site and divided the land between them. The companies continued making asbestos products and dumping waste materials on the property. Employees from Nicolet took asbestos wastes to two areas now known as the Locust Street Waste Pile and the Plant Waste Pile. The company also pumped

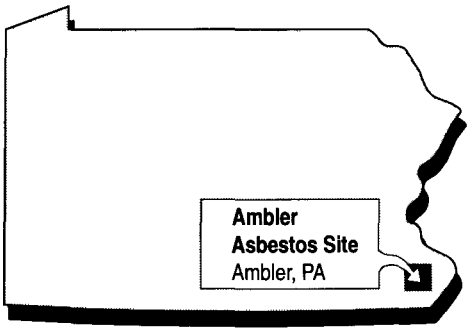
Ambler Asbestos Timeline



ıntains Turned to Green Hills

contaminated wastewater into settling ponds and lagoons built on the site. CertainTeed disposed of asbestos trash in another area of the site known as the Pipe Plant Dump.

In 1970, Congress enacted the Clean Air Act establishing EPA's first asbestos abatement program. The Act required EPA to set National Emission Standards for Hazardous Pollutants (NESHAPs). In 1971, EPA determined asbestos to be a hazardous air pollutant because of the fibers' ability to cause serious respiratory disorders, lung cancer, and even death. In 1973, EPA issued regulations to control asbestos emissions from manufacturing, milling, roadway surfacing, and demolition projects.

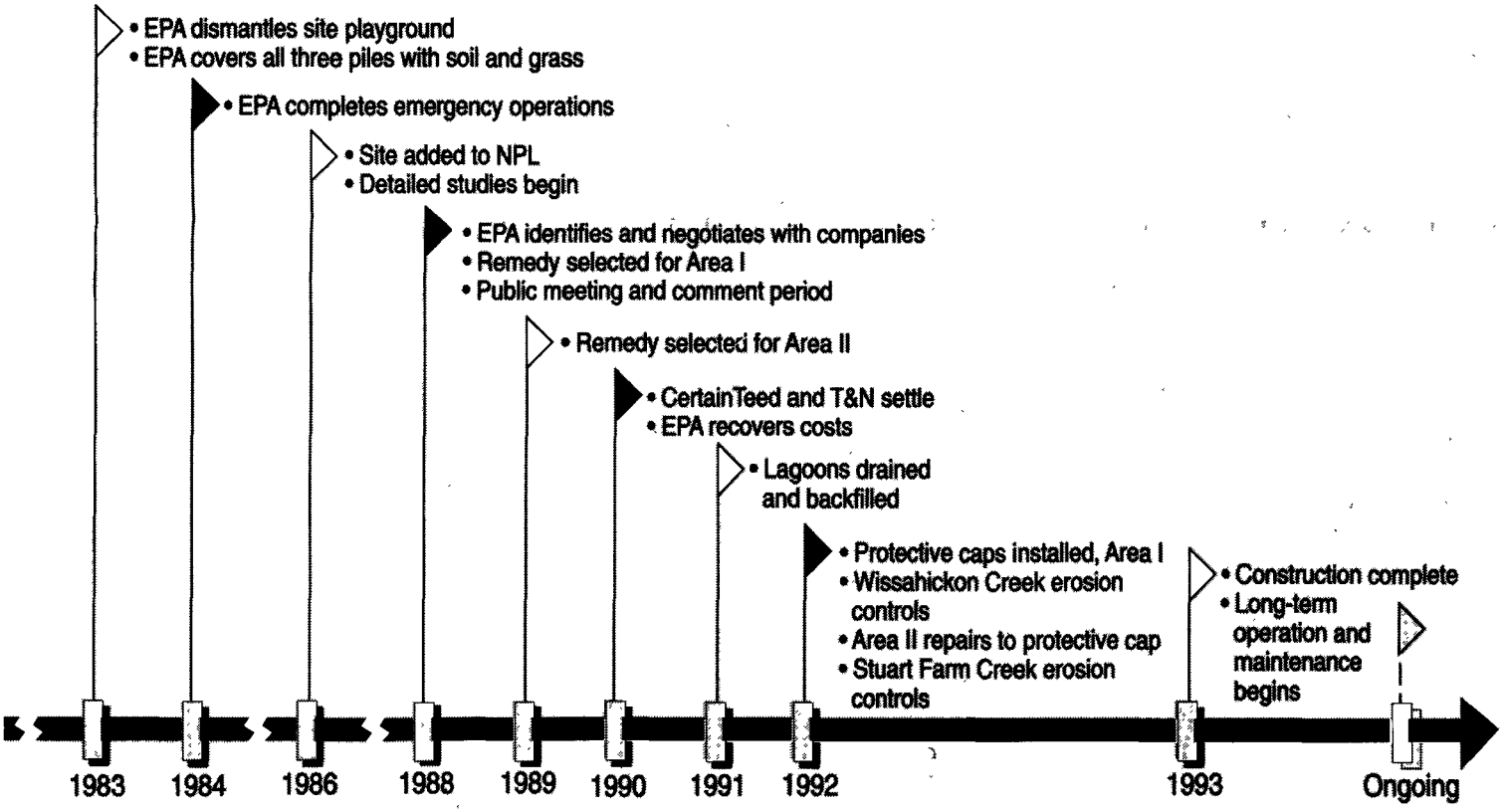


Complaints about visible emissions and dust from the site had been registered by area residents with the Pennsylvania Department of Environmental Resources (PADER) since 1971. Both Nicolet and CertainTeed were operating without permits until PADER ordered both companies in 1973 and 1974 to stop dumping wastes and take action to control emissions. CertainTeed complied, covering the Pipe Plant Dump with soil and seeding for grass, and then relocated operations. Nicolet appealed the order and continued dumping asbestos wastes on the uncovered piles until at least 1976.

EPA Addresses Threats

In 1980, Congress established the Superfund program within EPA with a primary goal of cleaning up the nation's hazardous waste sites. Whenever possible, EPA locates those responsible for the site contamination and tries to negotiate the use of private resources for cleanup.

At the state's request, EPA began a preliminary assessment of the site shortly thereafter. With help from the Centers for Disease



Control and Prevention (CDC), EPA sampled the Ambler site and surrounding area to determine the extent of contamination. After scientists detected asbestos fibers on playground equipment in November 1983, EPA warned the community that the area was unsafe and the playground equipment was dismantled.

Scientists detected asbestos fibers on playground equipment

EPA then undertook emergency actions to minimize exposure by covering the Locust Street Pile with topsoil and seeding for grass. Nicolet cooperated by covering over the Plant Waste Pile. EPA then installed a drainage system to prevent contaminated rainwater from running off the site.

In 1984, EPA proposed to add the site to the National Priorities List (NPL) of serious uncontrolled or abandoned hazardous waste sites eligible for cleanup under the Superfund program. Following a period of public comment, the site was officially added to the NPL in June 1986.

Responsible Parties Agree to Settlement Terms

With separate parties responsible for distinct areas of contamination, EPA divided the Ambler site into two areas, one including the Locust Street Pile, the Plant Waste Pile, and the waste lagoons; the other the Pipe Plant Dump. Negotiations with past and present owners and operators of the site to conduct the cleanup began in July 1988.

A search of company records led EPA to the T&N Corporation, a major shareholder of the old Keasby and Mattison Company. Together with Nicolet Industries, the companies were responsible for Area I, but Nicolet had declared bankruptcy in 1987 and subsequently agreed to a cash settlement with EPA through the court. The CertainTeed Corporation agreed to clean up Area II and reimbursed EPA $55,042 for past cleanup costs.

Cleanup Begins

Following a public comment period, EPA selected a remedy for Area I that included several different aspects. Under EPA supervision, workers from T&N pumped out collected water, stabilized the remaining sludge, and backfilled the lagoons with clean soil. Workers also repaired and replanted eroded areas on the slopes of the two piles and cleared trees and shrubs from the plateaus.

Engineers then installed protective caps over the Locust Street Pile and the Plant Waste Pile which included semi-permeable geotextile covers and a top layer of crushed stone. Workers also installed a concrete blanket on the bank of the Wissahickon Creek to prevent erosion of the side slope.

The plan further required repairing the protective fence surrounding the site, placing warning signs along the site perimeter, and monitoring the area for 30 years to ensure the long-term effectiveness of the remedy.

EPA negotiates with private parties for cleanup

Cleanup of the smaller Pipe Plant Dump (Area II) included clearing shrubs and trees from the waste pile and grading more soil on top to reinforce the protective cover built in late 1983 during EPA's emergency removal. CertainTeed workers also installed erosion control devices (gabions) on the banks of Stuart Farm Creek, repaired the fence, and posted warning signs. The company must monitor the protective cap and site conditions for 30 years. All field construction activities at both Areas were completed in November 1992.

Responding to Local Concerns

Area residents often take an active interest in EPA's actions to clean up a site. EPA encourages this participation and works with neighbors to ensure that residents' concerns are heeded. EPA worked closely with the citizens of Ambler to provide information and updates of anticipated cleanup actions.

During the emergency removal actions, the Locust Street playground was dismantled and removed and a fence constructed to restrict access. After the asbestos waste piles were stabilized, a local company (Interspec) wanted to build a basketball court at the site of the old playground; EPA arranged for the fence to be moved to accommodate the blacktop court.

Workers from T&N worked with local officials to move the fence closer to the Locust Street Pile to facilitate grass cutting in the city's regular schedule. The community has now gained a small open field adjacent to the basketball court.

With regard to the selection of site remedies, citizens expressed concern about a storm water culvert that flowed into a grassy area near Wissahickon Creek. During field activities, the culvert was extended to discharge into an existing channel. In addition, local officials wanted access to an underground sewer line that ran alongside and beneath the waste piles. Both T&N and CertainTeed voluntarily located long-buried manholes so the citycould have access to this sewer line.

During the design of the erosion control device for Wissahickon Creek, the Wissahickon Valley Watershed Association raised concerns about the aesthetic appearance of the original design. This group leases the Four Mills Nature Preserve directly adjacent to the site. In response, T&N submitted a second and yet a third design that would preserve the erosion control effectiveness of the device while minimizing any negative visual impact. Citizens and local officials expressed satisfaction to be included in the decision-making process.

Photo: Frank Martin, U.S. Fish & Wildlife Service

The Four Mills Nature Preserve is home to **Mallards**, Wood Ducks, Belted Kingfishers, turtles, muskrats, at least 20 species of fish, and many other woodland and aquatic animals.

Asbestos in America

Prior to 1970, asbestos was considered non-toxic and used for fire-proofing and to insulate homes, office buildings, and schools. But when factory workers began showing an increased rate of lung cancer, scientists identified asbestos as a major contributor to respiratory disorders and lung diseases.

"Asbestos" is the name for a group of naturally occurring minerals that separate into strong, microscopic fibers that are heat resistant, odorless, and very durable. Friable (easily crushed or pulverized) asbestos emits microscopic fibers into the air when even slightly disturbed. These fibers are easily inhaled and can cause a host of respiratory disorders. Lung cancer is the most frequently seen asbestos-caused disease and is more likely to occur if the exposed person is a smoker. Asbestos also causes asbestosis, a chronic disease of the lungs that makes breathing progressively more difficult and can lead to death.

EPA has taken numerous actions since 1971 to regulate the manufacture, use, removal, transportation, and disposal of asbestos-containing products and materials. In 1984, the Asbestos School Hazard Abatement Act provided approximately $135 million in interest-free loans to more than 1,500 schools to conduct asbestos control renovations. In 1986, the Asbestos Hazard Emergency Response Act required schools to identify areas of exposure to asbestos and submit corrective action plans. EPA then established training programs for proper inspection and removal procedures.

Because of continuing concerns about asbestos, EPA maintains a toll-free number for citizens at **1-800-368-5888** (in Washington, D.C. call 202/557-1938).

Success at Ambler

EPA's actions at the Ambler Asbestos site began with an emergency removal that significantly reduced the potential for exposure to airborne asbestos. Successful negotiations with companies responsible for the site contamination resulted in a thorough and expedient remediation. In a spirit of cooperation, the companies volunteered to expand their commitment to the community beyond required cleanup activities.

In addition, the parties reimbursed EPA for a substantial portion of past costs incurred at the site. Active construction at the site was completed ahead of schedule and a long-term operation and maintenance plan is underway.

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INDUSTRIAL MEDICINE

AND

HYGIENE

Edited by

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VOLUME 3

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1956

legal definition for the purposes of disablement benefit under the National Insurance (Industrial Injuries) Act, 1946:

"'Pneumoconiosis' means fibrosis of the lungs due to silica dust, asbestos dust or other dust, and includes the condition of the lungs known as dust reticulation."

This definition, however, is not to be interpreted generally, for it is restricted in its application, in so far as the disease for the purposes of the Act is prescribed only in relation to certain scheduled occupations and processes. This subject is more fully discussed in the section on disablement benefit (*see* p. 58).

Under the current Compensation Act (1952) in South Africa:

"'Silicosis' means any form of pneumoconiosis due to the inhalation of mineral dust. . . ."

These two definitions admirably illustrate the confusion, in both terminology and interpretation of medical facts, which exists in the legal codes of separate countries.

DUSTS AND THEIR ACTION

Dust: definition and classification

In 1857 Cox, a Lancashire practitioner, described "dust" as "solid mechanical impurities floating in a minute state of division "..." impalpable powder". Apart from the transposition of "minute" to precede "division", this definition has persisted until the present. As is indicated above, the International Conference of Experts, in defining pneumoconiosis, made this explanation: "The term 'dust' being understood to refer to particulate matter in the solid phase but excluding living organisms."

A suggested classification

Dust may be organic or inorganic and the physical structure may present in amorphous, crystalline, fibrous or plate form. No simple and accurate medical classification of dusts has yet been made, but the following broad sub-divisions are possible.

(1) *Dusts which are systemic poisons* and which may or may not produce lesions in the lungs: lead, arsenic, manganese, beryllium, vanadium and many others.

(2) *Irritant or corrosive dusts*: lime, arsenic, the bichromates, and many others in varying degrees.

(3) *Dusts which produce an allergic reaction*, such as asthma, rhinitis and urticaria: cotton, flax, some woods, occasionally the bichromates and others.

(4) *Carcinogenic dusts*: pitch, radioactive materials and certain ores.

(5) *Non-toxic inorganic dusts*—the common mineral dusts: silica in various forms, asbestos, coal, graphite, talc and others.

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PUBLISHED MONTHLY

DISEASES of the CHEST

BRONCHOPULMONARY
CARDIOVASCULAR

Asbestosis

Report of the Section on Nature and Prevalence
Committee on Occupational Diseases of the Chest
American College of Chest Physicians

Definition

Asbestosis is a diffuse pulmonary disease in which fibrosis is the dominant reaction to the prolonged retention in the lung of asbestos fibers.

Asbestos

Asbestos is of mineral origin. The name asbestos derives from the Greek word for "unquenchable." The term embraces at least 30 silicate compounds which characteristically have a fibrous structure. Their chemical constituents include: silicon, magnesium, iron, fluorine, manganese, aluminum and chromium in various molecular states and hydrated to different degrees.

Of the 30 or more asbestiform minerals, only six have current economic significance. They are: chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite. Chrysotile is a fibrous form of serpentine, the other five are amphiboles.

The major physical properties of asbestos are its incombustibility, its facility to be separated into filaments of fibers, its unusual flexibility and its high tensile strength. Other valuable and characteristic properties include resistance to heat, to moisture and to the corrosive action of acids. These properties vary considerably with the different types of asbestos. The size and flexibility of the fibers and some chemical attributes of asbestos are characteristics with medical implications.

Sources

Canada, Russia, South Africa and Rhodesia are the main producers of chrysotile. Crocidolite is found in South Africa, Australia, South America and Italy. Amosite is mined in South Africa while anthophyllite is found in Finland, United States, New Zealand, China, Japan and India. Asbestosis has been reported from all these countries.

Industrial Uses

The industrial uses of asbestos are increasing steadily and now exceed 3,000 specific conditions in which asbestos serves uniquely as a protectant against excessive heat, cold and corrosion. There are, therefore, a multiplicity of circumstances under which asbestosis can be encountered.

Processing of Asbestos

Because asbestos is found both on or near the earth's surface as well as at considerable depths below it, the ore can be recovered by open pit or underground mining. The fact that 15 to 20 tons of serpentine rock must be mined in order to produce 1 ton of usable asbestos fibers means that in many asbestos mining operations, workers are exposed to serpentine as well as to asbestos dust even to a ratio of 95 per cent to 5 per cent.

Asbestos fibers are recovered by mechanical milling consisting essentially of successive stages of crushing and separation by air screening. The fibers are further separated, cleaned, graded according to length and then bagged for shipment.

The asbestos fibers are used afterwards in the weaving of fiber resistant textiles and in the manufacture of reinforced molded cement products where they are submitted to further mixture with other constituents according to different specifications.

Industrial Hygiene Aspect

In determining the dust hazard, both the total count of asbestos particles* in the working environment and the prevalence of fibers of different lengths should be considered.

It is generally accepted that the risk of contracting asbestosis is highest where a

*Particles used in this context includes fibers.

greater proportion of the dust particles is fibrous and in those operations in which most of the processing is done in the dry state.

In spite of the fact that the total dust exposure may be higher in the asbestos mining industry, the health hazard is more serious in the asbestos textile industry. The explanation for this is that in mining 80 per cent to 95 per cent of the dust may be serpentine rock dust, which is biologically relatively inert.

The wet stage of the asbestos cement industry yields a low risk, but the dry mixing of asbestos with cement or dry cutting of finished asbestos products are sources of asbestos hazard.

There is no agreement on safe limits for asbestos dust and the best evidence for this is that several governmental agencies have recommended 5,000,000 asbestos particles (of any length) per cubic foot of air as the maximal allowable concentration, some industries have adopted as their standard 1,000,000 asbestos fibers of 5 microns and greater length per cubic foot, and a third group of hygienists considers a count of 10,000,000 total dust particles per cubic foot as a safe limit. Techniques of dust counting vary considerably and need to be standardized. The most practical method is the membrane filter device. The most accurate but least practical methods are the thermal and electrostatic precipitators. The Konimeter and Impinger methods are unreliable. Currently the value of the Tyndallometer and photoelectric methods are being explored.

Medical Aspects

(a) Toxicology:

Asbestos is not currently considered a toxic substance since it does not produce systemic poisoning. Thus far, no distinctive blood or urine deviations have been detected among workers exposed to asbestos. No minimum lethal dose has been established for asbestos.

(b) Allergy:

Asbestos dust has not been shown to be allergenic, either in occupational groups or in experimental animals.

(c) Pathogenesis:

Two theories of causation have gained acceptance in different quarters. These are, respectively, mechanical irritation by asbestos fibers and fibrogenicity of the protein capsule of the asbestos body.

The mechanical irritation concept is supported by the observations that fibrosis occurs most densely in the parts of the lungs where the respiratory movements are greatest, or where the lung impinges against other intrathoracic structures; that grinding the fibers to less than 5 microns in length decreases their capacity to evoke fibrosis in experimental animals; and that a fibrous mineral containing no silicate causes pulmonary fibrosis in experimental animals.

The chemical theory postulates an unknown fibrogenic agent which is released by disintegration of asbestos bodies. This theory takes into account the delayed development and progressive nature of asbestotic fibrosis, and is based on the assumption that there may be a correlation between dosage of exposure and the elapsed time after exposure.

(d) Pathology:

The principal pulmonary lesions include regional atelectasis, interstitial, mucosal and focal fibrosis, and bronchiolar fibrosis. Distortion, distention or stenosis of bronchi and fine diffuse emphysema may be associated with the fibrosis and become in such instances additional factors in the genesis of the respiratory disability. Perivascular fibrosis is also observed in most cases of asbestosis contributing significantly to the development of cor pulmonale. The disease process is dispersed throughout the lungs, but the lesions may be more accentuated subpleurally and at the bases of both lungs where the amplitude of the breathing movements is greater. No asbestotic fibrosis has ever been found in the mediastinal lymph nodes. Many alveolar spaces may contain asbestos bodies which

consist of asbestos fibers surrounded by a proteinaceous capsule. Their presence, although indicative of asbestos exposure, is not necessarily diagnostic of asbestosis.

Asbestotic fibrosis may concentrate around focal lesions such as inactive tuberculosis or a bronchiectasis. This fact must be kept in mind in assessing the severity of asbestosis through biopsy.

Pleural plaques have been detected by many observers in the United States of America, Canada, Finland, Germany and South Africa. In many individuals and perhaps even the majority of cases, these pleural plaques do not present any histologic lesions of asbestosis and contain no asbestos fibers. Some plaques calcify early and are localized on the parietal pleura leaving the visceral pleura unaffected. After many years, however, irritation by the parietal plaque can evoke a lesion on the opposing visceral pleura. These plaques, though apparent on x-ray, are not associated with any disability. They should, however, be distinguished from the serious form of subpleural fibrosis and from pleural mesothelioma, both of which can cause significant limitation of pulmonary excursions.

Radiology

The radiologic pattern of asbestosis is characterized by a ground glass appearance and sometimes a fine stippling. The cardiac silhouette may also be blurred. If there has been some concurrent exposure to dust other than asbestos (as in mining), the pattern may be much coarser. A single standard therefore does not apply. The I.L.O. radiographic classification is quite unsuitable for grading the type or severity of asbestosis. The complications of asbestosis, of course, have their own distinctive radiologic patterns.

Pulmonary Physiology

Function studies of the conventional range have not shown good correlation between the radiologic signs, the intensity or duration of exposure and pathology discovered through biopsy or at necropsy.

Arterial oxygen saturation may stay normal even in advanced asbestosis. On the contrary, more often than not, arterial oxygen desaturation may precede the radiologic manifestations. Deficient gaseous diffusion across the alveolocapillary membrane may in some cases be the only abnormal finding. Impaired ventilation and reduced pulmonary elasticity are often found in advanced asbestosis. In some instances of asbestosis, there is a long latent period between the establishment of positive radiologic signs, the first demonstrability of physiologic disturbance and the ultimate clinical outcome of respiratory failure. Additional sequelae or complications may supervene to initiate the disabling phase of the disease. Intercurrent factors, such as aging or coincidental pulmonary infections, may upset the respiratory balance.

Sequelae and Complications

Acute and chronic right-sided heart disease and progressive cardiorespiratory failure are the most frequent terminal sequelae of asbestosis. An association between asbestosis and tuberculosis has never been proven conclusively by any statistical or epidemiologic investigation and has been disproved in experimental animals. Active tuberculosis may heal and not become reactivated despite continuous asbestos dust exposure.

In the medical literature, there are more articles favoring a positive relationship between cancer of the lung and asbestosis than denying it. While it has been reported that there may be an enhanced prevalence of pulmonary neoplasia in some asbestos industries (e.g. crocidolite or amosite), or in some locations (e.g. South Africa, England), this does not appear to apply for the chrysotile industry in North America. This comment applies both with respect to intrapulmonary new growths and to pleural mesothelioma.

In contrast to other pneumoconioses, asbestosis is relatively infrequently complicated by bronchitis, bronchopneumonia or

pneumonia. In far advanced asbestosis, asymptomatic noninflammatory bronchiectasis may, however, occur as a result of distension of bronchi and bronchioles by contraction of intervening fibrous tissue. Hypertrophic or obstructive pulmonary emphysema is not a feature of asbestosis. Between zones of fibrosis, however, alveolar spaces may become distended and distorted. This anatomic condition may be identified through biopsy or at necropsy, but is not usually associated with a clinically disabling equivalent.

Prevalence of Asbestosis

Apart from inequalities of the dust exposure in different industries, many other circumstances can explain the great variation in the alleged incidence of asbestosis. Reports of prevalence range from 8 per cent to 77 per cent in different industries or different countries.

The criteria for the diagnosis of asbestosis are far from uniform. The application of different radiologic criteria, for instance, may significantly influence the incidence rate as reported by separate radiologists. The method of tabulating the cases is a factor. In the same industry, an incidence of 24 per cent among the workers exposed to the dust can become only 8 per cent when the same cases are diluted among the total number of employees of the whole industry. The pathologist, who sees only deceased cases, or the consultant who reviews chiefly problem cases, are likely to have more pessimistic views of the disease than the clinician, who has under his care both those who become ill and those who develop limited disease only or who may even escape the asbestotic reaction despite significant exposure.

Even the more or less official statistics issued by different Compensation Boards have to be accepted with caution before being compared. Often the liberal interpretation of the aggravating factor clause, or the according of benefit of the doubt and other social considerations, will give impressions of incidence which cannot be reconciled with authoritative medical opinions.

In order to have a prevalence rate which will be more representative and more exact, it would be necessary to collate the data which may be gathered from a small random sampling of pathology of deceased asbestos workers. Even such a study would only yield data applicable to the industry in question and similar investigations would be needed for each type of industry.

The divergent and even the contradictory opinions circulating on the different aspects of asbestosis and the numerous unanswered questions have created an embarrassing confusion for many of those concerned with the scientific and the practical problems of asbestosis.

Differential Diagnosis

Asbestosis can be simulated by any of the numerous varieties of diffuse interstitial fibrosis. For diagnosis, precise information is needed concerning the occupational exposure. When dealing with a group of industrial employees and when serial radiographs and clinical records are available, diagnosis may not be too difficult. In isolation, asbestosis can often only be recognized through biopsy or at necropsy. The finding of asbestos bodies in the sputum is indicative only of prior exposure and not of asbestosis.

Prevention

Asbestosis can only be prevented by avoiding prolonged inhalation of high concentrations of asbestos particles. Aluminum inhalations are of no benefit, as with silicosis.

Treatment

No specific treatment exists. However, considerable benefit may derive from treating symptoms or complications. It is better to keep asbestotic subjects active and ambulant as long as feasible. Prolonged immobility may lead to serious pulmonary restriction.

Compensation

In many states and countries, asbestosis is a compensable occupational disease. In some areas compensation is based on partial disability and in others is limited to total disability.

Comment

Asbestotic subcutaneous granulomatosis and asbestotic cutaneous verrucous acanthosis have been reported in occasional industries. Heavy exposure to some types of asbestos dust may cause itching especially in zones of contact between clothing, wristbands, etc. This is due to superficial penetration of coarse fibers and has no clinical significance.

Report prepared by the Section on Nature and Prevalence: John W. G. Hannon, Chairman; Paul Cartier, Ross K. Childerhose, David T. Dubow, G. W. H. Schepers, Reginald H. Smart and Roy E. Whitehead.

Peter A. Theodos, Chairman, Committee on Occupational Diseases of the Chest.

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HIGHLIGHTS FROM THE INTERIM CLINICAL SESSION*

AMERICAN COLLEGE OF CHEST PHYSICIANS

PHYSIOLOGIC STUDIES DURING CARDIOPULMONARY BYPASS ELIMINATING HEPARINIZED BLOOD

Drs. Arthur C. Beall, Jr. and Denton A. Cooley, Houston, stated that many adverse physiologic changes following temporary cardiopulmonary bypass recently have been attributed to the use of large quantities of fresh, heparinized, homologous blood to prime the various types of pump oxygenators. They have developed a technique of open heart surgery employing disposable oxygenators, primed with solutions such as 5 per cent dextrose in distilled water or 5 per cent dextrose in ¼ isotonic saline solution, under normothermic conditions. Results of this technique in more than 500 clinical cases have demonstrated its superiority to techniques employing pooled homologous blood in almost every respect.

In order to determine certain physiologic changes associated with this technique of open heart surgery, renal hemodynamic changes concomitant to this technique have been compared with those seen following temporary cardiopulmonary bypass with fresh homologous blood. A similar comparison has been made of changes in blood viscosity during and following bypass. Plasma electrolyte and both total body water and extracellular fluid volume changes have been studied, as have changes in plasma hemoglobin levels during and following bypass.

The results of these studies would appear to offer further evidence that this technique of open heart surgery is superior to those employing pooled homologous blood. Both experimental and clinical findings were presented and their implications discussed.

BRONCHIAL GLANDS

Dr. Otto C. Brantigan, Baltimore, and co-workers have made a study of submucosal bronchial glands and the mucus goblet cells of the mucous membrane. The study was made in normal man and in pulmonary emphysematous disease in man with and without pulmonary denervation (sympathectomy and parasympathectomy); the study was made in various animals. The albino rat has no submucosal bronchial glands, but many goblet cells. The domestic pig presents submucosal bronchial glands more nearly like those in man than do other animals, but normally it has no goblet cells in the mucosa. The patient with pulmonary emphysema has submucosal bronchial glands that are generally larger than the normal. In normal subjects and in pulmonary emphysema in man, the submucosal glands show extensive staining with P.A.S. stain which indicates an acid or neutral mucopolysaccharide; fewer cells and glands stain with Alcian blue which indicates acid mucopolysaccharide. After pulmonary denervation, the pulmonary emphysematous bronchus shows a marked atrophy of submucosal bronchial glands and the mucosa and submucosal layer and a marked lessening of the Alcian blue staining material. In addition, there is the appearance of many goblet cells in the mucous membrane.

GASTRIC FREEZING IN TREATMENT OF SYMPTOMATIC HIATAL HERNIA

Approximately 20 patients with symptomatic hiatus hernia with or without associated peptic ulcer diathesis have been treated by gastric freezing after the manner of Wangensteen during the past ten-month period. An evaluation of the clinical results over this ten-month followup period was presented by Dr. Kenneth Cruze, Takoma Park, Maryland. Pre-freeze evaluation and selection of these patients for cryogenic surgery was presented along with illustrations of some gross and microscopic changes seen in biopsy specimens of the mucosa. The results obtained during this period would not seem to support the excellent results reported by other investigators having smaller numbers of patients.

*Portland, Oregon, November 30-December 1, 1963. Future issues of *Diseases of the Chest* will contain complete manuscripts of many of these papers.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

NANCY DeBOLT, Individually, and as Special Administrator of the Estate of RICHARD D. DeBOLT, deceased,
Plaintiff,

v.

RAYMARK INDUSTRIES, INC., and OWENS CORNING FIBERGLAS CORPORATION,
Defendants.

No. 87 L 305

BEVERLY LANIGAN, Individually, and as Special Administrator of the Estate of DARRELL D. LANIGAN, deceased,
Plaintiff,

v.

RAYMARK INDUSTRIES, INC., and OWENS CORNING FIBERGLAS CORPORATION,
Defendants.

No. 87 L 307

ORDER DENYING PLAINTIFF'S POST-TRIAL MOTIONS
(for reversal of this Court's Order Granting Owens Corning's Motion for Judgment NOV and for a New Trial)

The above cases were consolidated for jury trial, which was conducted from November 5, 1997 through November 24, 1997. The jury returned verdicts in both cases in favor of Plaintiffs against both Defendants Raymark Industries and Owens Corning Fiberglas Corporation (hereafter OCF) and the Court entered judgments in favor of Plaintiffs in accordance with the verdicts on November 24, 1997. Post-trial motions were subsequently filed by Defendants. Before a hearing could be conducted on Defendant Raymark's post-trial motion, Raymark obtained a stay in bankruptcy and is not further involved. On 4-9-98, arguments were heard on Defendant OCF's post-trial motions, and on 4-24-98, the Court entered a written order granting judgment notwithstanding the verdict to Defendant OCF, or in the

alternative, granting a new trial to OCF. Plaintiffs subsequently filed their motions for reversal of the Court's order granting judgment NOV and for reinstatement of the jury's verdict. Hearing on Plaintiffs' motion was conducted on 8-19-98, and the Court took the matter under advisement pending issuance of a written order.

First of all, the Court apologizes to the parties for the length of time it has had this matter under advisement. The Court has been hampered by a heavy work schedule and by a four-week bout of bronchitis. The Court understands that this is a serious matter, and that the parties have waited a very long time to have their day in court.

Secondly, the Court knows that it is a very serious matter to overturn the verdict of a jury. This Court strongly believes in the jury system and is extremely reluctant to overturn a jury verdict, having done so now only twice in an eleven-year judicial career.

Thirdly, the Court knows that Plaintiffs' counsel (and undoubtedly Plaintiffs themselves) are deeply disappointed in the Court's decision to overturn the jury's verdict. This deep disappointment is reflected in the somewhat harsh tone of Plaintiffs' post-trial motion. Nevertheless, Plaintiffs' post-trial motion raises significant legal issues which should be addressed, particularly in light of the recent Fourth District Appellate Court decisions in the consolidated Thacker (92 L 162), Bicknell (92 L 140), and McClure (94 L 107) opinion filed on 8-11-98.

The legal standard in Illinois is that judgments NOV should be entered only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant, that no contrary verdict based on that evidence could ever stand. Pedrick v. Peoria and Eastern Railroad Company, 37 Ill. 2d 494. In reaching that decision, the Illinois Supreme Court rejected the previous standard that a

jury verdict could not be overturned where "any evidence" existed to support the verdict, recognizing that there may be "some" evidence, but which in light of the evidence as a whole, is too insubstantial to support a verdict. Pedrick.

In their post-trial motion, Plaintiffs correctly point out that the Court misstated the law with regard to the level of evidence necessary to establish Defendant's participation in the conspiracy. In Adcock v. Brakegate (164 Ill. 2d 54), the Supreme Court reiterated that the existence of a civil conspiracy must be proved by clear and convincing evidence. Once that has been established, presumably the usual "preponderance of the evidence" standard applies to the issues of whether: a) defendant joined the conspiracy, and for purposes of being held liable for tortious acts of the co-conspirators prior to the joining, b) whether the defendant knew of and approved of those tortious acts, and lastly, c) a defendant is legally responsible for all tortious acts of the conspiracy after the time the defendant joins it, regardless of specific knowledge. Van Winkle v. OCF, 291 Ill.App. 3d 265.

The Court now turns to the issues and evidence in this case, particularly in light of the recently decided McClure decision. The Court believes the following statements reasonably summarize evidence that was uncontroverted or conclusively established at the trial.

Asbestos fibers are harmful when breathed into the body. Asbestos fibers can become lodged in the lungs, which causes scarring and interfering with the ability of the lungs to expand and the body to breath. This condition is called asbestosis. Asbestosis can range from being mild to being very severe. Asbestos can cause lung cancer. Finally, asbestos can cause an always fatal type of cancer to the lining of the lungs and abdominal cavity called mesothelioma. The latency period, or the time

between exposure to asbestos fibers and the time of the onset of an asbestos-caused disease, can range anywhere from a few years for asbestosis up to 25-40 years for mesothelioma. Both Richard DeBolt and Darrell Lanigan died of mesothelioma caused by exposure to asbestos fibers while working at the UNARCO plant in Bloomington, Illinois, in the late 1950s and early 60s.

Defendant Owens Corning Fiberglas, OCF, came into existence in 1938 and as the name indicated, was a manufacturer of fiberglas products, including fiberglas insulation, which was a competitor with insulation products containing asbestos. In 1953, OCF began marketing Kaylo for another company, Owens Illinois. Kaylo contains approximately 15% asbestos. In 1958, OCF began manufacturing Kaylo at its plants in New Jersey. In 1970, OCF bought the Bloomington, Illinois, facility where asbestos products were manufactured, from UNARCO and continued manufacturing asbestos products there for several more years. Not until 1978, when the federal government officially announced that asbestos was harmful, did OCF warn its own workers of the hazards of working with asbestos.

In the Court's opinion, the evidence clearly established that Raybestos/Manhattan, a predecessor of Raymark Industries, along with Johns Manville, Union Asbestos, Abex, and perhaps other manufacturers of asbestos-containing products, began to learn of the health hazards of asbestos to asbestos workers in the 1930s and 1940s and actively conspired to prevent this information from coming to the attention of their workers and the general public. As the parties are aware of the details of this evidence, the Court will not repeat it. Rather, the Court will focus on the "evidence" that OCF joined this conspiracy, when OCF joined the

conspiracy, and with what knowledge and/or approval OCF had of the prior tortious conduct of the co-conspirators.

It is clear that if OCF joined the conspiracy, OCF is liable for any tortious acts committed after it joined the conspiracy, regardless of whether it had specific knowledge of those acts. With these principles in mind, the Court now turns to the specific facts which Plaintiffs contend, and the Fourth District Appellate Court found in McClure, are evidence to support a verdict against OCF.

Plaintiffs' Exhibit No. 66 is the so-called "weapon in reserve," a 1942 memorandum in which OCF executives discussed telling the insulation workers union that asbestos was being linked to lung and skin diseases. The context in which this memorandum was prepared was that insulation workers wanted a higher wage to work with insulation products made of fiberglas, over those made with asbestos, because they did not like the unpleasant itching effects of working with fiberglas. The harmful effects of asbestos to which the memorandum referred were apparently those contained in a US public health service bulletin which referred to lung problems but not cancer. This proves that OCF was aware as early as 1942 that exposure to asbestos might have some ill effects on human beings.

However, the evidence in this case also established that the 1940s were a time when the ill effects of asbestos fiber were only beginning to be understood in the U.S.--a time when manufacturers of asbestos products, the U.S. government, and the scientific community believed that exposure t asbestos dust was not harmful if exposure levels could be kept less than certain threshold limit values, usually five million parts per cubic foot of air. That asbestos fibers could cause cancer in human beings was a fac that gradually became known and accepted in the 1950s or early 60s, that asbestos caused mesothelioma not until the late 60s, and that there was no

safe level of exposure to asbestos fibers not until the late 60s or early 1970s. In other words, knowledge of the hazards of asbestos did not suddenly become universally known, but rather followed a gradual process that began before the turn of the century and culminated in Secretary Califano's address to the nation in 1978. There is nothing in the evidence to suggest that OCF knew in 1942 when it created the "weapon in reserve" memo what the asbestos manufacturers knew at that time, and were suppressing from public knowledge. At that time OCF was a fiberglas products manufacturer only and presumably would have benefitted from any solid evidence that its competitor's products were unsafe.

The Owens Illinois brochure of 1956, adopted by OCF in 1959 after it started manufacturing Kaylo, states that Kaylo was "non toxic." Both the Appellate Court and Plaintiffs cite this as an important item of evidence. The Court finds it to be of no evidential value at all. The testimony that Kaylo was toxic or non-toxic was a battle over semantics--a battle which OCF clearly won. Everything depends on the definition of toxic, which can have several meanings. The most common synonym for the word "toxic" is "poisonous." Only in a most strained sense can asbestos fibers themselves be considered toxic. If toxic is defined as anything that when taken into the body can kill you, as Plaintiffs' witnesses would seem to define it, then fatty foods would qualify. Even if by the broadest definition asbestos fibers are "toxic," the same cannot be said for the finished product Kaylo. It may be true that the asbestos portion of the dust created when Kaylo is cut is harmful. Certainly, the raw asbestos fibers that are made into Kaylo, are harmful, and there is no doubt that OCF should have warned its workers that the asbestos in Kaylo, or Kaylo itself, was harmful, but the statement that Kaylo itself is non-toxic was not

untruthful and does nothing to evidence OCF conspired with other asbestos companies in printing that statement on its brochure.

In 1964, Johns-Manville's health director sent OCF's health director a memo that Manville had decided to label its shipping containers with a warning of the health hazards of asbestos. In 1968 the National Insulation Manufacturers Association (NIMA), put out a health and safety practices pamphlet regarding asbestos, which contained no warnings of the asbestos-caused diseases of asbestosis, lung cancer, or mesothelioma. OCF and Johns-Manville executives were both on the committee that helped draft the pamphlet. The Court finds that these are facts constituting "some" evidence that a jury could find in support of the contention that OCF had joined in the conspiracy. Likewise is the fact that in that same year OCF executives, as a part of the activities of the Insulation Industry Hygiene Council, put out an internal memo that OCF wanted to limit the influence of Dr. Selikoff, a member of the Council who had been making statements about the dangers of asbestos and fiberglas. However, OCF produced credible evidence of the circumstances surrounding this memo that OCF was primarily concerned about Dr. Selikoff's unwarranted assertions about the health hazards of fiberglas, at a time when fiberglas products made up the lion's share of OCF's business, not asbestos products.

There was also evidence of a 1978 OCF memorandum that OCF wanted to contact other companies to see how they would respond to Secretary Califano's announcement about the hazards of asbestos, and a 1979 memo of Johns-Manville calling for a meeting of asbestos companies to discuss the viability of the asbestos-products industry, both cited by the Appellate Court in McClure. Although these memoranda can be considered concrete evidence that the companies manufacturing asbestos products were meeting to discuss the issue of where the asbestos industry was going, it could hardly

be said that they were seeking to meet to further the purpose of hiding the hazards of asbestos from their workers, since the cat was out of the bag then. There was nothing surreptious about these meetings or the purpose for them, nor any evidence of tortious conduct after that time. There is nothing in these memorandums to indicate that these meetings were a continuation of a long-going conspiracy. If anything, they indicate something new beginning.

Plaintiffs retained expert, Dr. Barry Castleman, a man who has based his graduate school and professional life on studying the asbestos industry and on selling asbestos conspiracy evidence and theories, did an excellent job of summing up the ever-increasing body of knowledge about the hazards of asbestos from the late 1880s right up to the present day. The evidence he cited about the early conspiracies among the previously cited asbestos manufacturers is incontrovertible in the Court's opinion. On legal grounds, Dr. Castleman was precluded by the Court from directly giving the jury his opinion that OCF was a part of the conspiracy. When pressed on cross examination about the evidence by which he concluded others belong to the conspiracy, Dr. Castleman acknowledged OCF was not involved in those activities. Rather, his opinion was mostly based on parallel conduct, that like all the other asbestos-products manufacturers mentioned, when OCF began manufacturing asbestos products, it likewise did not warn its workers of the dangers imposed to them by working with asbestos.

In McClure the Appellate Court stated, "If evidence of parallel conduct is sufficiently persuasive, we see no reason why a jury could not rely upon it alone to find that a conspiracy existed. A conspiracy is rarely susceptible of direct proof; instead, it is established from circumstantial evidence and inferences drawn from evidence, coupled with common-sense knowledge of the behavior of persons in similar circumstances.

If two drivers leave the same day on a ten-day trip, stop for gas and food at the same places, spend nights in the same towns, and make the same side trips, that could be enough to show an agreement even though both individuals deny it."

The Court entirely agrees with the above statement. However, if two drivers leave on a ten-day trip to the same destination, but they don't leave on the same day, they stop for gas and food at some of the same places but not all, spend one or two nights in the same town and don't make the same side trips, is that enough to show an agreement even though both individuals deny it? This Court believes the evidence in DeBolt and Lanigan is much closer to the latter scenario than to the analogy posed by the Appellate Court in McClure. Of course, no two cases are exactly the same, and the McClure case had evidence of an Owens-Illinois/OCF connection that was not present in this case.

What is the evidence in this case that OCF joined a conspiracy of other asbestos manufacturers to withhold the dangers of asbestos from their workers? We have one big instance of parallel conduct. As early as 1942 OCF knew that under some circumstances breathing asbestos dust could cause the lung disease known as asbestosis. By 1953 when it began marketing Kaylo and 1958 when it began manufacturing Kaylo, OCF would most likely have been aware that there was growing evidence of the dangers of asbestos to lung disease and possibly to lung cancer. By the time it bought the UNARCO plant in 1970 and discovered the "horrible conditions" with regard to asbestos dust there, OCF knew that asbestos dust caused lung cancer and was being linked with the more virulent cancer called mesothelioma. Despite this, it did nothing to warn its workers of the true hazards of asbestos until essentially forced to by government action in 1978. This is reprehensible behavior, and there is no question that if either of the

Plaintiffs in this case had worked for OCF during any of these relevant time periods, OCF should certainly be held liable for their suffering and death.

There is also the evidence previously cited that in the 1960s and 1970s OCF had contacts through a trade association or through informal contacts or committees involving its medical director and other medical directors or officers or counterparts in asbestos-products companies. The Court has stated that those contacts, taken in a light most favorable to Plaintiffs, could be "some evidence" supporting Plaintiffs contention that OCF joined the conspiracy to hide the hazards of asbestos from the workers

The Appellate Court has stated that evidence of conspiracy is seldom direct, but rather most often must be proved from circumstantial evidence. In Leavitt v. Farwell Tower Ltd. Partnership, 252 Ill.App. 3d 260 (1993), the First District Appellate Court made this statement regarding circumstantial evidence, "Although there is no rule against basing an inference upon another inference, at some point the probative value of such inferences becomes so weak that they should not be permitted. Ultimately, the existence of a fact cannot be inferred when a contrary fact could be inferred with equal certainty from the same evidence." (emphasis added)

Defendant OCF's conduct in not warning its own workers of the dangers of asbestos can clearly be explained by motivations that have nothing to do with conspiracy. Defendant had the same motive for keeping quiet as did the other asbestos manufacturers, i.e. profitability. The difference between Defendant and the other manufacturers is that Defendant was and always has been primarily a fiberglas products manufacturer, whereas companies like Johns-Manville, Raybestos, etc. were asbestos-products manufacturers. OCF began manufacturing a single asbestos-containing product in the 1950s, and then continued making some asbestos products tha

were being manufactured at the old UNARCO plant when it bought that facility in 1970. Under the evidence presented, there was nothing to indicate that OCF might not have been as well or better off competitively if the hazards of asbestos had been known to all.

Likewise, the fact that there are incidental contacts between people in the same trades or professions does not alone imply conspiracy.

The Court concedes that taken in the light most favorable to the Plaintiffs, there is "some" evidence to support Plaintiffs' contention that OCF joined a conspiracy. However, when that evidence is considered in the light of the evidence as a whole, it barely meets the "scintilla" test that was rejected by the Pedrick court. After thoroughly reviewing these issues for the third time, the Court is of the same opinion that it reached in its original order of April 24th, and that conclusion is that the evidence here is so weak that no rational jury could have found that OCF joined an already-existing conspiracy among asbestos-products manufacturers to hide the dangers of asbestos from asbestos workers. The evidence was not anywhere near the standard "by a preponderance of the evidence."

As the Court has previously stated during arguments, on these motions, the trial court is in the best position to not only hear the evidence, but to observe the intangibles about how the evidence is presented, and its impact on the jury. By the time this jury heard the evidence of the long-standing conspiracy of other asbestos manufacturers to hide the truth from their workers, and then was presented with evidence that when Defendant OCF had the chance to do better, it acted in the same callous way towards its workers, and considering the evidence of the horrors of the suffering and death caused by the asbestos disease of mesothelioma, this jury was ready to return a verdict against any defendant who manufactured asbestos products during the time period concerned. The Court remains convinced

that the verdict against OCF was based on emotion and not upon a dispassionate weighing of the evidence. Accordingly, Plaintiffs' post-trial motion is denied, and the judgments in favor of Defendant OCF are reaffirmed.

SO ORDERED.

Entered this 9 day of October, 1998.

Ronald Dozier
Circuit Judge

No. 5-16-0239

IN THE APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

JOHN JONES and DEBORAH JONES, Plaintiffs-Appellants, v. PNEUMO ABEX LLC and OWENS-ILLINOIS, INC., Defendants-Appellees.	)	On Appeal from the Circuit Court of the Second Judicial Circuit, Richland County, Illinois, No. 13-L-21, Hon. William Hudson, Judge Presiding.

BRIEF OF PLAINTIFFS-APPELLANTS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

INTRODUCTION

John and Deborah Jones brought this action against four of the actors engaged in a civil conspiracy to suppress information about the hazards of asbestos and affirmatively assert that it was safe for workers to be exposed to asbestos. John was exposed to asbestos from one or more of the conspirators and, as a result, contracted malignant lung cancer.

This case, originally filed in McLean County, which is in the Fourth District, was moved to Richland County, in the Fifth District, at the request of Defendants. C03036.

The alleged conspirators subject to this appeal, Abex and Owens-Illinois, were awarded summary judgment on Plaintiffs' conspiracy counts by the trial court. C09193-99, A1-7. No questions are raised on the pleadings.

QUESTIONS PRESENTED FOR REVIEW

1. Did the trial court err in granting summary judgment to Abex given that Plaintiffs have provided direct and circumstantial evidence of an agreement between Abex and other conspirators to suppress information of the hazards of asbestos?

2. Did the trial court err in granting summary judgment to Abex given that Plaintiffs have provided abundant evidence of Abex's conduct in furtherance of the conspiracy?

3. Did the trial court err in applying the "clear and convincing" burden of proof given that Plaintiffs have direct evidence of an agreement between Abex and other conspirators to suppress information related to the hazards of asbestos?

4. Did the trial court err in granting summary judgment to Abex given that Plaintiffs have met the Fourth District's new requirement stated in *Rodarmel* of providing a qualified expert opinion that the Saranac study was scientifically valid?

5. Did the trial court err in granting summary judgment to Owens-Illinois given the company's pervasive, conspiratorial contacts with Owens Corning?

6. Did the trial court err in granting summary judgment to Owens-Illinois given that the conspiracy between Owens-Illinois and Owens Corning did not end in 1958?

7. Did the trial court err in applying the "innocent explanation rule" to the parallel conduct of Owens-Illinois and Owens Corning, given their conduct is more consistent with guilt than with innocence?

STANDARD OF REVIEW

In appeals from rulings on summary judgment, the reviewing court conducts a *de novo* review. *Wells v. Enloe*, 282 Ill. App. 3d 586, 580-90 (5th Dist. 1996). If the reviewing court determines that there is a genuine issue of material fact, then the summary judgment is to be overturned. *Id.* Where doubt exists as to the right of summary judgment, the wiser judicial policy is to permit resolution of the dispute by trial. *Id.*

STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court by Supreme Court Rules 301 and 304(a). This appeal is based on final judgments of the circuit court entered on April 12, 2016. C09193-C09199, A1-7. By agreed order of the parties, the court entered a Rule 304(a) finding on those judgments May 17, 2016. C09215, A8. Plaintiff filed the Notice of Appeal May 31, 2016 within 30 days of the Court's Rule 304(a) finding. C02917-18, A9-10.

STATEMENT OF FACTS

A. The History Of Asbestos Civil Conspiracy Jurisprudence In Illinois

The Enforced Law Pre-*Rodarmel*

The first asbestos-related civil conspiracy cases were filed in 1987. R. Vol. 22 at 29:8-9. In 1994, the Illinois Supreme Court decided *Adcock v. Brakegate, Ltd.* 164 Ill. 2d 54 (1994), which affirmed asbestos-related civil conspiracy as a valid cause of action in Illinois. The court specially noted that conspiracies are "established from circumstantial evidence and inferences drawn from evidence, coupled with commonsense knowledge of the behavior of persons in similar circumstances." *Id.* at 66.

The Illinois Supreme Court next looked at asbestos civil conspiracy in *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102 (1999). The court held that "parallel conduct may serve as circumstantial evidence of a civil conspiracy among manufacturers of the same or similar products but is insufficient proof, by itself, of the agreement element of this tort." *Id.* at 135. The *McClure* court also stated that the "clear and convincing" burden of proof and the "innocent explanation" rule applied to civil conspiracy trials in cases where plaintiffs presented no direct evidence of a conspiratorial agreement. *Id.* at 134.

During the pendency of *McClure*, the Fourth District decided *Burgess I*, a conspiracy case involving Abex, a defendant in the case at bar. The Fourth District found the evidence involved Abex in "much more than parallel conduct. Direct evidence showed that Abex . . . knew what the other manufacturers were doing, took steps not to interfere, and profited from continued production

without disclosure to their employees." *Burgess v. Abex Corp.*, 305 Ill. App. 3d 859, 866-867 (1999).

Abex was not a defendant in *McClure*, so the Illinois Supreme Court has never issued a decision on the evidence of conspiracy as to Abex, but it did note how Johns-Manville and other conspirators "required Saranac Laboratory to omit references to cancer and tumors from the 1951 article it published concerning the results of asbestos research." *McClure*, 188 Ill. 2d at 143. Even so, the supreme court asked the Fourth District to rehear *Burgess* in light of its decision in *McClure*. The Fourth District did so in *Burgess II*. *Burgess v. Abex Corp. ex rel. Pneumo Abex Corp.*, 311 Ill. App. 3d 900 (2000).

In *Burgess II*, the Fourth District re-analyzed the evidence against Abex taking into account *McClure's* parallel conduct rule. The court re-affirmed its reasoning from *Burgess I*, holding, "There was clearly evidence here, other than evidence of parallel conduct, which was sufficient to establish the existence of an agreement between Abex and Johns-Manville to suppress or misrepresent information regarding the health hazards of asbestos." *Burgess II*, 311 Ill. App. 3d at 903. Eight years later, in *Dukes v. Pneumo Abex Corp.*, the Fourth District again concluded that plaintiffs had presented evidence "beyond parallel conduct" to establish the defendant in that case, Bendix (Honeywell), had engaged in a conspiracy. *Dukes v. Pneumo Abex Corp.*, 386 Ill. App. 3d 425, 445-46 (2008).

Those pronouncements in *Burgess II* and *Dukes* are still the law in Illinois, as neither the Supreme Court nor any other district of the Appellate Court has said otherwise. However, in recent cases, the Fourth District has "declined to follow" its prior precedent.

The *Rodarmel* Regime

Starting with *Rodarmel v. Pneumo Abex, L.L.C.*, 2011 IL App (4th) 100463, an appeal from a verdict for the plaintiffs, a subset of justices on the Fourth District has "declined to follow" the *Burgess* and *Dukes* decisions. *Rodarmel*, 2011 IL App (4th) at ¶¶ 118, 131. The *Rodarmel* majority decision granted Abex judgment *n.o.v.*, stating plaintiffs had presented insufficient evidence to prove a conspiracy, even though the record in that case was virtually identical to the record in the *Burgess* cases.

After *Rodarmel*, the Fourth District then decided *Menssen v. Pneumo Abex Corp.*, 2012 IL App (4th) 100904, another appeal from a verdict for the plaintiffs, in which the majority decided to "adhere" to its "analysis in *Rodarmel*" and award judgment *n.o.v.* to Abex and Honeywell. *Id.* at ¶ 51. Justice Cook, writing in dissent in *Menssen*, said the court's decision was "inconsistent with previous decisions and with our own supreme court's decision in *McClure*." *Id.* at ¶ 59.

Finally, the Fourth District decided *Gillenwater v. Honeywell Intern., Inc.*, 2013 IL App (4th) 120929, yet another appeal from a verdict for the plaintiffs, finding again that the plaintiffs had failed to present sufficient evidence of a conspiracy as to Abex and Honeywell. The court did find there was sufficient evidence of a conspiracy as to Owens-Illinois, a defendant in this case, but only between the years 1953 and 1958. *Id.* at ¶¶ 107-108.

The "*Rodarmel* Gap"

The trial court's order granting summary judgment in this case references "the *Rodarmel* gap." C09198. The "*Rodarmel* gap" is shorthand for the rationale the Fourth District stated in "declining to follow" its own decisions in *Burgess I*

and II, respectively, which found Abex agreed with other companies to suppress information about asbestos.

Specifically, the "gap" refers to Abex's overt acts in coordination with other asbestos companies to delete all references to cancer from a study on mice conducted by Dr. Gardner of Saranac Labs. *Rodarmel*, 2011 IL App (4th) at ¶ 120. Until *Rodarmel*, the Fourth District had regarded these acts as "evidence that Abex. . . directly entered into an agreement to conceal the dangers of asbestos." *Burgess II*, 311 Ill. App. 3d at 903; *see also McClure*, 188 Ill. 2d at 143.

The *Rodarmel* court, however, adopted Abex's argument that the results of the study are not "valid scientific evidence that asbestos causes cancer," and, therefore, the plaintiff has a new, additional burden to provide a "qualified expert opinion that the tumorous mice were scientific evidence of a relationship between asbestos and cancer." *Rodarmel*, 2011 IL App (4th) at ¶ 127. The many shortcomings of the *Rodarmel* decision are discussed at length in the Argument section of Plaintiffs' brief, *infra*.

Since *Rodarmel*, Plaintiffs have endeavored to meet this additional burden, including in this case, to provide evidence of the "scientific validity" of Dr. Gardner's experiment. For example, Abex Exhibit 711 (A11-12) is a contemporaneous letter from Dr. Kenneth Lynch, who, after Dr. Gardner's death, reviewed Dr. Gardner's work to determine if it could be published. Dr. Lynch states Dr. Gardner's outline of his observations—which includes the cancer data—is "valuable and publishable as it stands." Abex Ex. 711, A11. This letter was not in the *Rodarmel* record. C06600.

Plaintiffs also presented the trial court with the testimony and report of Dr. Arthur Frank, a renowned international expert in asbestos and asbestos

disease. C06818-C06858. Dr. Frank's CV outlining his credentials is 16-pages long. C06797-C06812. Dr. Frank has testified the Saranac results would have been significant scientific evidence on this issue of whether there was a relationship between asbestos and cancer. C06819 at 7:15-8:4. In his report (A13-14), Dr. Frank confirms Dr. Gardner's results had "scientific validity" and his experiment "would have been a significant publication and meaningful in the development of knowledge about the hazards of asbestos, and in particular, the findings of new growths and cancer." A14. Dr. Frank writes, "[T]he suppression of this data at the time could have been thought to have lengthened the time that physicians and scientists understood the carcinogenic potential of exposure to asbestos." A14.

B. How Abex Conspired To 'Save Its Own Skin'

'The Asbestosis Situation'

In late 1936, members of the self-described "asbestos industry" became anxious over what one asbestos manufacturer termed "the Asbestosis situation." Pl.'s Ex. 312, A15. The "asbestosis situation," from the perspective of Abex and its co-conspirators, was not the concern that "asbestos fibers can, and do, get into the lungs" of workers, causing a "Fibrosis condition," but, rather, the looming likelihood that the "asbestos industry" was going to soon have to pay for it. Pl.'s Ex. 312, A15. "Compensation Laws," one conspirator worried, "will become more rigid in the next few years." Pl.'s Ex. 312, A15. Not only would the laws become "more rigid," but asbestos, "on account of the advertising it has had lately," would "become one of the Compensation cases." Pl.'s Ex. 312, A15.

'Results That Will Stand Up And Be Accepted By The Medical Fraternity and . . . The Courts'

In response to the perceived threat of "compensation cases," the asbestos companies, "working as a unit," resolved to gather "all the information [they] can possibly get" to arm themselves for inevitable questions about the hazards of asbestos from "Compensation Commissions." Pl.'s Ex. 312, A15. The conspirators' goal was to "distribute the information among the medical community," so long as the information was "of the right type and would not injure our companies." Pl.'s Ex. 312, A15.

To this end, the conspirators held boardroom meetings and hatched a plan to engage the services of Dr. Gardner at Saranac Lab to perform asbestos dusting experiments on animals. *McClure v. Owens Corning Fiberglas Corp.*, 298 Ill. App. 3d 591, 595-96 (1998); Abex Ex. 602, A17-19; Abex. Ex. 603, A20-21. The conspirators hoped for results from Dr. Gardner that "would stand up and be accepted by the medical fraternity" and "the courts." Pl.'s Ex. 312, A15-16; Abex. Ex. 602, A17-19; Abex Ex. 603, A20-21.

What Abex Received For $750

The conspirators' agreement to jointly finance Dr. Gardner's study was memorialized in writing on November 20, 1936. Abex Ex. 602, A17-19. The Vice President of Abex, then known as American Brakeblock, signed the agreement a short time later. Abex Ex. 602, A18.

Dr. Gardner charged $5,000 per year for his study. Abex Ex. 602, A17. He anticipated the study would last three years. Abex Ex. 602, A17. Abex's share of the $5,000 amounted to $250 per year, or $750 total. Abex Ex. 606, A22-23.

That $250 per year bought Abex more than just Dr. Gardner's scientific expertise. Funding for the studies had certain strings attached. *McClure*, 298 Ill. App. 3d at 596 (1998); C07005 at 291:9-1; C07009 at 104:7-11; Abex Ex. 603, A20-21; Abex Ex. 604, A24-25. Dr. Gardner's results would be considered property of the conspirators, who retained the right to review any manuscript or report before publication. C7009 at 104:7-11; Abex Ex. 603, A20-21; Abex Ex. 604, A24-25. Vandiver Brown of Johns-Manville, writing for the conspirators, made sure Dr. Gardner understood the censorship and control provisions in his November 20, 1936 letter authorizing Dr. Gardner to begin the study. Abex Ex. 603, A20-21. He let Dr. Gardner know that the results of his study would only be published if they were "deemed desirable" by the conspirators. Abex Ex. 603, A21. Three days later, on November 23, 1936, Dr. Gardner responded to Brown and assured him he understood. Abex Ex. 604, A24-25.

In February of 1937, Brown reported he had "fully canvassed" the asbestos industry, and successfully organized 10 asbestos firms to collaborate in funding and controlling Dr. Gardner's work. Abex Ex. 606, A23. Brown was the point man for the "group" (his word), and fronted the money on behalf of Abex and other group members. Abex Ex. 603, A20-21; Abex Ex. 606, A22-23. He then billed the membership directly, meaning all funds flowed through him to Gardner. Abex Ex. 603, A20-21; Abex Ex. 606, A22-23. Brown made sure, however, that Gardner was "fully advised as to the identity of those companies whose support he is receiving." Abex Ex. 606, A23.

Although Abex, at $250 per year, contributed less money than some other firms (four firms contributed $250 per year, and six firms contributed $666.67), that did not mean Abex had any less influence over the study. Brown "advised

Dr. Gardner that those concerns which had limited their contributions were to participate just as fully in the benefits resulting from his experiments as were the others." Abex Ex. 606, A23.

Dr. Gardner's Results

As Dr. Gardner began his work, Vandiver Brown closely monitored his progress, making sure the conspirators, including Abex, got what they paid for. C7009 at 103:5-8. Brown received regular progress reports from Dr. Gardner. C7009 at 103:5-8; Abex Ex. 619, A195. The outbreak of World War II slowed Dr. Gardner's progress, but in February 1943, Dr. Gardner wrote to Brown that he had "at last succeeded in analyzing most of our voluminous experimental data and assessing the results." Pl.'s Ex. 400A, A26-27.

Although Dr. Gardner had still not completed a final report at that time, he had finished "a table of contents and an annotated outline to indicate conclusions and the line of argument that will be developed." Pl.'s Ex. 400A, A26. Dr. Gardner enclosed a copy of his outline in his letter to Brown "for the benefit of the contributors." Pl.'s Ex. 400A, A26. The first page of Dr. Gardner's outline, under "Complications of Asbestosis," is a section titled "Cancer of the Lung," which states, "The evidence is suggestive but not conclusive that asbestosis may precipitate the development of cancer in susceptible individuals." Pl.'s Ex. 400A, A32.

Pages seven and eight of Dr. Gardner's outline provide more detail of his findings. Pl.'s Ex. 400A, A38-39. His study showed that, among 11 mice that inhaled long fiber asbestos for 15-24 months, eight developed malignant lung tumors. Pl.'s Ex. 400A, A39. Dr. Gardner noted in his outline that the incidence of lung cancer in the mice he exposed to asbestos was "over 15 times the average

for mice inhaling other dusts." Pl.'s Ex. 400A, A39. Although Dr. Gardner acknowledged his work could be open to some "criticisms," he nonetheless concluded his observations were "suggestive evidence" that exposure to asbestos causes lung cancer. Pl.'s Ex. 400A, A39.

Suggestive evidence of lung cancer was precisely the type of "obviously undesirable" outcome that Vandiver Brown, Abex, and the other conspirators did not want. They would soon act together to scrub all references to cancer from the final report of Dr. Gardner's work. Pl.'s Ex. 361, A43-44.

The Saranac Scheme

Dr. Gardner died unexpectedly in 1946 before he could publish the results of his study. C07005 at 290:13. Vandiver Brown saw Dr. Gardner's death as an opportunity to exert control over the study results. Just a month after Dr. Gardner's death, Brown contacted Saranac Field Director Manfred Bowditch, who took over as the person in charge at Saranac until the lab could find another pathologist to replace Dr. Gardner. C07005 at 290:17-21; C07009 at 101-02; Abex Ex. 687, A45. Brown asked Bowditch if Saranac is "in a position to assemble the data and prepare a final report" of Dr. Gardner's experiments. C7005 at 290:22-291:4; Abex Ex. 687, A45. Brown described Dr. Gardner's February 24, 1943 outline (Pl.'s Ex. 400A) as "fairly mature." Abex Ex. 687, A45. Brown made sure to remind Bowditch of the censorship clauses attached to the financing of Dr. Gardner's work, and that his company and its fellow financiers in the asbestos industry, which included Abex, had complete control over anything Saranac made public about Dr. Gardner's research. C7005 at 291:9-14; Abex Ex. 687, A45. Bowditch complied with Brown's request and sent Dr. Gardner's materials to Dr.

Kenneth Lynch to see about publishing them. C06600; Pl.'s Ex. 401, A46; Abex Ex. 711, A11-12.

In the meantime, Bowditch and Brown continued to correspond. Pl.'s Ex. 401, A46; Pl.'s Ex. 401A, A47. In a letter dated March 18, 1947, Bowditch calls attention to some of Gardner's findings that were "transcribed and sent to Dr. Lynch." Pl.'s Ex. 401, A46. One finding Bowditch highlights is Dr. Gardner's discovery that 81.8% of one group of mice exposed to asbestos contracted lung cancer. Pl.'s Ex. 401, A46.

Brown quickly responded. On March 21, three days later, he wrote Bowditch he was "very much concerned" by Dr. Gardner's finding of lung cancer. Pl.'s Ex. 401A, A47. Despite Dr. Gardner's 1943 letter, in which he enclosed his outline that detailed his lung cancer findings, Brown told Bowditch none of Dr. Gardner's reports "ever indicated any such abnormal incidence of lung cancer." Pl.'s Ex. 401A, A47.

Although he had no way of knowing it, Bowditch was not the only recipient of that letter. Brown blind copied J.P. Woodard, an executive at Johns-Manville. Pl.'s Ex. 401A, A47. Brown told Woodard that Dr. Gardner's cancer finding "looks like dynamite." Pl.'s Ex. 401A, A47.

In contrast, Dr. Lynch was impressed with Dr. Gardner's work, including the finding of lung cancer. Abex Ex. 711, A11. In July 1947, four months after Brown expressed anxiety over the cancer findings to Woodard, Dr. Lynch wrote to Dr. A.J. Lanza—an employee of co-conspirator Metropolitan Life Insurance and longtime ally of Vandiver Brown who Brown tasked with reviewing Gardner's results for the conspirators—that Gardner's 1943 outline (included in Pl.'s Ex. 400A, A27-42) was "valuable and publishable as it stands." Abex Ex. 711,

A11. Dr. Lynch recommended publishing the outline—with the findings of lung cancer included—in the *Journal of Industrial Hygience*. Abex Ex. 711, A11.

Bowditch was eventually relieved of his interim leadership at Saranac by Dr. Arthur Vorwald, who in 1948 picked up the job of publishing Dr. Gardner's findings. Pl.'s Ex. 37, A48-49. On September 30, 1948, Saranac provided Vandiver Brown with the report of Dr. Gardner's work, complete with his cancer findings. Pl.'s Ex. 320A, A50-96. Brown, in turn, disseminated copies to the conspirators, with the warning that they "treat it with the utmost confidence and make it available to no one outside your organization." Pl.'s Ex. 360, A97. Brown summoned the members to meet in the Johns-Manville boardroom on November 11, 1948 to discuss the report. Pl.'s Ex. 360, A97-98. He made clear the recipients of the letter should attend themselves or nominate one of the other conspirators to act on their behalf. Pl.'s Ex. 360, A97-98. Brown said it appeared "desirable from the point of view of the industry" that the report be published—provided, of course, that certain "comments are omitted." Pl.'s Ex. 360, A97. Brown concluded his letter by again reminding his co-conspirators to keep the draft confidential. Pl.'s Ex. 360, A97-98.

Upon receiving Brown's letter, Defendant Abex provided the Saranac report to its medical director, Dr. L.E. Hamlin. Pl.'s Ex. 360B, A100-01. Hamlin reported back that he "gain[ed] the impression from Mr. Brown's letter that he is concerned with possible repercussions from the legal point of view...." Pl.'s Ex. 360, A100. Although Hamlin did not necessarily agree the report would cause legal problems for the conspirators to the degree expressed by Brown, he nonetheless agreed "the idea of reviewing the manuscript prior to publication is a good one in order to achieve mutual understanding with Saranac." Pl.'s Ex.

360, A100. Due to existing obligations, Hamlin could not attend the November 11 meeting in person, but nominated Brown to act on behalf of Abex: "I am sure our interest in the matter could be adequately protected by Mr. Brown," he wrote. Pl.'s Ex. 360, A101.

Armed with Hamlin's comments, Abex's executive vice president, W.T. Kelly, wrote to Brown three days in advance of the meeting. Pl.'s Ex. 360A, A102. He asked Brown to act for Abex at the meeting. Pl.'s Ex. 360A, A102. He asked Brown if Abex could keep their copy of the draft report. Pl.'s Ex. 360A, A102.

Brown did indeed act as Abex's representative at the November 11, 1948 meeting of the conspirators. Pl.'s Ex. 361, A43-44. On November 12, he wrote Kelly and summarized the conspirators' actions. Pl.'s Ex. 361, A43-44. He informed Kelly that the conspirators had "by unanimous opinion" decided "the references [in the Saranac report] to cancer and tumors should be deleted." Pl.'s Ex. 361, A43. Brown said the decision to delete all references to cancer was "a point we will insist upon." Pl.'s Ex. 361, A43.

Brown also asked Abex to return its copy of the draft report. Pl.'s Ex. 361, A44. According to Brown, the conspirators "felt it would be most unwise to have any copies of the draft report outstanding if the final report is to be different in any substantial respect. The feeling of the representatives of the various companies was very emphatic on this point." Pl.'s Ex. 361, A44. Abex thanked Brown for his letter and promptly ordered the draft report be returned. Pl.'s Ex. 362, A103.

With the blessings of the conspirators, the rest was up to Lanza. A month after the November 11 suppression meeting, Lanza wrote to Dr. Vorwald at Saranac instructing him to delete all traces of Dr. Gardner's cancer findings from

the report prior to publication. Pl.'s Ex. 37, A48-49. Lanza also instructed Dr. Vorwald to emphasize that asbestos was safer than silica—an important point to the conspirators who hoped to use the report to convince state "Compensation Commissions" to not make asbestos disease compensable. Pl.'s Ex. 37, A49. Dr. Vorwald promised Lanza that Saranac would produce a final report "with the changes introduced which the asbestos group believe are essential." Pl.'s Ex. 39, A104.

By the spring of 1949, Vorwald finished the report and sent a copy to Vandiver Brown, who in turn sent it to all the conspirators. Pl.'s Ex. 360, A97-99. Brown wanted Saranac to publish the report "as promptly as possible." Pl.'s Ex. 37 at A48-49. Kelly, at Abex, wrote back to Brown thanking him and acknowledging receipt of Abex's copy of the report. Pl.'s Ex. 360A, A102.

The *Journal of Industrial Hygiene and Occupational Medicine* published the report in January 1951. Pl.'s Ex. 105, A105-47. The published report lists Vorwald as the lead author. Pl.'s Ex. 105, A105. An explanatory note on the first page states the report is the product of a "series of studies of asbestosis" conducted by Dr. Gardner at Saranac Laboratory. Pl.'s Ex. 105, A105. According to the note, the report as published "presents for the first time *a complete survey of the entire experimental investigation*." Pl.'s Ex. 105, A105 (emphasis added).

For Abex, the 1951 publication of Gardner's censored Saranac results fit nicely into its growing archive of published articles harmful to its employees' interests. Pl.'s Ex. 236, A148-51. For example, Abex's medical director, Hamlin, published an article in the March 1945 issue of *Industrial Medicine* titled, "Should the Worker with Silicosis Be Informed of His X-Ray Findings?" Pl.'s Ex. 236, A148. Hamlin answers his question by arguing the word "silicosis" should never

be used "unless the man brings it into the conversation himself." Pl.'s Ex. 236, A151. Hamlin argues that telling workers they have silicosis might make them "unduly apprehensive," whereas "if told that their x-rays show evidence of accumulation of dust they are not nearly as concerned." Pl.'s Ex 236, A151.

Abex's Continued Participation In The Conspiracy

Abex nurtured the ignorance of its workforce and customers to the hazards of asbestos for many decades post-Saranac, despite having hard knowledge through multiple dust counts that workers at its facilities were being overexposed. *E.g.*, Pl.'s Ex. 208, A152-67. Abex never placed any warnings about asbestos in its company newsletter, which was designed for employees and touted the company health program. *See Gillenwater*, 2013 IL App (4th) at ¶ 18.

Abex was able to keep its workers ignorant of asbestos hazards despite OSHA inspections because Abex shadowed OSHA inspectors as they toured Abex's facilities and attempted to talk to workers and union representatives. Pl.'s Ex. 193, A172-74. In the estimation of an Abex official, one OSHA inspector, named Hartman, "required more following" because he was a "very clever individual." Pl.'s Ex. 193, A173.

In 1968, Abex had a scare when one of its suppliers informed Abex it planned to put a caution label on the bags of raw asbestos consumed at Abex's Winchester plant. Pl.'s Ex. 187, A175-78. The label stated, in part, "[I]nhalation of this material over long periods may be harmful." Pl.'s Ex. 187, A177. The label did not warn about asbestosis, cancer, or mesothelioma. Still, Rennie, Abex's executive vice president, became anxious. Pl.'s Ex. 187, A175. Rennie wrote to the Abex medical director at the time, Dr. Blackwell, claiming the label "could give us some repercussions at Winchester if our people working with asbestos get

concerned about the hazard to their health." Pl.'s Ex. 187, A175. Rennie asked Blackwell to provide the company with talking points "in rebuttal to questions the employee might raise." Pl.'s Ex. 187, A175.

Abex successfully kept warnings off its asbestos products until the 1970s. Even then, when corporate customers did not want warnings, Abex complied by removing the warnings. Pl.'s Ex. 200, A168. According to Abex, the first time it informed its workers about the hazards of asbestos was in 1978, six years after the enactment of OSHA. Pl.'s Ex. 299D, A170-71.

C. How Owens-Illinois And Owens Corning Poisoned Their Workers And Customers

Around the same time Vandiver Brown, Abex, and their partners were scheming on how to manipulate the unfavorable report from the Saranac Laboratory, Defendant Owens-Illinois (O-I) was itself receiving news from Saranac.

In 1943, Owens-Illinois began manufacturing and selling a thermal insulation product it branded "Kaylo." That same year, O-I engaged the services of Dr. Gardner at Saranac to test the product for dust release. Pl.'s Ex. 567, A179. Even before testing it, Dr. Gardner warned O-I in 1943 that because the company used asbestos and quartz (silica) in Kaylo, O-I had "all the ingredients for a first class hazard." Pl.'s Ex. 567, A179.

Saranac provided O-I with an update on the Lab's progress in 1948, after Dr. Vorwald had taken over as a result of Dr. Gardner's death. Vorwald wrote to O-I that Saranac's testing to that point revealed, "In all animals sacrificed after more than 30 months of exposure to Kaylo dust unmistakable evidence of asbestosis has developed, showing that Kaylo on inhalation is capable of

producing asbestosis and must be regarded as a potentially-hazardous material." Pl.'s Ex. 263, A180.

Dr. Vorwald, to his credit, assumed he was delivering news that would affect O-I's manufacturing of Kaylo. "I realize that our findings regarding Kaylo are less favorable that anticipated," he wrote. "However, since Kaylo is capable of producing asbestosis, it is better to discover it now in animals rather than later in industrial workers." Pl.'s Ex 263, A182. Vorwald re-iterated this warning in a progress report sent to O-I in 1950: Kaylo dust "does produce the asbestotic type of reaction in the lungs and, therefore, we believe every precaution should be taken to minimize exposure of industrial employees." Pl.'s Ex. 576, A185.

Saranac finished its Kaylo study in 1952. Vorwald wrote to O-I that, once again, the tests showed "Kaylo dust is capable of producing a peribronchiolar fibrosis typical of asbestosis." Pl.'s Ex. 278, A186. Vorwald indicated the Kaylo study results might be published. Pl.'s Ex. 278, A186. But, now more familiar with the asbestos industry than he was in 1948, re-assured O-I that even if the study results were published, "reference will be made only to hydrous calcium silicate and not to 'Kaylo;' thus the interest of your Company will be safe-guarded." Pl.'s Ex. 278, A186. Still, Vorwald stated again—as he had in 1948 and in 1950—"the results of the study indicate every precaution should be taken to protect workers against inhaling the dust." Pl.'s Ex. 278, A186.

Throughout the nine years (1943-1952) Owens-Illinois received clear and persistent warnings from Saranac, it continued to ramp up production of Kaylo. In 1943, its sales were around $5,000. By 1948, sales had jumped to over $360,000. And by 1952, sales of its asbestos product totaled $3,335,841.65. C07317.

'For Where Your Treasure Is, There Will Your Heart Be Also'

While O-I was pushing Kaylo in the late 40s and early 50s, the company O-I created in 1938, Owens Corning (OC), was also prospering. Upon the creation of OC in 1938, O-I owned 49.77% of OC common stock. C07357-38. By 1956, O-I's shares of OC stock were worth over $143 million dollars. C07370-72. As late as 1978, O-I still owned over 750,000 shares of OC stock. C07379-80. OC and O-I had many corporate officers and directors in common from OC's creation through the 1940s, until forced to stop that practice by the Department of Justice. Pl.'s Ex. 710, A187-88. In 1995 arbitration proceedings between the two companies, counsel for OC said it was as difficult for OC to initiate the proceedings "as it would be for one member of a family to sue another member of a family." C07391 at 12:12-13.

That familial relationship often came in handy for OC. In 1941, OC workers voiced concerns to OC management over the skin irritation they were experiencing from OC's fiberglass insulation. Pl.'s Ex. 66, A189-90. After a year of reacting locally in 1941, OC's plan for 1942 was to "take the offensive" against the workers and create an "impressive file" of all the medical and scientific literature concerning the hazards of asbestos. Pl.'s Ex. 66, A189-90. OC believed the file would be "five or six hundred pages" and could be deployed as a "weapon-in-reserve" to show the OC workers how good they had it working with fiberglass instead of asbestos. Pl.'s Ex. 66, A189-90. OC thought threatening workers with the risk of asbestos exposure could "promote dissension in the ranks that conceivably could bring about the over-throw of present Union leadership." Pl.'s Ex. 66, A190. O-I helped OC develop its "weapon-in-reserve"

and fortified OC's arsenal with articles discussing the health hazards of asbestos to industrial workers. Pl.'s Ex. 265, A191.

As it happened, OC never deployed its "weapon-in-reserve." This restraint proved beneficial to both companies in 1953 when O-I and OC entered into a distributorship agreement for asbestos Kaylo. C07291-310. Under the agreement, O-I would continue to manufacture Kaylo, and OC would distribute it. *Gillenwater v. Honeywell Intern., Inc.*, 2013 IL App (4th) 120929, ¶ 55. The agreement lasted until 1958, when O-I sold its Kaylo division to OC. *Id.* at ¶ 57. Throughout the period of the agreement, neither company placed any warnings on Kaylo packaging. *Id.* In fact, both companies did just the opposite—they advertised Kaylo as "non-toxic." Pl.'s Ex. 33, A192-93. Owens Corning's Medical Director, John Konzen, testified that the advertisement was false. C07335. Konzen admitted that at the time of the advertisement, 1956, Owens Corning had known for at least 13 years that asbestos was toxic. C07335. Owens Corning did not warn its workers of the hazards of asbestos until "1977 or '78." C07329 at 117:20-119:22.

After O-I sold its Kaylo division to OC in 1958, the companies remained close. O-I continued to provide packaging for Kaylo until the late 1960s. C07262. The companies continued to keep the packaging warning-free throughout their partnership. C07262. As referenced above, O-I maintained a major investment in OC well into the 1970s. OC's profits and earnings were a frequent topic of conversation at O-I directors meetings from the 1940s through the '70s. C07398-425.

O-I's Failure To Warn Post-Kaylo

In 2003, four years after *McClure* was decided, O-I's then CEO Joseph Lemieux gave a deposition in which he provided a detailed history of O-I's asbestos abuse and its indifference to workers. C07792-C07827. Lemieux's testimony revealed O-I's custom of suppressing knowledge of the hazards of asbestos from its workers and customers continued long after it sold the Kaylo division to OC. C07792-C07827.

O-I utilized asbestos in its manufacturing processes throughout the 1960s and '70s. C07807. Yet, Lemieux, who was a plant-level managerial employee from 1957-1973, had no recollection of ever seeing signs or other information indicating asbestos posed a hazard. C07798-99. Lemeiux did not learn of the hazards of asbestos from his employer, O-I, until 1974 upon advancing within the company to a VP position at corporate headquarters. C07799.

When Lemieux arrived in his new position, O-I had no program to control asbestos dust in its plants. O-I's first iteration of an "asbestos-control program" was not initiated until the summer of 1974, when O-I finally started scrambling to bring its plants up to compliance with federal regulations. C07872-73. Lemieux, in his role as vice-president in charge of the glass container division, sent a Teletype to plant managers in his division stating there was a "serious problem concerning our asbestos control program." C07814, C07904. Although Lemieux sent a message to the plant managers informing them of the dust problem, he could not recall ever sending a similar message to the plants' blue collar workers. C07814. Evidence introduced in the *Gillenwater* trial showed O-I allowed its plants to skirt the company's "asbestos-control program" into the 1990s. C07820-21.

D. Owens-Illinois' Contacts With Other Co-Conspirators

O-I and OC represented to our state's supreme court in *McClure* that its contacts with other conspirators were "scant and benign," that OC had "nothing to do with Unarco, the Bloomington plant or the plaintiffs during the 1950s or 1960s," and that O-I had "nothing to do with Unarco, its plant, [or] the asbestos used there." C07460-61, 64, 541.

Documents discovered by plaintiffs post-*McClure* prove otherwise. C07265. According to O-I itself, in the 1950s, both O-I and OC sold Unarco's asbestos product, Unibestos. C07652. Also according to O-I, beginning in 1958 OC "entered into a rebranding agreements with other manufacturers pursuant to which OCF bought the asbestos-containing products of others (e.g., Johns-Manville) and resold them under the OCF Kaylo label." C07653, C07788-89. The rebranded Johns-Manville products had an even higher asbestos content than Kaylo. C07765. John McCallister, a former O-I employee, testified in 1983 in front of O-I's lawyers that O-I received the asbestos it used in Kaylo from both Johns-Manville and Unarco. C07741.

O-I agrees that Johns-Manville participated in an asbestos conspiracy. In fact, in 1999—the same year *McClure* was decided—O-I filed a complaint in the United States District Court for the Eastern District of Texas seeking to recover more than $1,000,000,000 in damages. C07605-39. The charge? O-I complained it was the victim of an asbestos conspiracy involving Johns-Manville and other conspirators. C07605-39.

O-I's allegations are very similar to Plaintiffs'. O-I alleged the conspirators had "formed an international asbestos cartel," whose purpose was to "suppress[] information about the health risks posed by exposure to asbestos, and

maximiz[e] demand for and profits from the sale of asbestos fiber." C07615. The conspirators, according to O-I, "knew that, if their customers (the manufacturers of asbestos-containing products) learned that users of finished insulation products were at risk of contracting asbestos related disease, demand for asbestos fiber would decrease or disappear entirely." C07615.

According to O-I, a central part of the conspiracy included the conspirators "work[ing] together actively to suppress publication of scientific research concerning the potential risks posed by exposure to asbestos dust." C07618. The conspirators "monitored and edited scientific research results prior to publication to eliminate references to unfavorable results, withheld information about asbestos-related illnesses from their own employees and the public, and attempted to suppress publication of scientific research." C07618. Part of the *Gillenwater* record is the testimony of O-I's Vice President and former general counsel, McWeeny, who said he believed Johns-Manville was in an asbestos conspiracy.

Plaintiff's Exposure To The Conspirators' Asbestos Products

John Jones started working construction in 1969, when the manufacture and usage of asbestos-containing thermal insulation was still in full swing. C05730 at 7:23-24. From the start of John's career, he worked installing and removing Johns-Manville and Owens Corning insulation products. C05731 at 9:21-10:5, 23-24. John described cutting, grabbing, and pulling the insulation to install and/or remove it. C05731 at 10:7-17. Installing and removing the conspirators' asbestos insulation created dust. C05731 at 10:18-19, 11:5-7. John was diagnosed with lung cancer in 2011. C05731 at 9:10-11.

ARGUMENT

The evidence in this case shows Defendant Abex conspired with other asbestos manufacturers, including Johns-Manville, to suppress information about the hazards of asbestos. The evidence shows Defendant Owens-Illinois conspired with Owens Corning to do the same.

The evidence against these companies is not limited to "parallel conduct." Plaintiffs have produced direct evidence of Abex's agreement with other conspirators to suppress information about the hazards of asbestos. Even when the evidence is "parallel conduct," the "innocent explanation rule" should not apply, especially at summary judgment, where all inferences are to be drawn in the nonmovant's favor. In any case, the "innocent explanation" rule only applies in instances when the explanation is "as consistent" with innocence as with guilt. There is no explanation for Defendants' abhorrent conduct meeting that "as consistent" with innocence as with guilt with standard.

The recent case law out of the Fourth District examining Plaintiffs' evidence against Abex and Owens-Illinois is deeply flawed on many levels. The two principal decisions, *Rodarmel* and *Gillenwater*, written by the same justice, simply misunderstand Plaintiffs' allegations and the evidence supporting them. In its own review of the evidence, this Court should be guided by the Fourth District's prior, still binding, decisions in the *Burgess* and *Dukes* cases, which found Plaintiffs' evidence met the standards set out by the Illinois Supreme Court in *Adcock* and *McClure*.

I. THE TRIAL COURT ERRED WHEN IT GRANTED ABEX SUMMARY JUDGMENT BECAUSE THE EVIDENCE SHOWS ABEX JOINED A CONSPIRACY TO SUPPRESS INFORMATION ABOUT THE HAZARDS OF ASBESTOS.

The tort of civil conspiracy has two elements. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 133 (1999). A plaintiff must allege "an agreement and a tortious act in furtherance of that agreement." *Id.* In this case, Plaintiffs allege Defendants Abex and Owens-Illinois were members of a conspiracy with other asbestos companies to suppress information about the hazards of asbestos. See Pl.'s Compl. at C00033. The nature of the alleged agreement, then, is just that: to suppress information about the hazards of asbestos from blue-collar workers and consumers. Plaintiffs allege, and the evidence shows, the conspirators committed several acts in furtherance of that agreement. C00034-35.

Civil conspiracy is an intentional tort and requires proof that a defendant "knowingly and voluntarily participates in a common scheme to commit an unlawful act or a lawful act in an unlawful manner." *Id.* quoting *Adcock v. Brakegate, Ltd.* 164 Ill. 2d 54, 64 (1994) (internal quotations omitted). A defendant "who understands the general objectives of the conspiratorial scheme, accepts them, and agrees, either explicitly or implicitly to do its part to further those objectives . . . is liable as a conspirator." *Adcock*, 164 Ill. 2d at 54.

Because a conspiracy "is almost never susceptible to direct proof," it must "*usually* . . . be established from circumstantial evidence and inferences drawn from evidence, coupled with common-sense knowledge of the behavior of the persons involved." *McClure*, 188 Ill. 2d at 134 (internal citations omitted) (emphasis added). *If* a civil conspiracy is shown by circumstantial evidence, "that evidence must be clear and convincing." *Id.*

Summary judgment is a "drastic measure" that "should be allowed only when a moving party's right to it is clear and free from doubt." *Morris v. Union Pacific R. Co.*, 2015 IL App (5th) 140622, ¶ 22. A plaintiff "does not have to prove his case" at summary judgment, but merely "present a factual basis that would *arguably* entitle him to a judgment." *Id.* at ¶ 23 (emphasis added). In determining whether a genuine issue of material fact exists, a court should "construe pleadings, depositions, admissions, exhibits, and affidavits strictly against the movant and liberally in favor of the respondent." *Id.* A court "cannot make credibility determinations or weigh evidence in deciding a summary judgment motion." *Ahle v. D. Chandler, Inc.*, 2012 IL App (5th) 100346 at ¶ 13. In the words of our supreme court, "The purpose of summary judgment is not to try a question of fact, but to determine if one exists." *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002).

A. The Trial Court Applied The Wrong Burden Of Proof On Plaintiffs.

In its order granting summary judgment to Abex, the trial court incorrectly applied the "clear and convincing" evidentiary burden of proof on Plaintiffs. C09196-97. The clear and convincing burden of proof (and, by extension, the "innocent explanation" rule of parallel conduct) applies only "*if* a civil conspiracy is shown by circumstantial evidence...." *McClure*, 188 Ill. 2d at 134 (emphasis added). It follows, then, that *if* the Plaintiffs have *direct* evidence, then the clear and convincing standard does *not* apply. *See McClure*, 188 Ill. 2d at 140 ("[T]he clear and convincing standard of proof . . . applies [to civil conspiracy] ***when*** the evidence is circumstantial, as it is in the case before us.") (emphasis added). Likewise, the "innocent explanation" rule is invoked only

"under" the clear and convincing standard, *McClure*, 188 Ill. 2d at 141, meaning if the clear and convincing burden of proof does not apply, the "innocent explanation" rule cannot be invoked to explain away parallel nefarious conduct. The Fourth District agrees with that point. *Gillenwater*, 2013 IL App (4th) at ¶ 129 ("The innocent explanation rule is inherent in the standard of clear and convincing evidence.").

Plaintiffs in this case (Abex was not a defendant in *McClure*) do have direct evidence of an agreement between Abex and the other conspirators. *Burgess II*, 311 Ill. App. 3d at 903 ("In *Burgess*, we stated there was evidence that Abex and Unarco directly entered into an agreement to conceal the dangers of asbestos."). As explained below, the Saranac Agreement—from the moment it was conceived in 1936 to the moment its object was achieved in 1951—is direct evidence of an agreement between Abex, Johns-Manville, and the other conspirators to suppress information about the hazards of asbestos. The clear and convincing burden of proof and innocent explanation rule do not apply to Plaintiffs' case against Abex.

B. Abex Entered Into 'An Agreement' To Suppress Information Regarding The Hazards Of Asbestos.

As outlined above, the tort of civil conspiracy has two elements, the first merely being whether the conspirators "entered into an agreement." *McClure*, 188 Ill. 2d at 133. In this case, Plaintiffs allege Abex agreed with other conspirators, such as Johns-Manville, to suppress information regarding the hazards of asbestos. C00033. It is "not necessary that defendant admit the conspiracy; evidence of an implicit agreement is enough." *Menssen v. Pneumo Abex*, 2012 IL App (4th) 100904, ¶ 61 (Cook, J. dissenting).

Either direct evidence or parallel conduct may serve as evidence of an agreement. However, although "parallel conduct may serve as circumstantial evidence of conspiracy among manufacturers of the same or similar products," it "is insufficient proof, by itself, of the agreement element of this tort." *McClure*, 188 Ill. 2d at 135.

The *McClure* decision turned on whether the plaintiffs in that case had produced evidence at trial other than "parallel conduct" to "establish the existence of an agreement between defendants and Unarco or Johns-Manville to suppress or misrepresent information regarding the hazards of asbestos." *Id.* at 142. The same type of agreement—to suppress information regarding the hazards of asbestos—is at issue in this case. C00033.

The defendants in *McClure* were Owens Corning and Owens-Illinois. The *McClure* court found their conduct paralleled that of conspirators Unarco and Johns-Manville in four key areas. *Id.* at 145. The evidence showed all four companies "(1) knew that asbestos could cause disease at the time they sold asbestos-containing products; (2) sold these products without warning of the diseases; (3) failed to warn employees and consumers of these diseases; and (4) failed to adequately protect their employees from exposure to asbestos dust." *Id.* at 146. In other words, all four companies, for decades, intentionally acted with the same malicious disregard for the health and safety of their employees and customers.

Nonetheless, because the plaintiffs in *McClure* had not provided direct evidence of a conspiracy, the *McClure* court held the plaintiffs had not produced "clear and convincing" evidence of the agreement element. *Id.* at 143 ("Plaintiffs presented no direct evidence of an agreement."). Without direct evidence of an

agreement to show otherwise, the *McClure* court reasoned there could be "innocent explanations for parallel conduct" by the conspirators. *Id* at 141. Put another way, just because a group of companies in the same industry all decided to expose workers and consumers to a deadly toxin without warning them, it does not mean those actions were "connected by an agreement." *Id.* at 152.

Plaintiffs in this case, however, do have direct evidence of an agreement between the defendant, Abex, and conspirator Johns-Manville to suppress or misrepresent information regarding the hazards of asbestos. Abex signed the 1936 agreement to finance the Saranac experiments (Abex Ex. 602, A17-19); they paid the buy-in money (Abex Ex. 606, A22-23); they received the 1948 report (Pl.'s Ex 360, A97-99); they asked Vandiver Brown of Johns-Manville to act at the suppression conference on their behalf (Pl.'s Ex 360A, A102); they returned the only outstanding draft report to Brown at his request (Pl.'s Ex. 362, A103); and they continued for decades afterward to participate in—and benefit from—the same conduct as Johns-Manville and other conspirators.

The Fourth District characterized these same facts as direct evidence "sufficient to establish the existence of an agreement between Abex and Johns-Manville to suppress or misrepresent information regarding the health hazards of asbestos." *Burgess II*, 311 Ill. App. 3d at 903. The *Burgess II* court made that holding within the context of *McClure*: "*McClure* indicates the key criterion is evidence other than parallel conduct of an agreement to suppress or misrepresent information regarding the health hazards of asbestos. Such evidence exists in this case." *Id.* (internal citations omitted). The evidence presented to the trial court here (largely, though not exhaustively, outlined in the

Statement of Facts, above) is the same evidence above and beyond parallel conduct reviewed by the Fourth District in the *Burgess* case.

It is also the same evidence presented to the Fourth District in *Rodarmel,* but the *Rodarmel* majority, unlike its predecessor court, fundamentally misunderstands the evidence's significance. Justice Appleton, writing for the majority in *Rodarmel,* states, "Plaintiffs contend that [the Saranac agreement] to suppress the cancer references was a conspiratorial agreement, an agreement to perform an unlawful act." *Rodarmel,* 2011 IL App (4th) at ¶ 120. Justice Appleton is wrong. Plaintiffs did not so contend in that case, and Plaintiffs do not so contend in this case. (Justice Appleton does not cite to anywhere in the record where the *Rodarmel* plaintiffs made that contention.)

Plaintiffs' contention, rather, is that the Saranac Agreement, and its associated documents, is direct *evidence of* an act in furtherance of the agreement to suppress the hazards of asbestos—the same agreement plaintiffs have been alleging since 1987. Paragraph 19 of Count 1 of Plaintiffs' complaint in this case reads as follows:

> The Conspirators knowingly conspired, implicitly agreed, or had a mutual understanding among themselves to, among others:
>
> a) assert what was not true, that it was safe or non-toxic for people to be exposed to asbestos and asbestos-containing products;
>
> b) fail to provide information about the harmful effects of asbestos to exposed persons.

C00033. The Court should notice what is not alleged in that paragraph. Nowhere do Plaintiffs allege the conspiracy as to Abex is comprised solely of their participation in the Saranac Agreement. The Saranac Agreement and the suppression of the report, then, is not *the* agreement, but an action providing

direct evidence of the larger conspiratorial agreement *in addition to* all of the parallel conduct cited in *McClure*. *See Burgess I*, 305 Ill. App. 3d at 866-867; *Burgess II*, 311 Ill. App. 3d at 903; *Menssen*, 2012 IL App (4th) at ¶ 62 (Cook, J. dissenting) ("We have meetings, conferences, telephone calls, and cooperation in this case."). If the Saranac Agreement was *THE* agreement alleged, Plaintiffs' complaint would look very different, and there would be no need to introduce all the additional evidence of Abex's continued efforts in the decades after Saranac to suppress information about asbestos hazards.

Justice Appleton, writing for the *Rodarmel* majority, seems to come to this realization—but, unfortunately, treats it almost as an afterthought. He writes:

> The agreement to suppress the tumorous mice really does not match up with the conspiracy allegations in the complaint. According to the complaint, [Abex] entered into a conspiracy with UNARCO and other companies to withhold information about the harmful effects of asbestos. The record appears to contain no expert opinion, however, that Gardner's finding of tumors in the eight or nine mice really qualified as information about the hazards of asbestos.
>
> Besides, in agreeing to suppress the eight or nine tumorous mice, the financing corporations did not agree, generally and perpetually, to withhold any and all information about the carcinogenic effects of asbestos.

Id. at ¶ 129-130. If only the court had thought to ask *why* the Saranac Agreement and the allegations in the complaint do "not really match up," it would have realized it is because the Saranac Agreement is not "the agreement" alleged. It is direct evidence *of* an act in furtherance the agreement alleged—to steadfastly suppress information about the hazards of asbestos—as required under *McClure*.

Ironically, writing for the court in *Gillenwater* two years after *Rodarmel*, Justice Appleton describes the type of evidence that would be necessary to show an agreement among conspirators—and what he describes sounds exactly like

the Saranac Agreement. *Gillenwater*, 2013 IL App (4th) at ¶ 143. According to the *Gillenwater* court, to show a conspiratorial agreement, a plaintiff is "obliged to present some other plus factor, some 'additional evidence that reasonably tend[s] to exclude the possibility that the defendants were acting independently': evidence of intentional encouragement." *Id.*, quoting *McClure*, 188 Ill. 2d at 136. This evidence might take the form of "uniform behavior among competitors, preceded by conversations implying that later uniformity might prove desirable" or "proof that the defendants got together and exchanged assurances of common action." *Id.* Would a signed agreement among several competitors in the asbestos industry to fund, control, and censor research related to asbestos with the stated purpose of manipulating the legal and medical landscape to their benefit count as "conversations implying that later uniformity might be desirable"? Would it count as "proof the defendants got together and exchanged assurances of common action"? Plaintiffs submit it does.

Yet, the *Rodarmel* decision does not discuss the Saranac Agreement in these terms at all. Instead, the *Rodarmel* majority mistakenly identifies the key questions about Dr. Gardner's research as "whether such an article would have deserved to be published in the first place" and "whether Abex agreed 'to commit an unlawful act or a lawful act in an unlawful manner'" by agreeing to censor the cancer findings. *Id.* at ¶¶ 123-24. But because Plaintiffs do not premise their lawsuit on the contention that censoring the final report was "an agreement to perform an unlawful act," the *Rodarmel* court's entire discussion of whether censoring the report was "unlawful" is irrelevant to determining whether it is evidence of an overarching agreement "to suppress or misrepresent information regarding the health hazards of asbestos."

The true relevant questions concerning the Saranac Agreement are the questions the *Rodarmel* majority dismisses: What would have been the effect of publishing Gardner's cancer findings on the asbestos industry, and what were Abex's motives behind its efforts to suppress them? *Id.* at ¶¶ 123-24. The answers to these questions are obvious. In the words of Justice Appleton in *Rodarmel*:

> One can readily infer that the financing corporations, including Abex, had self-serving reasons for omitting any mention of the tumorous mice from the published report and for keeping the tumor findings confidential. As plaintiffs note, Johns-Manville's attorney remarked to another Johns-Manville executive: "This finding looks like dynamite." [Plaintiffs' expert] Castleman might be correct about the dynamic effect: if a scientific journal had published an article stating Gardner had proved, by animal experimentation, that asbestos caused lung cancer, it might have gone a long way toward sealing the acceptance of the causal connection between asbestos and cancer [. . .] So, yes, it is an eminently reasonable inference that Johns-Manville, Abex, and other companies were concerned more about their own skin than about scientific integrity.

Id. at ¶¶ 123-24. The only way to avoid the significance of those answers is to turn the Saranac Agreement into something it is not. *See Menssen*, 2012 IL App (4th) at ¶ 61 (Cook, J. dissenting) ("It is surprising that this court would conclude that the suppression of the results of the Saranac Laboratory research was no big deal."). Instead of being *an* agreement, Abex would have this Court see it as *the* agreement. Instead of looking at Saranac and all the activity surrounding it—the preliminary letters discussing new "Compensation Laws," the anxiety over "embarrassing" leaks, the explicit anticipation of using the report in litigation, the demand that all the draft reports be returned—as clear evidence of an ongoing implicit agreement or mutual understanding to suppress information about the hazards of asbestos, Abex would rather quibble about whether the report had "scientific validity."

Abex's motion for summary judgment in this case is 75-pages long. C05079-05154. Over 40 of those pages are dedicated solely to undermining the "scientific validity" of Dr. Gardner's study. That might be the argument Abex wants to have, but it is not an argument responsive to Plaintiffs' allegations. C00033. This case is not solely premised on Saranac; it never has been. It is about the fact it is tortious to knowingly expose people to toxic products for material gain. The probative value of the Saranac evidence is that it lays bare the cold avarice of the asbestos industry. Saranac shows all that parallel conduct by many actors—the decades of failing to warn and actively suppressing information—is not just coincidence subject to "innocent explanations." It shows the conspirators, including Abex, understood "the general objectives of the conspiratorial scheme, accept[ed] them, and agree[d], either explicitly or implicitly to do [their] part to further those objectives." *McClure*, 188 Ill. 2d at 134 quoting *Adcock*, 164 Ill. 2d at 54.

This Court should reverse the trial court's award of summary judgment to Abex.

C. Abex And Its Co-Conspirators Committed Many Acts In Furtherance Of The Conspiracy.

The second element of civil conspiracy is "a tortious act in furtherance of [the] agreement." *McClure*, 188 Ill. 2d at 133. Accidental, inadvertent, or negligent participation in a common scheme does not amount to a conspiracy. *Id.* at 134. However, once the agreement element of a conspiracy is satisfied, "that defendant may be held liable for any tortious act committed in furtherance of the conspiracy, whether such tortious act is intentional or negligent in nature." *Adcock*, 164 Ill. 2d at 64. All members of the conspiracy "are liable for injuries

caused by any unlawful acts performed pursuant to and in furtherance of the conspiracy." *Id.* at 65.

In their complaint, Plaintiffs alleged 15 separate acts performed in furtherance of the conspiracy. C00034-35. Many of those acts were committed by Johns-Manville, or by Johns-Manville in cooperation with another conspirator. Abex also committed several acts in furtherance of the conspiracy, above and beyond the Saranac Agreement and subsequent suppression of the report. As outlined in the Statement of Facts, *supra*, Abex continued to suppress the hazards of asbestos from its workforce for years after Saranac. In *Gillenwater*, an opinion also authored by Justice Appleton, the Fourth District summarizes Abex's conduct post-Saranac as patently tortious:

> Suffice it to say, the record contains evidence that [Abex, Honeywell, and Owens-Illinois] had been contemporaneously committing one ore more of the same types of wrongdoing: inadequately protecting their employees from asbestos dust, keeping quiet about the dangers of asbestos or affirmatively concealing or downplaying the dangers, and continuing to use asbestos in their products, without any adequate warning, even after the human cost had become evident.

Gillenwater, 2013 IL App (4th) at ¶ 18. The Fourth District previously said all of this conduct was performed in furtherance of the conspiracy. *Burgess II*, 311 Ill. App. 3d at 903 ("The jury here could have found that Abex's return of the report was a tortious act in furtherance of the agreement, as were Abex's employee publications that made no reference to asbestosis, cancer, or industrial dust hazards.").

Simply put, it is tortious to knowingly expose another person to a toxic product. Johns-Manville exposed Plaintiff to its toxic asbestos product without ever warning him. C08091.3-91.4. As a result, John Jones contracted lung cancer.

C08091.4. Abex can be held liable for Johns-Manville exposing John to asbestos because, as argued above, they were part of an agreement or mutual understanding with Johns-Manville to suppress information regarding the hazards of asbestos.

The Court should reverse the trial court's award of summary judgment to Abex.

II. PLAINTIFFS HAVE FILLED THE "*RODARMEL* GAP."

Even if the Court does adopt the reasoning of the Fourth District's *Rodarmel* majority, it should still reverse the decision of the trial court because Plaintiffs have provided "a qualified expert opinion that the tumorous mice were scientific evidence of a relationship between asbestos and cancer." *Rodarmel*, 2012 IL App (4th) at 128. Plaintiffs disagree that such an opinion is necessary, but as Plaintiffs' counsel told the trial court, "[I]f that's what your Appellate Court tells you to do, you try to go out and get it." R. Vol. 22 at C09276:5-6.

The *Rodarmel* majority's demand for a "qualified expert opinion" is in service to the distinction it identifies between doing the "wrong thing" and doing the "right thing for the wrong reason." *Rodarmel*, 2011 IL App (4th) at ¶ 124. To overcome this distinction, Plaintiffs in asbestos conspiracy cases against Abex now have the burden of showing through a "qualified expert," instead of through common sense, that censoring all references to cancer from Gardner's work was the "wrong thing." *Cf. Adcock*, 164 Ill. 2d at 66 (holding "common sense knowledge of behavior of people in persons in similar circumstances" can be used as circumstantial evidence of a conspiracy).

Dr. Frank, a world-renowned expert in asbestos disease, has given his expert opinion that censoring the study was the "wrong thing." He testified the

Saranac results would have been significant scientific evidence on this issue of whether there was a relationship between asbestos and cancer. C06819 at 7:15-8:4. Dr. Frank's testimony was not in the *Rodarmel* record.

Dr. Frank has also given a report post-*Rodarmel*. In his report, Dr. Frank confirms Dr. Gardner's results had "scientific validity" and his experiment "would have been a significant publication and meaningful in the development of knowledge about the hazards of asbestos, and in particular, the findings of new growths and cancer." C06858. Dr. Frank writes, "[T]he suppression of this data at the time could have been thought to have lengthened the time that physicians and scientists understood the carcinogenic potential of exposure to asbestos." C06858. Dr. Frank's report and his testimony "address the question of whether [Dr. Gardner's research] would have deserved to be published in a scientific journal." *Rodarmel*, 2011 IL App (4th) at ¶ 123.

Since *Rodarmel*, Plaintiffs have uncovered other evidence showing the scientific merit of Dr. Gardner's cancer findings. Abex Exhibit 711 (C6886) is a contemporaneous letter from Dr. Kenneth Lynch, who states that Dr. Gardner's outline of his observations—which includes the cancer data—is "valuable and publishable as it stands." C06886; C06860. This letter was not in the *Rodarmel* record, C06600, a fact the trial court overlooks in its order. C09197 (Stating the "body of evidence in the instant matter is the same as that in *Rodarmel* . . . with the one exception, the testimony of Dr. Frank.").

Defendant, on the other hand, has acquired the services of Dr. James Crapo to opine the opposite—that Dr. Gardner's study was worthless. Abex also presented the testimony of Philip C. Pratt, who worked on the experiments with Gardner. *Rodarmel*, 2011 IL App (4th) at ¶¶ 53, 127. Pratt, who is now deceased,

was being paid by Abex at the time he gave the testimony Abex used in *Rodarmel* and uses again in this case to undermine Gardner's cancer findings. *Id.* at ¶ 53. Under cross-examination, Pratt admitted he was not involved in any way in censoring the report and did not even know Vorwald had censored it at the conspirators' behest. C06956-58; *Rodarmel*, 2011 IL App (4th) at ¶ 53.

All this means is Plaintiffs and Defendant have competing evidence as to whether Dr. Gardner's findings were "scientifically valid." At this stage, summary judgment, the Court cannot make credibility determinations or weigh the evidence. *Ahle*, 2012 IL App (5th) at ¶13. The only question at summary judgment is "whether the evidence presents a sufficient disagreement to require submission to a jury." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). Even if the Court accepts *Rodarmel's* view of the Saranac Agreement and the report's censorship, Plaintiffs here have produced sufficient evidence of the experiment's scientific worth to submit the case to a jury.

III. THE TRIAL COURT ERRED IN GRANTING OWENS-ILLINOIS SUMMARY JUDGMENT BECAUSE OWENS-ILLINOIS WAS PART OF A CONSPIRACY WITH OWENS CORNING TO SUPPRESS INFORMATION ABOUT THE HAZARDS OF ASBESTOS.

The same elements of a civil conspiracy described above are at issue in Plaintiffs' case against Owens-Illinois. But whereas Plaintiffs allege Abex conspired with Johns-Manville and others, Plaintiffs also specifically allege Owens-Illinois conspired with the company it created and then set loose, Owens Corning. All Illinois courts of review that have surveyed Plaintiffs' evidence have found Owens-Illinois and Owens Corning both engaged in reprehensible parallel conduct throughout many decades. *E.g.*, *McClure*, 188 Ill. 2d at 146; *Gillenwater*, 2013 IL App (4th) at ¶ 18. The *Gillenwater* court said plaintiffs'

portrayal of defendants as "caring only about making money, even at the expense of people's lives" was "deserved." *Gillenwater*, 2013 IL App (4th) at ¶ 139. The *Gillenwater* court also acknowledged plaintiffs had proved O-I and OC were coconspirators in a scheme to suppress information about the hazards of asbestos in order to ensure continued sales of Kaylo. *Id.* at 96. The only question relevant to this case, then, is *when* the conspiracy ended. In answering that question, as is always the case at summary judgment, the court "has a duty to construe the record strictly against the movant and liberally in favor of the nonmoving party." *Seymour v. Collins*, 2015 IL 118432, ¶ 42.

A. The 'Scope' Of the Conspiracy: Yes, Owens-Illinois 'Cared' About Owens Corning's Kaylo Sales.

In *Gillenwater*, the Fourth District held O-I and OC were in a civil conspiracy from 1953 to 1958. *Gillenwater*, 2013 IL App (4th) at ¶ 96. Those are the years during which O-I and OC "had a distributorship agreement whereby Owens-Illinois manufactured Kaylo and Owens Corning distributed it." *Id.* at ¶ 90. Kaylo is the asbestos-containing pipe insulation at issue in this case due to John Jones's exposure to it. In 1958, Owens-Illinois sold its Kaylo division to Owens Corning, who continued manufacturing and selling the asbestos product through the 1960s into the 1970s. *Id.* at ¶ 64-65. The *Gillenwater* court held the conspiracy between O-I and OC ended upon O-I's sale of the Kaylo division to OC because "[t]he record gives no basis for supposing that, after 1958, Owens-Illinois cared whether Owens-Corning sold any more Kaylo." *Id.* at ¶ 107.

The Fourth District's analysis is wrong, and it does not take much space in this brief to show how wrong it is. The record in *Gillenwater*—and the record in this case—is replete with evidence showing that even after 1958 Owens-Illinois

cared very much about "whether Owens-Corning sold any more Kaylo." *Id.* The *Gillenwater* court was wrong to dismiss—in one sentence—the financial entanglement of the two companies that lasted from OC's creation throughout the 1970s. *Id.* at ¶ 88. As the court notes, in 1959, O-I's ownership of OC stock had a value of over $110 million dollars. *Id.* As late as 1978, O-I still owned over 750,000 shares of OC stock. C07379-80. OC's profits and earnings were a frequent topic of conversation at O-I directors meetings from the 1940s through the '70s. C07398-425. OC's earnings, profits, and—by extension—the value of its stock were linked with its success in selling Kaylo. Furthermore, Owens-Illinois continued to provide packaging for Kaylo until the late 1960s, meaning its own sales revenues were impacted by Kaylo sales. C07262. With a financial stake totaling in the hundreds of millions of dollars, of course Owens-Illinois cared "whether Owens-Corning sold any more Kaylo" after 1958. *Adcock*, 164 Ill. 2d at 66 (holding a conspiracy is established from "circumstantial evidence and inferences drawn from evidence, coupled with common sense knowledge of behavior of people in persons in similar circumstances"). After all, by their own description, the two companies were like family. C07391 at 12:12-13.

B. Owens-Illinois Did Not 'Withdraw' From The Conspiracy By Selling Its Kaylo Division To Owens Corning.

The *Gillenwater* court's holding that Owens-Illinois "withdrew from the conspiracy" in 1958 by simply by selling its Kaylo division to Owens Corning is based on reductive and flawed reasoning. *Id.* at ¶¶ 110-118. The court decreed that the "object" of the conspiracy between O-I and OC was for OC to sell O-I's Kaylo without an adequate warning. *Id.* at ¶¶ 107, 111. Thus, the court's reasoning goes, when O-I sold Kaylo to OC, Kaylo was *technically* no longer "O-

I's product," and, so, O-I could no longer participate in a conspiracy to sell "O-I's Kaylo" because "O-I's Kaylo" no longer existed. In short, after the sale, Owens-Illinois Kaylo became Owens Corning Kaylo. *Id.* at ¶ 111.

The court's reasoning is flawed because even after O-I sold Kaylo to OC it still had a powerful incentive to participate in the conspiracy. In addition to the reasons explained above concerning O-I's continued financial entanglement with OC, Owens-Illinois *continued to utilize asbestos in its own operations.* C07807. The difference between the conspiracy here and the conspiracy alleged by the government in the case *Gillenwater* cites, *United States v. Steele,* 685 F.2d 793 (3d Cir. 1982), is that once the defendant employee in *Steele* resigned from his position at General Electric, he truly had no reason to care whether the conspiracy continued. Imagine if, instead of retiring from General Electric, he had gone to work for a co-conspirator where he also performed work in furtherance of the conspiracy. Would his defense that he "withdrew" from the conspiracy by resigning from General Electric still be persuasive?

The Third Circuit recognized this distinction. Unlike the *Gillenwater* court, the *Steele* court held the question of whether the defendant withdrew from the conspiracy was a question of fact, not a question of law. *Steele* states that evidence of withdrawal can be rebutted "by going forward with evidence of some conduct in furtherance of the conspiracy subsequent to the act of withdrawal." *Steele,* 685 F.2d at 804. Had the prosecution in *Steele* done that, instead of "standing on its proof," the question of whether the defendant had truly withdrawn from the conspiracy "properly would have gone to the jury." *Id.*

Likewise, the fact O-I sold its Kaylo division to OC in 1958 is merely *evidence of withdrawal,* it is not, as the *Gillenwater* court would have it, withdrawal

by operation of law. Owens-Illinois's continued financial stake in Owens Corning after 1958, the fact it continued to provide the packaging for Kaylo throughout the 1960s, and the fact it continued to use asbestos in its own products and facilities and never warned its consumers or workforce is all evidence rebutting the contention Owens-Illinois "withdrew" from the conspiracy in 1958 simply by selling Kaylo to Owens Corning. It is not the court's duty to weigh this evidence at summary judgment; instead, the question should go to the jury. *Ahle*, 2012 IL App (5th) at ¶13; *see also Steele*, 685 F.2d at 804.

C. The 'Innocent Explanation Rule' Does Not Apply To Owens-Illinois' Parallel Conduct With Owens Corning.

In order for parallel conduct to be subject to the "innocent explanation rule," the conduct in question must be "*as consistent* with innocence as with guilt." *McClure*, 188 Ill. 2d at 147-48 (emphasis added). "Innocent," in this context, means "innocent of a conspiracy, not *necessarily* innocent of other wrongdoing." *Gillenwater*, 2013 IL App (4th) at ¶ 124 (emphasis added). The crux of the innocent explanation rule as applied to this case is the question of whether these asbestos companies all acted in the same wrongful way because of a mutual understanding, or whether they just *happened to* because, as members of the same industry, they would all encounter "the same business problems, the same consumer demands, and the same competitive pressures." *McClure*, 188 Ill. 2d at 141.

Although the *McClure* court decided the evidence showed the latter as to O-I and OC's parallel conduct with Johns-Manville and UNARCO, the evidence presented in *McClure* is not the same as the evidence in this case. Since *McClure*, plaintiffs have uncovered a trove of additional evidence illuminating the shared

interests of the companies. Statement of Facts, *supra*, 17-23. In fact, Owens-Illinois and Owens Corning misrepresented the extent of their contacts with each other and to other conspirators in that case. *Id.* Furthermore, because the plaintiff in *McClure* was not exposed to Kaylo, the supreme court only decided whether OI and OC's parallel conduct with Johns-Manville and UNARCO was "innocent." *Gillenwater* is the only case to take up whether O-I and OC's parallel and direct conduct *with each other* shows a conspiratorial agreement between the two of them. Although the *Gillenwater* court correctly found O-I and OC were in a conspiracy, the court unfortunately came to the wrong conclusion as to when the conspiracy ended.

Just as the court in *Rodarmel* misapprehended the nature of plaintiffs' conspiracy allegations, so too did the court in *Gillenwater*. The *Gillenwater* court, which admitted to having a "problem . . . with the theory of conspiracy" seems to believe the conspiracy plaintiffs allege in these cases is just a conspiracy to make money, and what's wrong with trying to make money? *Gillenwater*, 2013 IL App (4th) at ¶ 138-39. The court asks,

> [W]hy would one need to posit a conspiratorial agreement to explain these companies' continuing to do the wrongful things whereby they were each making a lot of money? They each, individually and independently, had a powerful economic incentive to conceal the hazards of their own asbestos-containing products. Consequently, it would seem that a conspiratorial agreement is a fifth wheel, which could be lopped off by Occam's razor.

Id at ¶ 139. The flaw in this view, especially in light of the evidence in this case, is it requires the cynical assumption that each corporate member of every industry in a capitalist economy will naturally, and independently, turn to knowingly poisoning its consumers and workforce if that is what it takes to stay

competitive. This outcome does not sound like a public policy Illinois courts would want to encourage.

But we know that assumption is not borne out in typical corporate conduct. For example, just because one car company saves money by making cars with exploding gas tanks does not mean every other car company will do so as well. Just because one car company saves a few pennies on each car by using a faulty ignition switch does not mean every other car company will do so as well. Just because one car company cheats on its emissions tests does not mean every other car company will do so as well.

On the other hand, if a group of car companies came together, tested the ignition switches they were all using, found them to be faulty and hazardous, and then each did their part to suppress that information from consumers so that they could all keep "making a lot of money," you might say that conduct is not "as consistent" with innocence as with guilt. You might say it shows—clear and convincingly—the companies had a mutual understanding to suppress information about the hazardous ignition switch. Wouldn't the conduct in this example be *more* consistent, instead of *as* consistent, with guilt instead of innocence? That is the conclusion jury after jury after jury has reached in the 25 years asbestos conspiracy cases were tried in this state, from 1987 until the Fourth District in *Rodarmel, Menssen,* and *Gillenwater* substituted its judgment for not only the judgment of all those juries, but also the judgment expressed in *Burgess I, Burgess II,* and *Dukes I.*

There is nothing inherent in making thermal pipe insulation, or glass products, or packaging products, or brake pads and brake linings that requires the suppression of information about the toxins encountered while making those

products or working with them. Similar business problems, consumer demands, and competitive pressures do not provide an "innocent explanation" for the uniform decision to suppress information about the hazards of asbestos from workers and consumers for decades "even after the human cost [becomes] evident." *Gillenwater*, 2013 IL App (4th) at ¶ 18. As Justice Cook writes in *Menssen*, "Of course the defendants attach excuses to their decisions to suppress, in an attempt to justify those decisions. We should not give undue weight to those excuses." *Menssen*, 2012 IL App (4th) at ¶ 62 (Cook, J. dissenting). In other words, the "innocent explanation rule" is not the "any explanation rule."

To trigger the court's duty to find for a conspiracy defendant, the explanation must be *as consistent* with innocence as with guilt. Defendants cannot make that showing and, in fact, at summary judgment it is not this court's duty to draw that inference in favor of the defendant anyway. The Illinois Supreme Court has never applied the innocent explanation rule at summary judgment in an asbestos case. Doing so would conflict with the summary judgment standard. As the Illinois Supreme Court has said, summary judgment and trial are not the same, and should not be treated the same: "[T]hese two procedural settings are very different." *Robidoux*, 201 Ill. 2d at 334. The purpose of summary judgment "is not to try a question of fact, but to determine if one exists." *Id.* at 335.

CONCLUSION

Issues of material fact exist in this case as to both Defendants. The Court should reverse the decision of the trial court to award summary judgment to Abex and Owens-Illinois. The Court should order a trial on the merits.

Respectfully submitted,

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RULE 341 CERTIFICATION

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the Rule 341(d) cover, the Rule 341(h)(1) points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 46 pages.

CHIP CORWIN, #6312586

No. 5-16-0239

IN THE APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

JOHN JONES and DEBORAH JONES, Plaintiffs-Appellants, v. PNEUMO ABEX LLC and OWENS-ILLINOIS, INC., Defendants-Appellees.	)	On Appeal from the Circuit Court of the Second Judicial Circuit, Richland County, Illinois, No. 13-L-21, Hon. William Hudson, Judge Presiding.

CERTIFICATE OF SERVICE

The undersigned certifies that on November 9, 2016, he served for filing via Federal Express overnight delivery, an original and nine (9) copies of the Brief of Plaintiffs-Appellants, upon the Clerk of the Fifth District Appellate Court, 14th & Main Street, Mt. Vernon, Illinois, 62864, and three (3) copies of same were sent, via Federal Express overnight delivery, to counsel for Defendants-Appellees addressed as follows:

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STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

HENDRICKS, GORE
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 06 L 21

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION TO RECONSIDER, THE COURT BEING ADVISED IN THE PREMISES BY COUNSEL AND HAVING REVIEWED THE PAPERS FILED IN CONNECTION WITH OWENS-ILLINOIS, INC.'S MOTION TO RECONSIDER AND THE PAPERS FILED IN CONNECTION WITH OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION TO RECONSIDER ITS RULING OF NOVEMBER 24, 2010, IS GRANTED;

2) OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFFS HENDRICKS AND PLAINTIFF GORE ARE GRANTED.

DATE: APRIL 30, 2012

Judge

Name
Attorney for
Address
City
Telephone

IN THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT FOR
ADAMS COUNTY, ILLINOIS

VIRGINIA BOWLES, Individually, and as Independent Executor of the Estate of JERALD BOWLES, Deceased, Plaintiff,	)	
v.	)	No. 09-L-65
PNEUMO ABEX CORPORATION, PNEUMO ABEX LLC, METROPOLITAN LIFE INSURANCE COMPANY, OWENS-ILLINOIS, INC., HONEYWELL INTERNATIONAL, INC., GARLOCK SEALING TECHNOLOGIES LLC, JOHN CRANE, INC., AURORA PUMP COMPANY, BUFFALO PUMPS, INC., WARREN PUMPS, INC., and TYCO FLOW CONTROL INC. f/k/a YARWAY CORPORATION Defendants.	)	

ORDER

I. Introduction

The court has considered the Motions for Summary Judgment filed on behalf of the Defendants and the Plaintiff's Responses. The claims against the remaining Defendants can be divided into what the parties have referred to as the "conspiracy" and "exposure" claims.

The Plaintiff confessed the exposure claim as to Honeywell and the Plaintiff had no evidence of exposure while Bowles was on the USS Enterprise, USS Oriskany or the USS Constellation.

Accordingly, there are conspiracy claims remaining against Pneumo-Abex, hereinafter "Abex", Honeywell and Owens-Illinois, hereinafter "OI" and exposure claims against OI and John Crane, hereinafter "JC."

The court heard final arguments on June 24, 2012 and has listened again to portions of the previous oral arguments on the various motions through electronic recording. In addition, the court, during oral argument, requested that the Plaintiff provide the three "best" cases in her favor and the Defendants provide the three "best" cases in their favor on the exposure claims and the court received various submissions via e-mail. Those e-mail transmissions are printed and filed in this case so that the record is complete.

II. Conspiracy Claims

The first issue common to all of the conspiracy claims is the standard to be applied at the motion for summary judgment stage under 735 ILCS 5/2-1005(c). The court finds the Defendants' arguments, supported by the case law cited, to be persuasive.

The court in *Ray Dancer, Inc. v. DMC Corp.*, 230 Ill.App.3d 40, 594 N.E.2d 1344 (2nd Dist. 1992) stated:

> Dancer does not dispute the additional rule pointed out by DMC that a plaintiff seeking to establish the existence of an alleged anti-trust conspiracy solely through circumstantial evidence, as here, would have to satisfy the high "clear and convincing" standard of proof at a trial on the merits which standard is necessarily implicated when the court rules on a motion for directed verdict or summary of judgment. That is, in determining whether a "genuine" issue of material fact exists in the instant case, we must consider whether a fact finder applying the "clear and convincing" evidentiary standard as to the conspiracy count or the "preponderance of the evidence" standard as to the monopoly count could reasonably find for either Dancer or DMC as opposed to finding that the evidence is so one sided that one of those two must prevail as a matter of law. (Citations omitted)

It appears to this court that *Ray Dancer* stands for the proposition that, on a motion for summary judgment, the court must weigh the submissions, with all inferences in favor of the non-movant, under the standard of proof for what would be required at trial. This only makes sense.

The court has not been directed to any case nor has it found any case which suggests that a lower standard of proof or a different standard of proof be applied at the summary judgment stage. Accordingly, for the conspiracy counts the burden at trial would be "clear and convincing" provided the proof is based upon circumstantial evidence, and for the exposure counts the burden would be by a preponderance of the evidence.

Although, as the Plaintiff correctly points out, the court in *Lozman v. Putnam* did not have to rule on the standard to be applied since the plaintiffs in that case apparently conceded or did not argue against the higher standard being applied, this court finds the language in *Lozman* persuasive on this issue. *Lozman v. Putnam*, 379 Ill.App.3d 807, 884 N.E. 2d 756 (1st Dist. 2008)

Under either standard, the court is well aware that all inferences are to be construed strictly against the movant and liberally in favor of the non-movant and that the court must deny a motion for summary judgment if there is a genuine issue of material fact.

Evidence of parallel conduct alone is insufficient to support the agreement element of a civil conspiracy claim. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill.2d 102, 720 N.E.2d 242 (1999). Mere knowledge of the fraudulent or illegal actions of another is also not enough to show a conspiracy. *McClure*, 188 Ill.2d at 134 citing

Tribune Co. v. Thompson, 342 Ill. 503, 174 N.E. 561 (1930). Accidental, inadvertent, or negligent participation in a common scheme does not amount to conspiracy. *McClure*, 188 Ill.2d 133-134, citing *Adcock v. Brakegate Ltd.*, 164 Ill.2d 54 at 64, 645 N.E. 2d 888 (1994).

The *McClure* court also applied the innocent construction rule which requires a finding that there was no conspiracy if the evidence is circumstantial and if facts are as consistent with innocence as they are with guilt. The *McClure* court specifically noted the innocent construction rule as being "under" the clear and convincing standard. *McClure*, 188 Ill.2d at 140, 720 N.E.2d at 262.

A. Pneumo-Abex

Stare decisis requires this court follow the decisions of higher courts, but does not bind it to follow decisions of equal or inferior courts. *See Sunbelt Reynolds, Inc. v. Ehlers*, 394 Ill.App.3d 421, 915 N.E.2d 862 (4th Dist. 2009). This court will follow the decision by the 4th District Appellate Court in *Rodarmel v. Pneumo Abex Corp.*, 2011 Ill.App. (4th Dist.) 100463, 957 N.E.2d 107 (modified opinion issued September 15, 2011 upon denial of rehearing) for the reasons stated herein. At the hearing in this case on May 30, 2012, the court was advised that the Illinois Supreme Court had, that day, denied the Petition for Leave to Appeal filed in *Rodarmel*.

Rodarmel is the latest decision by the Fourth District Appellate Court on the conspiracy issue which involved both Abex and Honeywell. Plaintiff argues that the *Rodarmel* decision is wrong and that this court can and should apply *Burgess v. Abex Corp. ex. rel. Pneumo Abex Corp.*, 311 Ill.App.3d 900, 725 N.E.2d 792 (4th Dist. 2000) and *Dukes v. Pneumo Abex Corp.*, 386 Ill.App.3d 425, 900 N.E.2d 1128 (4th Dist. 2008).

The Plaintiff is trying to give this court more latitude than the court feels it can take with regard to which case to apply. The majority in *Rodarmel* addressed both *Burgess* and *Dukes* and for the reasons stated in *Rodarmel* found aspects of those decisions "incorrect" and the court "declined" to follow them. Given that language, this court does not feel it can "decline" to follow *Rodarmel* and find *Burgess* and *Dukes* to be "correct."

Although the Defendants and the Plaintiff have attached a variety of decisions by other trial judges with similar cases, this court cannot take decisions of equal courts as binding precedent and does not do so for this opinion.

Saranac occupied much of the opinion in *Rodarmel*. This court must follow the higher court's decision that it is not an unlawful or a wrongful act to suppress information that is devoid of significance.

The main inquiry of this court to the Plaintiff was whether this case was different from *Rodarmel* in some way. The Plaintiff has argued that this case is at a different stage and the court has already addressed that issue.

The court knows that it does not have the complete appellate record in *Rodarmel* before it. There have been some arguments back and forth on whether this case is "identical" factually to *Rodarmel* or not. The court's approach to reviewing the submissions was to see if there was anything new in this case that was not in *Rodarmel*.

The court looked at the evidence against the backdrop of both the two-step test of *McClure* and the *Rodarmel* opinion to see if the evidence was outside the categories of parallel conduct, purchases from other suppliers, shared directors, membership in trade

organizations, sharing of information and all of the other connections referred to in both cases.

It appears that the Plaintiff is offering Dr. Frank in order to satisfy the *Rodarmel* court's concern that no qualified expert could opine that the tumorous mice were evidence of a relationship between asbestos and cancer that would pass scientific muster.

This court agrees with the Abex that Dr. Frank was not disclosed as an expert witness designated to give an opinion on the Saranac studies and therefore would be barred from giving an opinion of the significance of Saranac at trial. This court also has concerns about the admissibility of his opinion given his concessions about the flaws in the study.

However, for the analysis under summary judgment and for the sake of argument, what if Dr. Frank was properly disclosed as an expert as to Saranac and a foundation could be laid so he could give his opinion in an attempt to fill the gap in *Rodarmel*?

Regardless of what any expert on either side says in 2012 about the significance of the 1948 Saranac study, this court keeps coming back to the memo of Dr. Hamlin in light of what *McClure* said about the joint drafting of the NIMA pamphlet.[1] Although not exactly stated in *McClure*, the court assumes that the pamphlet was intended for distribution to the trade.

In *McClure*, OI participated in the drafting of a pamphlet which the plaintiff claimed showed an agreement to conceal since it did not specifically identify the diseases associated with asbestos. The *McClure* court found that the inference of an agreement improper even though it was a joint project since there was no evidence as to what extent

[1] Dr. Hamlin (Abex's medical director) memo dated November 3, 1948, Abex Exhibit 746

the companies controlled the content of the pamphlet. So, under *McClure*, joint drafting was not enough and evidence of control over content was necessary.

Abex Exhibit 746 shows that (1) Abex was not concerned with content and (2) Abex had ceded control over content to another company. Mr. Kelly, vice-president of Abex, sent Dr. Hamlin's memo to Mr. Brown at Johns-Manville and said he could act for them in any decisions that needed to be made.

The following portions of the memo are pertinent to this court's analysis:

> I gain the impression from Mr. Brown's letter that he is concerned with possible repercussions from the legal point of view but I must confess I do not see anything in the report in its present form which need cause undue concern. Similar reports are frequent in the literature not only in this country but also from abroad.
>
> I think the idea of reviewing the manuscript prior to publication is a good one in order to achieve mutual understanding with Saranac, but I feel that this can be accomplished quite satisfactorily without my presence.
>
> Mr. Brown has stated that it would be advisable for us to designate a representative of another company to act for us in connection with the decisions to be made. I think this would be a satisfactory alternative and would like to suggest that we request (Mr. Brown) to act for us. It would be most difficult for me to attend personally at this time because of the meetings I mentioned to you over the phone. I am sure our interest in the matter could be adequately protected by Mr. Brown.

This court views this memo in an entirely different light than the Plaintiff. Abex is on record that it was not concerned about the content of Saranac and ceded control of the Saranac content to another.

The bottom line is that Dr. Hamlin did not see anything in Saranac which caused him concern, stated much of what was in the Saranac study was already known and, finally, said he was too busy with other meetings to even attend. None of this suggests an agreement by Abex to conceal and, in fact, points to the opposite conclusion.

If *McClure* found no inference of an agreement in a jointly drafted trade pamphlet where there was no evidence of who controlled content, then certainly there cannot be an inference of an agreement when it comes to a scientific study where there is evidence that a company did not see any problem with the content and then let others control the content.

This is not the act of a co-conspirator entering into a plan to do an overt wrongful act. While the court might agree with the Plaintiff that no reasonable person would believe that what was foremost in Mr. Brown's mind was the integrity of the scientific process, Mr. Brown was not with Abex.

Even if an argument can be made that Abex was pretty sure Brown would delete the mice study, knowledge of that action is not sufficient for conspiracy under *McClure*. The actions of Abex with regard to the publishing of Saranac study are, in this court's opinion, not only consistent as much with innocence as guilt, they are evidence of Abex's claim in this case that asbestos was not a primary concern for them.

B. Owens-Illinois (OI)

In opposition to the motion for summary judgment the Plaintiff filed the exhibits from the Dunham case in McLean County and argues that OI's motions for summary judgment have been denied in every case since *McClure*. Although OI was in the *McClure* case, the Plaintiff argues this case is different since this involves OI and Owens-Corning. The Plaintiff again argues against the reasoning in *Rodarmel* and urges the court to follow *Burgess* and *Dukes I*.

Going through the Plaintiff's submissions, the claim of shared directors, without more, must fail under *McClure*. The fact that Biggers was at a board meeting concerning

a plant where the "dust liability" amounted to one million dollars does not lead this court to find the conspiracy complained of.

The documents of the arbitration between OI and Owens-Corning (Exhibits 2 & 3) over indemnification for asbestos claims actually supports the notion that these two companies treated each other at arm's length and support Defendant's contention of no conspiracy.

The plaintiff has certainly presented the court with more documents against OI in support of the conspiracy claim as compared to Abex or Honeywell. The court has reviewed each submission, some multiple times, and while they do show parallel conduct they do not show evidence other than parallel conduct which would be sufficient to conclude there was an agreement under the *McClure* standard.

While the quantity of documents Plaintiff has attached to the Response to OI is impressive, the Response really does not set out with sufficient clarity why these documents make a difference in terms taking this case outside *Rodarmel* or are different from the categories in *McClure* mentioned previously. Repeated contact between these asbestos companies over the years is simply not enough to show conspiracy.

C. Honeywell

Plaintiff seemed to concede at oral argument that there is really nothing new in Bowles that was not in *Rodarmel* in light of the fact that Honeywell was not involved in Saranac. Plaintiff does attach many exhibits to the Response which the court has reviewed. It appears to the court that they all fall into the classification of parallel conduct or do not tend to show an agreement to conspire or an unlawful act in furtherance of a conspiracy.

Most of the documents are page after page of sales orders between Honeywell (Bendix) and other asbestos manufacturers. This court declines to find that rebranding of products constitutes an unlawful act in furtherance of the alleged conspiracy per the decision in *Rodarmel.*

III. Exposure Claims

Before examining the exposure claims, the court wants to state that it knows the big picture. For years, asbestos manufacturers hid the dangers of these products from their workers and those who used their products. As a result, these manufacturers have been held accountable. However, this accountability can only be in the form of cash. Many workers paid with their lives.

Nevertheless, the law has not eliminated certain burdens for plaintiffs. Just because a company manufactured asbestos does not make it liable for anyone who was around asbestos. The law allows a company the defense that it was not their product which caused the injury.

The Plaintiff cannot meet the "frequency, regularity and proximity test" set forth by the Illinois Supreme Court in *Thacker v U.N.R. Industries, Inc.* 151 Ill.2d 343, 603 N.E.2d 449 (1992). The plaintiff was a radioman on the ship. While he may have been around asbestos that insulated the pipes on the ship there has been no showing that he ever installed or worked with the product.

In *Thacker* the decedent worked for 8 years at the Union Asbestos and Rubber Company in the pipe-covering department, with his final three months in the plastics department. The plant was a large, open area with no interior walls. He opened bags of

raw asbestos which gave off dust. Tons of raw asbestos were used in this plant. Other employees testified that dust was continuously visible in the air.

The *Thacker* court specifically noted the "amount" of asbestos likely used at the plant, the "nature" of the work performed and the "extended period of time" the decedent worked in the plant. In this case there is no evidence of the "amount" of asbestos on the ship that was manufactured by the two remaining exposure defendants, the asbestos that was there was not used in the same manner as it was "used" in a manufacturing plant, Bowles' work was as a radioman, and the period of time is less than one-fourth of what was presented in *Thacker*.

As to the nature of the asbestos, the *Thacker* court emphasized, "...the friable and potent nature of the *raw* asbestos..." (emphasis original) and noted the numerous witnesses who could describe the "haze" of asbestos "throughout" the plant. This case does not involve raw asbestos nor a worker who formed, cut, installed or even handled processed asbestos products.

In summary the difference between *Thacker* and this case can be illustrated as follows:

	Thacker	Bowles
Type of Asbestos	Raw asbestos	Installed final product 13%-20% asbestos
Time of potential exposure	8+ years	1½ years
Amount of particular Defendant's product	75 tons	Unknown
Exact location of particular Defendant's product	Everywhere in open plant	Unknown or boiler room

Taking all inferences in favor of the Plaintiff, one and a half years of working, forming and cutting a finished asbestos product from an identifiable manufacturer would be enough to survive a motion for summary judgment. However, Bowles did not do this type of work.

In *Johnson v. Owens-Corning Fiberglass Corp.*, 284 Ill.App.3d 669, 672 N.E.2d 885 (3rd Dist. 1996) the court held that the plaintiff had the burden of proving more than just minimal contact with a particular defendant's asbestos product and that in order to survive a summary judgment motion the plaintiff must "...put forth some evidence tending to show that (1) the decedent regularly worked in an area where the defendant's asbestos was frequently used and (2) the decedent worked close enough to this area to come into contact with the defendant's product."

Although *Zimmer v. Celotex Corp.* came before *Thacker*, summary judgment was affirmed using the *Thacker* principles of frequency, regularity and proximity. *Zimmer v. Celotex Corp.*, 192 Ill.App.3d 1088, 549 N.E.2d 881 (1st Dist. 1989). Zimmer was a shipfitter who worked for 12 years in naval shipyards. Originally, 13 defendants were named, but only 3 remained as defendants, one being OI.

In his affidavit, Zimmer stated that he worked in close proximity to boilermakers, pipefitters, sheet-metal workers and pipe coverers including a man named Moe Rapchick. Although Zimmer could not identify the manufacturers of asbestos products to which he was exposed, he attached deposition testimony of other workers in unrelated lawsuits involving asbestos claims.

One of the workers, Moe Rapchick, recalled working with OI asbestos but could not recall that a particular product was used in a particular month on a particular ship. He

further stated that the asbestos products were used all over the ships, were shared by different tradesmen, including shipfitters and that the workers were covered with insulation as it drifted from the tradesmen working above and next to them.

The *Zimmer* court noted the plaintiff must identify the manufacturer and establish a causal connection between the injury and the product. This may be proven by direct or circumstantial evidence but liability cannot be based upon mere speculation, guess or conjecture.

Zimmer was a shipfitter working for over 12 years next to workers installing asbestos. Bowles was a radioman, not involved in repairing or replacing insulation. Bowles was on the Parks from December 4, 1958 until May 27, 1960, except for the period from October 21, 1959 to November 4 of that same year when he was in the San Diego Naval Hospital. His tour on the Parks was about a year and a half.

Even assuming for this motion that the dust which fell when the guns were fired or when the ship moved was asbestos, no one can say which company manufactured the asbestos which Bowles might have breathed. Assuming that Bowles spent most of his time in the radio room or his bunk, no one has said that the pipes in either location contained an asbestos product manufactured by the two remaining exposure defendants in this case. Plaintiff's witnesses have little information on where Bowles spent his time.

From the court's review of the depositions any claim that Bowles inhaled asbestos from either of the two manufacturers would have to be based upon speculation, guess or conjecture. No one can state with specificity the amount of asbestos from either manufacturer used on the Parks, the exact location or locations where the asbestos from

either manufacturer was used on the Parks or the time period when it was used on the Parks.

At least in *Thacker* the plaintiff had proof that 75 tons of raw asbestos came into the open plant. The defendants in *Thacker* argued that under the best calculation for the plaintiff this amounted to just 3% of the total asbestos being brought into the plant during the relevant time period since another manufacturer was shipping 200 tons per month into the facility. The *Thacker* court said that it could not find 3% insignificant as a matter of law.

Although 3% is a fairly low bar to overcome, and taking all inferences in favor of the plaintiff that there is a genuine issue of material fact as to the existence of OI and JC products on the Parks, there is still no evidence as to amount, location or time of exposure. Mere existence is not enough under *Thacker*. Moreover, *Thacker* involved an open factory, not a compartmentalized ship.

The evidence thus far is that the original asbestos was from another company, UNARCO. The Plaintiff claims that the insulation could release asbestos when disturbed, when the guns on the ship were fired or due to the movement of the ship. Captain Lowell testified that most of the insulation was in the machinery part of the ship and, as a radioman, it was more likely than not that Bowles was not in that area on a frequent basis.

The discovery depositions all seem to indicate that asbestos products would cover piping; cloth was then applied and painted with white enamel. According to Captain Lowell, the original insulation installed on the Parks was most likely UNARCO's

Unibestos. If there was either an OI or JC product on the Parks it would have been a product used to repair or replace the original insulation.

The court will not lengthen this opinion by analyzing each defendant in the Johnson case other than to say that the Johnson court looked at where the product was used and how it was used to determine whether a particular defendant was granted summary judgment. The facts here are closer to or better than the facts for those defendants who were granted summary judgment in *Johnson*.

One defendant from Johnson illustrates this point. Summary judgment was affirmed for defendant Zolteck because there was no evidence as to where Zolteck's products were used at the facility. There is no evidence in Bowles as to the exact location where OI products were installed or how frequently Bowles was in those locations. We know that JC products were in the boiler room, but even the Plaintiff concedes that their products were significantly different than OI's, not friable under OHSA standards and, again, there is no evidence of how many times Bowles might have been in the area where they were being installed.

Since Bowles never worked directly with asbestos in his job as a radioman the Plaintiff must necessarily rely on fiber drift evidence. As noted in the Fourth District's decision in *Wehmeier*, which the Supreme Court cited from extensively in *Thacker*, each case must stand on its own facts. *Wehmeier v. UNR Industries, Inc.*, 213 Ill.App.3d 6, 572 N.E.2d 320 (4th Dist. 1991).

The *Wehmeirer* court noted that

> "...fiber-drift evidence cannot alone support an inference of causation but must be accompanied by evidence establishing how frequently the particular asbestos product was used, the area in which it was used, and the regularity of a plaintiff's employment with a zone covered by the reach of fiber drift. Necessarily, each case must stand on its own facts. Given the various diseases which are associated with asbestos exposure, the medical evidence presented, they types of asbestos involved, the manner in which the products are handled, and the tendency of those asbestos products to release asbestos fibers into the air, the amount of evidence needed to establish the regularity and frequency of exposure will differ from case to case."

Summary judgment is appropriate where the plaintiff cannot prove a necessary element of their case. *Weber v Armstrong World Industries, Inc.*, 235 Ill.App.3d 790, 601 N.E.2d 286 (4th Dist. 1992). It appears under *Wehmeirer*, the Plaintiff cannot satisfy the prongs of showing how frequently the product was used, where it was used and the regularity of his employment within that zone.

Accordingly, the court grants the Defendants' Motions for Summary Judgment on both the conspiracy and exposure claims for the reasons stated in this opinion.

Entered: 6/28/2012

Judge

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF MORGAN

SUE WISEMAN, Special Administrator of the Estate of ROBERT POOLE, Deceased, Plaintiffs,	)	
-vs-	)	No. 06-L-9
PNEUMO ABEX LLC, et al., Defendants.	)	

ORDER

This matter is before the Court on Defendant Honeywell's Motion for Summary Judgment, along with Owens-Illinois, Inc.'s Motion to Reconsider its Motion for Summary Judgment of Plaintiff's civil conspiracy claims.

After a review of the Motion for Summary Judgment, pleadings, memorandums, supporting documentation and the arguments of counsel, the Court makes the following findings:

That the "clear and convincing" burden of proof does apply at the summary judgment stage. *Ray Dancer, Inc.v. DMC Corp.*, 230 Ill.App. 3d 40; 594 NE 2d 1344 (2nd Dist. 1992).

As part of the analysis of the case, the "innocent construction rule" applies. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d at 140; 720 NE 2d at 262.

Evidence of parallel conduct alone is insufficient to support the agreement element of a civil conspiracy claim. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d at 102; 720 NE 2d at 242 (1999).

Rodarmel v. Pneumo Abex, 2011 Ill. App. (4th Dist.); 957 NE 2d 107 (modified opinion issued in September 2011), is the most recent case on civil conspiracy and should be followed.

That considering the facts and allegations in the light most favorable to the non-movant Plaintiff the Court finds that the Plaintiff's evidence is insufficient to prove either the alleged conspiratorial agreement, or an act in furtherance of that agreement that caused the injury alleged in the case, by the required standard of clear and convincing evidence.

Therefore, the Court finds that there is no genuine issue of material fact and the Motions for Summary Judgments are granted.

Entered: June 29, 2012

Judge

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF MORGAN

JUDITH WEAVER and EARL WEAVER, Plaintiffs,	)	
-vs-	)	No. 08-L-05
PNEUMO ABEX LLC, et al., Defendants.	)	

ORDER

This matter is before the Court on Defendants Owens-Illinois, Inc. and Honeywell International, Inc.'s Motions for Summary Judgment.

After a review of the Motions for Summary Judgment, pleadings, memoranda, supporting documentation and the arguments of counsel, the Court finds that there was no duty owed to the Plaintiff, and therefore the Motions for Summary Judgment of Owens-Illinois, Inc. and Honeywell International, Inc. are granted as to all counts.

Entered: 9-19-12

Judge

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

COUNTY OF MORGAN

RICHARD COOK and SHARYN COOK, Plaintiffs,	)	
-vs-	)	No. 11-L-2
PNEUMO ABEX LLC, et al., Defendants.	)	

ORDER

This matter is before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment of Plaintiff's civil conspiracy claim.

After a review of Owens-Illinois, Inc.'s Motion for Summary Judgment, pleadings, memoranda, supporting documentation, and the arguments of counsel, the Court grants the motion.

Entered: 9-19-12

Richard T. Mitchell
Judge

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

PLOENSE
Plaintiff/Petitioner,

vs

ELECTROLUX HOME, INC. etal
Defendant/Respondent.

FILED
McLEAN COUNTY
SEP 25 2012
No. 02
CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEALD ON DEFENDANT OWENS-ILLINOIS, INC.'S MOTION FOR RECONSIDERATION AND REQUEST FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS OF THE PARTIES AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION FOR RECONSIDERATION OF THIS COURT'S NOVEMBER 29, 2010 DENIAL OF OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED;

2) SUMMARY JUDGMENT IS AWARDED TO OWENS-ILLINOIS, INC. AND AGAINST PLAINTIFF.

DATE: SEPTEMBER 20, 2012

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S WACKER
City CHICAGO ILLINOIS 60606
Telephone 312 258 5502

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

James Hewitt
Plaintiff/Petitioner,

vs

Rapid American
Defendant/Respondent.

No. 06-L-39

ORDER

Defendant Momentive Specialty Chemicals, Inc.'s Motion to Amend Case Management Order and Continuance of trial setting, called heard and granted.

Case is reset for trial on the February 2013 trial docket.

ABX, Honeywell, and Owens-Illinois (as to conspiracy counts only) motions for summary judgment are allowed.

DATE: 9-20-12

Judge

Name
Attorney for
Address
City
Telephone

CKC-RA Scott-cabs
IP-UPL WF-OI

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

CARAKER
Plaintiff/Petitioner,

vs

PNEMO ABAT etal
Defendant/Respondent.

No. 07 L 139

FILED
McLEAN COUNTY
SEP 20 2012
CIRCUIT CLERK

ORDER

Cause coming to be heard on Defendants' Motions for Summary Judgment, notice given and the Court advised in the premises, it is hereby ordered:

(1) Absex's MSJ is granted
(2) Honeywell's MSJ is granted
(3) OI's MSJ is granted as to conspiracy
(4) To the extent that Plaintiff believes she has sufficient evidence of Decedents exposure to OI products to overcome summary judgment, Plaintiff is to file a written opposition, if any, within 14 days
(5) October 2012 trial date vacated and case set on Feb. 2013 trial calendar.

DATE: 9/21/12

Judge

Name RLC
Attorney for OI
Address
City
Telephone

gm - HW

RLC

S

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF MASON

WILLA WOODING, Individually and as Special Administrator of the Estate of HARRY WOODING, Deceased, TIM SONDAG, Special Administrator of the Estate of IRVIN SONDAG, Deceased, and RUTH SONDAG, Individually,	)	FILED DEC 10 2012 MICHAEL D. ROAT CIRCUIT CLERK MASON CO., IL
Plaintiffs,	)	
-versus-	)	*CASE NO. 10-L-2*
PNEUMO ABEX CORPORATION, PNEUMO ABEX LLC, METROPOLITAN LIFE INSURANCE COMPANY, OWENS-ILLINOIS, INC., HONEYWELL INTERNATIONAL, INC., GEORGIA PACIFIC, BONDEX CORPORATION, TREMCO, INC., SPRINKMANN SONS CORPORATION, RAPID-AMERICAN CORPORATION, UNION CARBIDE CORPORATION and JOHN CRANE, INC.,	)	
Defendants.	)	

OPINION AND ORDER

BACKGROUND

This matter comes forth for hearing on Defendants' various Motions for Summary Judgment. In reviewing the matter, the Court believes that the Plaintiffs' Complaint can be summarized as follows:

- *Wooding Counts I, II and III (Conspiracy)*
- *Wooding Counts IV, V and VI (Causation)*
- *Sondag Counts VII, VIII, and IX (Conspiracy)*
- *Sondag Counts X, XI and XII (Causation)*

The Defendants' remainting in this matter according to the Court's

information are as follows:

Conspiracy: Pneumo Abex, Honeywell, and Owens-Illinois

Causation: Rapid-America, Tremco, and Union Carbide

Each of the Defendants' have filed their own Motion for Summary Judgment, and where relevant have adopted their respective co-defendants' Motion for Summary Judgment. Plaintiffs' have filed opposition to each of the Defendants' Motion for Summary Judgment, to which the Defendants' have filed an appropriate reply.

The Court has read the Motions for Summary Judgment, the Plaintiffs' opposition to said motion and the replies of the Defendants. Further, the Court has examined the exhibits which have been presented by attachment or otherwise plead in this matter by all of the parties, including the Plaintiffs, has read many depositions, various cases relied upon by the parties, and have heard the oral arguments of the parties hereto in support of their respective positions.

LAW

The legal principle of stare decisis applies with respect to the conspiracy counts filed by each of the Plaintiffs herein. Recently the Fourth District Court of Appeals of the State of Illinois (of which Mason County is part), has rendered several decisions that are relevant and material to the Court's determination in this mater. Specifically as to the conspiracy counts, this Court is bound to follow the directives of the Fourth District set forth in Mensson v. Pneumo Abex, et al, which may be found at 2012 Ill. App., Fourth District 100904, which was filed August 31, 2012, and Rodarmel v. Pneumo Abex LLC and Honeywell International, 2011 Ill. App. Fourth

District 100463.

Each of the parties hereto, including the Plaintiffs briefed these cases to the Court and each argued as to the appropriate application and meaning of these cases to the case at bar. In addition, the Defendants supplied the Court with several trial court opinions found throughout the Fourth District that although are of some benefit, certainly do not bind this Court under the rules of stare decisis, and therefore the Court did not consider these rulings for the purpose of this opinion.

Each of the parties submit numerous other cases in support of their position, which have been read by the Court and applied to the various arguments presented by the parties to support their position on issues such as:

1. The standard of proof the Court must apply in the conspiracy counts: (See Ray Dancer, Inc. v. DMC, Corp., 230 Ill. App. 3d 40, Second District (1992).

2. The proper context for the Court to rule on a Motion for Summary Judgment.

3. The test in the causation counts to be applied as to Plaintiffs' alleged exposure to asbestos containing materials. (See Thacker v. UNR Industries, Inc., 151 Ill. 2d 343 (1992).

4. The McClure rule of innocent construction in conspiracy cases. (See McClure v. Owens Fiberglass Corp., 188 Ill. 2d 102).

5. The McClure rule regarding parallel conduct.

6. The Rodarmel disagreement with Burgess (See Burgess v. Pneumo Abex Corp., et al, 311 Ill. App. 3d 900 (Fourth District, 2000.).

7. The Thacker rule of "frequency, regularity and proximity" (See also

Wehmeier v. UNR Industries, Inc., (Fourth District) 213 Ill. App. 3d 6 (1991).

THE FACTS

For this Court's analysis on the pending Motions for Summary Judgment all reasonable inferences favoring the non-moving party are made. Court has reviewed numerous depositions supplied by each party not only on the causation/exposure issues, but also on conspiracy issues. Of particular note are the following depositions: Willa Wooding, Gregory Wooding, Donald Dowell, Daniel Sondag, Timothy Sondag, Edward Sondag, Michael Kohler, Joseph Sondag, and Arthur L. Frank, M.D. .

The Court in deciding this matter and reaching its opinion does not reach the issues of timeliness and adequacy of Dr. Frank's letter opinions under Supreme Court Rule 191, nor the arguments of the various defendants regarding the statute of limitations with regards to Plaintiffs' Complaint. The question to this Court is simply: Is the evidence as to conspiracy and causation/exposure presented by the Plaintiffs' in opposition to the Motion for Summary Judgment as alleged in its Complaint taken in its most favorable light, and with all reasonable inferences made in Plaintiffs' favor, sufficient to establish that there are issues of genuine material fact sufficient for this case to proceed to trial and for a trier of fact to find in favor of the Plaintiffs, or in the alternative that in consideration of the above, are there not genuine issues of material fact, therefore requiring the Court to grant Defendants' Motion for Summary Judgment.

CONSPIRACY

The Court is of the opinion that the standard to be applied is that Plaintiff's proof must be by "clear and convincing evidence". That is the burden of proof that the Court will apply in making its analysis. It is Plaintiffs' burden of proof. (See Roy Dancer, Inc. v. DMC Corp., 230 Ill. App. 3d 40 (Second District, 1992). Further, as stated in McClure (See cite above) the "innocent construction" rule applies, and as further stated in McClure, "evidence of parallel conduct alone is insufficient to support the agreement element of a civil conspiracy claim." Therefore, in applying these rules to the facts at bar, and giving the appropriate weight to the decisions of Rodarmel and Menssen, the Court is of the opinion that no genuine issue of material fact exists to support the Plaintiffs' conspiracy claims against the Defendants Pneumo Abex, Honeywell and Owens-Illinois and therefore the Court grants the Defendants' Motion for Summary Judgment as a matter of law.

CAUSATION/EXPOSURE

Of particular note for the Court on this issue, as it reviewed the deposition of Doctor Frank on November 10, 2011, and specifically at Page 26, Lines 11 through 14, where he opined as follows:

"I do not have any detailed information as to the frequency, duration or dose that Mr. Wooding would have had at any point during his career."

Furthermore the Plaintiff fails to point out any differing opinion as it would apply to Mr. Sondag.

TREMCO

In its counts against Tremco, Plaintiffs allege that the Defendant Tremco was in the business of manufacturing and selling asbestos containing products. (See Counts IV, V and VI, Wooding and Counts X, XI and XII, Sondag.) At Attachment A of the Complaint under the heading Tremco, these products are allegedly identified by the Plaintiff as "asbestos containing caulk and joint material" and "asbestos tapes".

Joseph Sondag, the only witness deposed to attempt to identify the Defendant Tremco's products says, "that a roll, three inches wide, and white and blue in color was used on wallboard seams." He could not recall why he thought it was a Tremco product, and had no knowledge whether the product contained asbestos. (See the deposition of Joseph Sondag.)

Defendant Tremco denies it ever manufactured such a product. Plaintiff fails to point to any advertising, catalogue, sales brochure or invoices that point to Tremco's sale, advertising or manufacturing of such a tape product to be used in the plastering industry for the purpose of sealing joints.

The question then becomes: Have Plaintiffs presented evidence, taken in the light most favorable to the Plaintiff that would establish the existence of such a product (tape); that Plaintiffs used or were exposed to the product on a regular and frequent basis, that the product contained asbestos, and that the Plaintiff was in close proximity to the asbestos, and therefore placing Defendant in a position of having a duty to warn the Plaintiffs as to the dangerous nature of the product.

Such evidence is wholly lacking in this matter, even if taken in the light most

favorable to the Plaintiff, and therefore the Court is of the opinion that the Plaintiff failed to establish for the purposes of this Summary Judgment that a genuine issue of material fact exists whereby a reasonable trier of fact could find for the Plaintiff, and therefore on that basis the Defendant's Motion for Summary Judgment is granted.

The Court therefore need not go to the other issues raised by Defendant Tremco as to Plaintiff's failure to show the causation which if presented would also be found in Defendant's favor based on the extremely limited evidentiary showing by Plaintiffs as to Plaintiffs' contact with a Tremco product.

RAPID AMERICAN

The test here, once again, is the duty of the Plaintiffs to specifically identify the products this Defendant manufactured; to establish Plaintiffs exposure thereto; to establish that such exposure was with frequency, regularity and proximity and then to present proof of causation as to specific injuries of the Plaintiffs, i.e. colo-rectal cancer (Wooding); rectal cancer (Sondag.)

Plaintiffs list a number of products allegedly produced by this Defendant or its predecessors at the Attachment A to its Complaint. It is Plaintiffs' burden to link these products to the Defendant; to show frequency, regularity and proximity to the Plaintiffs; and finally to show that the products contained asbestos and that, in fact, such asbestos containing product caused the Plaintiff's injury.

In review of the depositions of Plaintiffs' witnesses (Joseph Sondag, Mark Sondag, John Sondag, Susan Hill, Ruth Sondag, Theresa Mickens, Daniel Sondag,

Timothy Sondag, Kathryn Rogers, Willa Wooding, Gregory Wooding, Edward Sondag and Steven Sondag) none of these witnesses are able to establish with any certainty, clarity or precision that either Plaintiff was exposed to Defendant's product or products, much less that such exposure was frequent, regular or proximate to them.

Furthermore, the Defendant in its motion denies ever being in the business directly or indirectly involving an asbestos containing product. This denial is uncontroverted by the Plaintiff. Once again without deciding whether Plaintiffs' evidence as presented by Doctor Frank on causation is sufficient to show proximate cause of Plaintiffs' injury, the Court can only conclude that no issue of genuine issue of material fact exists as to Defendants' products not only containing asbestos; but furthermore, that the Plaintiffs were exposed on a regular, frequent and proximate basis. Therefore the Motion for Summary of Rapid American must be granted.

UNION CARBIDE

This Defendant also relies on the Thacker rule in urging the Court to decide the Motion for Summary Judgment in its favor and against the Plaintiffs. Defendant here unequivocally asserts that is product (asbestos) was never used in plaster products. Therefore it reasons that since the Plaintiffs were engaged in the plaster business and its products were not used in that business, that Plaintiffs were not exposed to asbestos through Defendant's products. Plaintiff fails to counter this assertion.

Defendant asserts that under the law it is Plaintiffs' burden by a

preponderance of the evidence to do more than simply allege exposure. That, in fact, the Plaintiff must present the Court with facts supporting the allegation that Plaintiffs were exposed to Defendant's products, and such was the proximate cause of Plaintiffs' injuries. Defendant states that it does not need to disprove exposure. I agree.

The Court is of the opinion that Plaintiffs' assertion that this Defendant supplied products to U.S. Gypsum; that U.S. Gypsum manufactured plastering materials containing Defendant's asbestos and therefore such materials were used by Plaintiffs, causing Plaintiffs' exposure resulting in the injury complained of, simply fails the Thacker test of frequency, regularity and proximity. In this Court's opinion, the bare allegations and nothing more would cause the trier of fact to have to speculate as to the Plaintiffs' use, exposure and causation of Plaintiffs' injuries, and with nothing more than in effect a stream of commerce theory, Plaintiff would be unable to sustain its cause of action under Thacker.

Union Carbide even denies its products ever were used for Plaster products and Plaintiff fails to show specifically a connecting link between Defendant's products and Plaintiffs regular and frequent use. Therefore the Motion for Summary Judgment is granted.

ORDER

By reason of the above and foregoing, Plaintiffs Complaint in twelve counts is dismissed, Motions for Summary Judgment granted.

ENTER: December 10, 2012.

ALAN D. TUCKER
Circuit Judge

cc: Mr. James Wylder
Mr. Andrew Kelly
Mr. Robert Scott
Mr. Regan Simpson
Mr. Matthew Fischer
Mr. Luke Mangan
Ms. Cecilia Carroll
Mr. John Redlingshafer

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

VATES
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 188

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.

DATE: OCTOBER 30, 2012

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER SUITE 6600
City CHICAGO IL 60606
Telephone 312 258 5500

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

TANNER
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 153

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION IS GRANTED

DATE: OCTOBER 30, 2012

Judge

Name M. FISHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER
City CHICAGO IL 60606
Telephone 312 258 5500

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

SYLVESTER
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 170

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC'S MOTION IS GRANTED AS TO THE CONSPIRACY COUNTS;

2) OWENS-ILLINOIS, INC'S MOTION IS CONTINUED AS TO THE EXPOSURE COUNTS.

DATE: OCTOBER 30, 2012

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address ~~6600~~ 233 S. WACKER
City SUITE 6600
Telephone CHICAGO ILLINOIS 60606

Wylder P

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

QUIGGINS
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 09 L 167

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION IS GRANTED AS TO THE CONSPIRACY COUNTS - COUNTS 1, 2, 9, 10;

2) OWENS-ILLINOIS, INC.'S MOTION IS CONTINUED AS TO THE EXPOSURE COUNTS - COUNTS 3, 4, 5, 6.

DATE: OCTOBER 30, 2012

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER
City CHICAGO IL 60606
Telephone

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

PEMBLE
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 09 L 95

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION IS GRANTED AS TO THE CONSPIRACY COUNTS;

2) OWENS-ILLINOIS, INC.'S MOTION IS CONTINUED AS TO THE EXPOSURE COUNTS.

DATE: OCTOBER 30 2012

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER, SUITE 6660
City CHICAGO IL 60606
Telephone 312 258 5500

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

BUXTON / LONG
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 168

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING BEEN ADVISED IN THE PREMISES AND HAVING REVIEWED THE WRITTEN SUBMISSIONS, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'s MOTION IS GRANTED

DATE: OCTOBER 30, 2012

Judge

Name M. FIGHTER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER
City CHICAGO IL 60606
Telephone 312 258 5300

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

KRAMER
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 09 L 42

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION IS GRANTED.

DATE: OCTOBER 30, 2012

Judge

Name M. FISHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER SUITE 6600
City CHICAGO IL 60606
Telephone 312 [illegible]

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

DOSS / ADAMS
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC. et al
Defendant/Respondent.

No. 08 L 108

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION IS GRANTED AS TO THE CONSPIRACY COUNTS -

2) OWENS-ILLINOIS, INC.'S MOTION IS CONTINUED AS TO THE EXPOSURE COUNTS AGAINST OWENS-ILLINOIS, INC.

DATE: OCTOBER 30, 2012

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER
City CHICAGO IL 60606
Telephone 312 258 5500

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

CORRY
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 191

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED

DATE: OCTOBER 30, 2012

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S WACKER SUITE 6600
City CHICAGO IL 60606
Telephone 312-258-5500

A269

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

CHAMBERLAIN
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC
Defendant/Respondent.

No. 09 L 101

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION IS GRANTED AS TO THE CONSPIRACY COUNTS;

2) OWENS-ILLINOIS, INC.'S MOTION IS CONTINUED AS TO THE EXPOSURE COUNTS.

DATE: OCTOBER 30, 2012

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER SUITE 6600
City CHICAGO IL 60606
Telephone

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

WALL
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 141

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OWENS-ILLINOIS, INC.'S MOTION IS GRANTED AS TO THE CONSPIRACY COUNTS;

2) OWENS-ILLINOIS, INC.'S MOTION IS CONTINUED AS TO THE EXPOSURE COUNTS.

DATE: OCTOBER 31, 2012

Judge

Name MFISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S WACKER
City CHICAGO IL 60606
Telephone 312 258-5500

Wyderski

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

ROBBINS
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 05 L102

FILED
McLEAN COUNTY
DEC 3 - 2012
CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT

OWENS-ILLINOIS, INC.'s MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS, INC. AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 6600 SEARS TOWER
City CHICAGO IL 60606
Telephone 312 258 5700

A272

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

MONICAL / BROWN
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC
Defendant/Respondent.

No. 06 L 69

FILED
McLEAN COUNTY
DEC 3 - 2012
CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS, INC. AND AGAINST PLAINTIFF MONICAL AND AGAINST PLAINTIFF BROWN.

DATE: 12/3/12

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC
Address 233 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606 A273

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

HOCHHALTER / ROGERS
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 07 L 4

McLEAN COUNTY - FILED
DEC 3 - 2012
CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE HAVING BEEN GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

ATTY

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE SUITE 6600
City CHICAGO IL 60606
Telephone 312 258 5591

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Thorpe/Salch
Plaintiff/Petitioner,

vs

Owens-Illinois Inc. etal
Defendant/Respondent.

No. 07 L 90

ORDER

This cause coming to be heard on OI's Motion for Summary Judgment, the court having reviewed the submissions and being advised in the premises, it is hereby ordered that

Owens-Illinois, Inc's Motion for Summary Judgment is granted. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff over Plaintiff's objection.

DATE: 12/3/12

Judge

Name RCK
Attorney for OI
Address
City
Telephone

A11-TI

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

WOFFITT
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 07 L 143

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE HAVING BEEN GIVEN, THE COURT BEING ADVISED IN THE PREMISES AND HAVING REVIEWED THE SUBMISSIONS, IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED, JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

AL-11

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE SUITE 6600
City CHICAGO ILLINOIS 60606
Telephone 312 258 5500

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

KIPLING
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 07 L 182

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'s MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES. IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS, INC.'s MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

AK-TT

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE, SUITE 6600
City CHICAGO IL 60606
Telephone 312 258 5500

A277

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

COMPTON
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 07 L 204

McLEAN COUNTY - FILED
DEC 3 - 2012
CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'s MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

SONDAG
Plaintiff/Petitioner,

vs

Owens-Illinois, Inc., et al
Defendant/Respondent.

No. 08 L 17

ORDER

This cause coming to be heard on OI's Motion for Summary Judgment, the court having reviewed the submissions and being advised in the premises, it is hereby ordered that

Owens-Illinois, Inc.'s Motion for Summary Judgment is granted. Judgment is hereby entered in favor of Owens-Illinois Inc. and against Plaintiff, over the objection of Plaintiff.

DATE: 12/3/12

Judge

Name RCK
Attorney for OI
Address
City
Telephone

ALCH

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Mc GOWAN J.
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 12

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC's MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS, INC.'s MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

Name M. FISHER
Attorney for OWENS-ILLINOIS, INC.
Address 333 S WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

WILLENSCHLAGER
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 167

FILED
McLEAN COUNTY
DEC 3 - 2012
CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, ~~AND~~ THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES OF IS HEREBY ORDERED THAT

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED OVER PLAINTIFF'S OBJECTION. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

AK-TT

Name M. FISCHER
Attorney for 233 S. WACKER DRIVE
Address SUITE 6600
City CHICAGO IL 60606
Telephone 312 258 5500

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

GRAHAM
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 187

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC
Address 233 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606

AIC-TI

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

HECK / STONE
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 09 L 163

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE HAVING BEEN GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS, INC AND AGAINST PLAINTIFF HECK AND AGAINST PLAINTIFF STONE.

DATE: 12/3/12

Judge

AL-TI

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

DAVIS
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS INC.
Defendant/Respondent.

No. 10 L 877

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS MOTION IS GRANTED
JUDGMENT IS HEREBY ENTERED FOR
OWENS-ILLINOIS AND AGAINST PLAINTIFF

DATE: 12/3/12

Judge

ATC-II

Name M. FISCHER
Attorney for OWENS-ILLINOIS
Address 233 S. WACKER SUITE 6600
City CHICAGO IL 60606
Telephone 312 258-5500

A284

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

LAMB
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 10 L 160

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF

DATE: 12/3/12

Judge

Name M. FISHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606

AK-TI

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

VOLZ
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 11 L 94

McLEAN COUNTY FILED
DEC 3 - 2012
CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT.

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS
Address 333 S. WACKER
City SUITE 6600
Telephone CHICAGO IL 60606

ALL-TI

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

DECKER
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 10 L 1177

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE HAVING BEEN GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND HAVING BEEN ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) WITH REGARD TO THE CONSPIRACY COUNTS ONLY, OWENS-ILLINOIS, INC.'S MOTION IS GRANTED

2) WITH REGARD TO ALL OTHER COUNTS, OWENS-ILLINOIS, INC.'S MOTION IS CONTINUED TO A LATER DATE.

DATE: 12/3/12

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S WACKER DRIVE
City SUITE 6000
Telephone 312 258 5320

ALT

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

THOMSON
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 09 L 206

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES. IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED
JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF

DATE: 12/3/12

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 333 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606

AVL-TT

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

SHOOPMAN
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 09 L 159

FILED
McLEAN COUNTY
DEC 3 - 2012
CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE HAVING BEEN GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS, INC. AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

AK-TI

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

ERSCHEN / ENDRES / LORRANCE
Plaintiff/Petitioner,

vs

OWENS - ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 195
09 L 124

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT

OVER PLAINTIFF'S OBJECTION, OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF ERSCHEN, PLAINTIFF ENDRES AND PLAINTIFF LORRANCE

DATE: 12/3/12

Judge

Name M. FISCHER OWENS-ILLINOIS
Attorney for 233 S WACKER
Address SUITE 6600
City CHICAGO IL 60606
Telephone 312 258 5500

AK-TT

A290

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Mc Gowan, P.
Plaintiff/Petitioner,

vs

Owens-Illinois, Inc.
Defendant/Respondent.

No. 08 L 177

ORDER

This cause coming to be heard on Owens-Illinois, Inc.'s Motion for Summary Judgment, due notice being given, the Court having reviewed the submissions and being advised in the premises, it is hereby ordered that:

Owens-Illinois, Inc.'s Motion for Summary Judgment is granted. Judgment is hereby entered in favor of Owens-Illinois and against Plaintiff.

DATE: 12/3/12

Judge

Name M. Fischer
Attorney for Owens-Illinois, Inc.
Address 233 S. Wacker Drive
City Suite 6600
Telephone Chicago IL 60606

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

COTTON
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 08 L 142

McLEAN COUNTY · FILED · DEC 3 - 2012 · CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS HEREBY ENTERED IN FAVOR OF OWENS-ILLINOIS AND AGAINST PLAINTIFF

DATE: 12/3/12

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606
(312) 258-5779

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

HOLLOWAY
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS, INC.
Defendant/Respondent.

No. 07 L 183

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS AND BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

OWENS-ILLINOIS, INC.'s MOTION IS ~~HEREBY~~ GRANTED
JUDGMENT IS HEREBY ENTERED IN FAVOR
OF OWENS-ILLINOIS AND AGAINST PLAINTIFF.

DATE: 12/3/12

Judge

Name M. FISCHER
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606

Not Reported in F.Supp.2d, 2013 WL 1099016 (E.D.Pa.)
(Cite as: 2013 WL 1099016 (E.D.Pa.))

H
Only the Westlaw citation is currently available.

United States District Court,
E.D. Pennsylvania.
Linda ELLIS, Plaintiff,
v.
PNEUMO ABEX CORPORATION, et al., Defendants.

MDL No. 875.
Transferred from the Central District of Illinois Case No. 11-01128.
E.D. PA Civil Action No. 2:11-66774-ER.
Jan. 3, 2013.

ORDER

EDUARDO C. ROBRENO, District Judge.

*1 AND NOW, this 31st day of December, 2012, it is hereby ORDERED that the Motion for Summary Judgment of Defendant Owens-Illinois, Inc. (Doc. No. 50) is GRANTED.[FN1]

FN1. This case was transferred in July of 2011 from the United States District Court for the Central District of Illinois to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

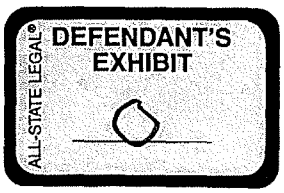
Plaintiff Linda Ellis alleges that Decedent Walter Tom ("Decedent" or "Mr. Tom") was exposed to asbestos, developed lung cancer as a result of this exposure, and died from that illness. In her complaint, Plaintiff alleged that Decedent was exposed to an asbestos-containing product(s) manufactured by Owens Corning, a predecessor to Defendant Owens-Illinois, Inc. ("Owens-Illinois"), while serving as a boilerman in the Navy from 1969 to 1973 and while working as a boilerman for NASA from 1973 to 1979.

Plaintiff brought claims against various defendants, including a claim for civil conspiracy to suppress and misrepresent information regarding the hazards of asbestos. Plaintiff alleges that Defendant (along with other defendants in this action) conspired with three other entities who have previously declared bankruptcy and are not defendants in this action: Johns-Manville ("Johns-Manville"), Unarco Industries ("Unarco"), and Raymark Industries (formerly Raybestos-Manhattan, Inc.) ("Raymark").

Defendant Owens-Illinois has moved for summary judgment arguing that there is insufficient evidence to support a finding of conspiracy on its part. Defendant Owens-Illinois also moved for summary judgment on grounds of insufficient evidence of exposure/ product identification. However, in her opposition, Plaintiff conceded that she does not have evidence that Decedent was exposed to asbestos from any product manufactured or supplied by Defendant. Therefore, Plaintiff now asserts that Defendant is liable solely for conspiracy to suppress and misrepresent information regarding the hazards of asbestos. The parties agree that Illinois law applies.

I. Legal Standard

A. *Summary Judgment Standard*



> Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a). "A motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d Cir.2009) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–248 (1986)). A fact is "material" if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.
>
> In undertaking this analysis, the court views the facts in the light most favorable to the non-moving party. "After making all reasonable inferences in the nonmoving party's favor, there is a genuine issue of material fact if a reasonable jury could find for the nonmoving party." *Pignataro v. Port Auth. of N.Y. & N.J.*, 593 F.3d 265, 268 (3d Cir.2010) (citing *Reliance Ins. Co. v. Moessner*, 121 F.3d 895, 900 (3d Cir.1997)). While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the non-moving party who must "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 250.

B. *The Applicable Law*

1. *Procedural Matters*

In multidistrict litigation, "on matters of procedure, the transferee court must apply federal law as interpreted by the court of the district where the transferee court sits." *Various Plaintiffs v. Various Defendants ("Oil Field Cases")*, 673 F.Supp.2d 358, 362–63 (E.D.Pa.2009) (Robreno, J.). Therefore, in addressing the procedural matters herein, the Court will apply federal law as interpreted by the U.S. Court of Appeals for the Third Circuit. *Id.*

2. *Substantive Legal Issues*

The parties agree that Illinois substantive law applies. Therefore, this Court will apply Illinois law in deciding Defendant's Motion for Summary Judgment. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938); *see also Guaranty Trust Co. v. York*, 326 U.S. 99, 108 (1945).

C. *Civil Conspiracy Under Illinois Law*

Illinois courts have previously considered civil conspiracy in the context of asbestos litigation. A summary of the relevant decisions follows:

(i) *Adcock*

Adcock v. Brakegate, 164 Ill.2d 54 (Ill.1995), affirmed a judgment on a jury verdict awarding damages to the estate of a deceased asbestos worker. In that case, the Supreme Court of Illinois considered an appeal by Owens–Corning and wrote:

> While the agreement is a necessary and important element of a cause of action for

> civil conspiracy, it does not assume the same importance as in a criminal action.... Thus, the gist of a conspiracy claim is not the agreement itself, but the tortious acts performed in furtherance of the agreement.

164 Ill.2d at 63. The trial court had previously entered judgment against defendant Owens–Corning as a sanction for failure to produce witnesses and the trial, therefore, only pertained to damages. The intermediate appellate court had affirmed the trial court's judgment. In affirming the intermediate appellate court (and the district court), the Supreme Court of Illinois noted, "we express no opinion on the factual sufficiency of the complaint."

(ii) *McClure*

McClure v. *Owens Corning Fiberglas Corp.*, 188 Ill.2d 102 (Ill.1999), involved allegations of an industry-wide conspiracy to conceal dangers of asbestos (involving, *inter alia,* Owens Corning). In *McClure,* the Supreme Court of Illinois reversed a trial court's entry of judgment on a jury verdict for plaintiffs. In doing so, it held that (1) parallel conduct may serve as circumstantial evidence of a civil conspiracy among manufacturers of the same or similar products, but cannot, by itself establish an agreement sufficient to support a conspiracy claim, and (2) evidence of direct contacts between defendants, and their parallel activity, was insufficient to establish the requisite agreement by clear and convincing evidence.

The evidence analyzed by the *McClure* court is extensive and detailed. A quick summary is a follows: (i) the Lanza study, which was edited by Johns–Mansville and Raybestos attorneys to exclude evidence of asbestos hazards, (ii) Asbestos Magazine (in which Johns–Manville and Raybestos prevented the publication of information concerning health hazards), (iii) Results of Saranac Labaratory Research (entitles other than defendants omitted evidence of asbestos hazards), (iv) evidence that Unarco's and Johns–Manville's plants did not warn employees of asbestos hazards of which they were aware, (v) evidence of parallel conduct by defendant Owens–Illinois, (vi) evidence that Owens Corning concealed evidence of asbestos hazards, and (vii) evidence of contacts between Owens Corning and defendant Owens–Illinois (as well as evidence of contacts of defendants with other alleged conspirators, such as Johns–Manville and Raybestos), (viii) expert opinion of Dr. Barry Castleman that the alleged conspirators were conspiring to suppress information about asbestos hazards.

In its decision, which addressed much of the same evidence presented by Plaintiff in the present case, the Supreme Court of Illinois wrote:

Civil conspiracy is defined as "a combination of two or more persons for the purpose of accomplishing by concerted action either an unlawful purpose or a lawful purpose by unlawful means." *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill.2d 12, 23, 230 Ill.Dec. 596, 694 N.E.2d 565 (1998). In order to state a claim for civil conspiracy, a plaintiff must allege an agreement and a tortious act committed in furtherance of that agreement. *Adcock v. Brakegate, Ltd.*, 164 Ill.2d 54, 62–64, 206 Ill.Dec. 636, 645 N.E .2d 888 (1994). The

agreement is "a necessary and important" element of this cause of action. *Adcock*, 164 Ill.2d at 62, 206 Ill.Dec. 636, 645 N.E.2d 888. The civil conspiracy theory has the effect of extending liability for a tortious act beyond the active tortfeasor to individuals who have not acted but have only planned, assisted, or encouraged the act. *Adcock*, 164 Ill.2d at 62–63, 206 Ill.Dec. 636, 645 N.E.2d 888.

Civil conspiracy is an intentional tort and requires proof that a defendant "knowingly and voluntarily participates in a common scheme to commit an unlawful act or a lawful act in an unlawful manner." *Adcock*, 164 Ill.2d at 64, 206 Ill.Dec. 636, 645 N.E.2d 888. Accidental, inadvertent, or negligent participation in a common scheme does not amount to conspiracy. *Adcock*, 164 Ill.2d at 64, 206 Ill.Dec. 636, 645 N.E.2d 888. Mere knowledge of the fraudulent or illegal actions of another is also not enough to show a conspiracy. *Tribune Co. v. Thompson*, 342 Ill. 503, 530, 174 N.E. 561 (1930). Similarly, "[a] defendant who innocently performs an act which happens to fortuitously further the tortious purpose of another is not liable under the theory of civil conspiracy." *Adcock*, 164 Ill.2d at 64, 206 Ill.Dec. 636, 645 N.E.2d 888. However, "[a] defendant who understands the general objectives of the conspiratorial scheme, accepts them, and agrees, either explicitly or implicitly to do its part to further those objectives is liable as a conspirator." *Adcock*, 164 Ill.2d at 54, 206 Ill.Dec. 636, 645 N.E.2d 888.

A conspiracy is almost never susceptible to direct proof. *Walsh v. Fanslow*, 123 Ill.App.3d 417, 422, 78 Ill.Dec. 846, 462 N.E.2d 965 (1984). Usually, it must be established "from circumstantial evidence and inferences drawn from evidence, coupled with common-sense knowledge of the behavior of persons in similar circumstances." *Adcock*, 164 Ill.2d at 66, 206 Ill.Dec. 636, 645 N.E.2d 888. If a civil conspiracy is shown by circumstantial evidence, however, that evidence must be clear and convincing. *E.g., Majewski v. Gallina*, 17 Ill.2d 92, 99, 160 N.E.2d 783 (1959); *Tribune Co.*, 342 Ill. at 529, 174 N.E. 561; *Bosak v. McDonough*, 192 Ill.App.3d 799, 804, 139 Ill.Dec. 917, 549 N.E.2d 643 (1989).

In this case, defendants argue that the jury verdicts finding them liable for civil conspiracy must be overturned because the evidence showed no agreement between either of them and Unarco or Johns–Manville to conceal or misrepresent information concerning the health hazards of asbestos. They challenge the appellate court's ruling that evidence of similarities between defendants' conduct and the conduct of Unarco and Johns–Manville was sufficient to establish the required agreement for civil conspiracy. According to defendants, the evidence showed that they acted unilaterally, and mere parallel conduct is never enough to establish that there was an agreement for purposes of civil conspiracy.

In addition, defendants argue that the appellate court erred in concluding that there was any evidence other than parallel conduct that demonstrated an agreement between defendants and the alleged conspirators. Defendants assert that any contacts they may have had with each other failed to show their involvement in the alleged conspiracy with Unarco or

Johns–Manville. In addition, defendants argue, the few contacts Owens Corning had with others in the industry were for legitimate business reasons and not due to the alleged conspiracy. Based on the lack of evidence of an agreement, defendants contend that the jury verdicts cannot stand.

Our review of the sufficiency of the evidence in this case, therefore, involves a threshold legal question: whether parallel conduct alone can suffice as proof of agreement for civil conspiracy . Prior to the appellate court decision in this case, no Illinois court had addressed this question. *But see Smith v. Eli Lilly & Co .*, 173 Ill.App.3d 1, 28–30, 122 Ill.Dec. 835, 527 N.E.2d 333 (1988) (holding that parallel activity by drug manufacturers in producing and marketing DES does not establish civil conspiracy or concerted action), *rev'd on other grounds*, 137 Ill.2d 222, 148 Ill.Dec. 22, 560 N.E.2d 324 (1990). This case, therefore, presents us with an issue of first impression. After reviewing decisions on point from other jurisdictions, as well as related precedent in Illinois, we hold that parallel conduct may serve as circumstantial evidence of a civil conspiracy among manufacturers of the same or similar products but is insufficient proof, by itself, of the agreement element of this tort.

Our review of case law from other jurisdictions convinces us that the overwhelming weight of authority has refused to accept mere parallel action as proof of conspiracy.... The reason federal courts require evidence in addition to mere parallel conduct before imposing liability for conspiracy is to avoid inadvertent condemnation of nonconspiratorial conduct. *See Coleman*, 849 F.Supp. at 1466.

Similarly, in cases involving the tort of conspiracy, courts in other jurisdictions have held that proof of mere parallel conduct is insufficient. *See, e.g., In re Asbestos School Litigation*, 46 F.3d 1284, 1292 (3d Cir.1994); *Burnside v. Abbott Laboratories*, 351 Pa.Super. 264, 280, 505 A.2d 973, 982 (1985); *Collins v. Eli Lilly Co.*, 116 Wis.2d 166, 188, 342 N.W.2d 37, 47–48 (1984). For example, in *Collins v. Eli Lilly Co.*, the Wisconsin Supreme Court held that the plaintiff's proof of parallel conduct was insufficient to establish the defendants' liability under a civil conspiracy theory. The plaintiff had sued the defendants, who were manufacturers of the drug diethylstilbestrol (DES), for injuries she allegedly suffered as a result of her mother's ingestion of this drug while pregnant. According to the plaintiff, the defendant drug companies engaged in a conspiracy to obtain FDA approval in 1941 and 1947, to market DES as a treatment for pregnancy problems, and to misrepresent that it was safe to use the drug for this purpose. *Collins*, 116 Wis.2d at 187, 342 N.W.2d at 47.

The *Collins* court rejected the plaintiff's conspiracy claim. According to the court:

"[T]he drug companies apparently engaged in parallel behavior in both 1941 and 1947, but parallel behavior alone cannot prove agreement. There is no indication in the record that the defendants either explicitly or tacitly collaborated to gain FDA approval so that they could in turn collaborate to misrepresent the safety and efficacy of DES for use in preventing miscar-

riages." Collins, 116 Wis.2d at 188, 342 N.W.2d at 47–48.

The *Collins* court, therefore, held that the summary judgment entered in favor of the defendants was appropriate.

Proof of parallel conduct was held insufficient in another DES case involving a civil conspiracy claim. In *Burnside v. Abbott Laboratories*, the Pennsylvania Supreme Court held that the plaintiffs' proof of parallel conduct was insufficient to hold the defendant drug manufacturers liable for civil conspiracy. The plaintiffs alleged that each of the defendants marketed DES in a generic form as a miscarriage preventative; that they knew or should have known that it was potentially carcinogenic; that they failed to test the drug for carcinogenic or teratogenic effects; and that they marketed it without warnings. *Burnside*, 351 Pa.Super. at 280, 505 A.2d at 981–82.

The *Burnside* court held that these allegations of parallel conduct were insufficient to withstand the defendants' motion for summary judgment. The court explained:

"[P]laintiffs in the instant case have failed to allege the manner in which a conspiratorial scheme was devised and carried out. The complaint contains no averments of meetings, conferences, telephone calls, joint filings, cooperation, consolidation, or joint licensing. The plaintiffs have alleged no more than a contemporaneous and negligent failure to act. This was insufficient to state either a conspiratorial agreement or the requisite intent to cause injury." *Burnside*, 351 Pa.Super. at 280, 505 A.2d at 982.

For these reasons, the court found that the trial court had properly granted summary judgment in favor of the defendants on this claim.

Similarly, in *In re Asbestos School Litigation*, the United States Court of Appeals for the Third Circuit held that a former manufacturer of asbestos-containing products could not be held liable under a civil conspiracy theory based on conscious parallel activity with other asbestos manufacturers. The evidence of parallel conduct presented in that case was as follows: (1) the defendant began to sell Kilnoise, an asbestos-containing product, in 1964 without warnings; (2) in 1965, the defendant learned of the connection Dr. Selikoff had made between asbestos and cancer; (3) thereafter the defendant continued to sell Kilnoise; (4) the defendant and other asbestos-containing product manufacturers sold their products without warnings despite knowledge of the dangers of these products; and (5) the defendant and other asbestos-containing product manufacturers were aware that each was selling these products without warnings. In re Asbestos School Litigation, 46 F.3d at 1291. Although the court found that these actions indicated that the defendant and the other manufacturers engaged in parallel courses of conduct, it held that "conscious parallelism is not sufficient to establish a civil conspiracy." *In re Asbestos School Litigation*, 46 F.3d at 1292.

...

Like these other courts, we find that requiring more than proof of mere parallel conduct in civil conspiracy cases involving

manufacturers of the same or similar products is necessary to make certain that there is a reasonable basis for inferring an agreement and to minimize the risk that liability will be imposed based on non-conspiratorial conduct. Our conclusion that parallel conduct alone is insufficient to establish civil conspiracy in such cases finds support in the clear and convincing standard of proof that applies to the elements of that tort when the evidence is circumstantial, as it is in the case before us. *See, e.g., Bosak*, 192 Ill.App.3d at 804, 139 Ill.Dec. 917, 549 N.E.2d 643 (noting the standard of proof for civil conspiracy). Under this clear and convincing standard, "if the facts and circumstances relied upon are as consistent with innocence as with guilt it is the duty of the court to find that the conspiracy has not been proved." *Tribune Co.*, 342 Ill. at 529, 174 N.E. 561; *see also Regan v. Garfield Ridge Trust & Savings Bank*, 220 Ill.App.3d 1078, 1091–92, 163 Ill.Dec. 605, 581 N.E.2d 759 (1991); *ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc.*, 90 Ill.App.3d 817, 830, 46 Ill.Dec. 186, 413 N.E.2d 1299 (1980). As defendants and the amici argue, there are many potential innocent explanations for parallel conduct by competitors. These include encountering the same business problems, the same consumer demands, and the same competitive pressures. As defendants observe, "[b]asic economic principles dictate that competitive companies will often act in a highly similar manner." *See also, e.g., Sindell v. Abbott Laboratories*, 26 Cal.3d 588, 606, 607 P.2d 924, 933, 163 Cal.Rptr. 132, 141 (1980) (it is a common practice in the industry for manufacturers to use the experience and methods of others making the same or similar products). Parallel conduct alone by manufacturers of the same or similar products is, therefore, as consistent with innocence as with guilt and cannot be considered, in itself, clear and convincing evidence of a conspiracy.

Not only does our rejection of mere parallel conduct as proof of civil conspiracy comport with the clear and convincing standard of proof Illinois courts have applied to this tort, it is consistent with this court's previous descriptions of the scope of a manufacturer's liability.

...

Requiring proof of more than parallel action to establish civil conspiracy liability is necessary to protect manufacturers from becoming insurers of their industry. This case illustrates the potential for industry-wide liability under the civil conspiracy theory. Plaintiffs were allegedly injured as a result of the actions and products of defendants' competitors. Defendants have been found liable for the injuries plaintiffs allege in their complaints even though it is undisputed that neither plaintiffs nor their husbands were employed by defendants, worked at the Unarco plant after Owens Corning purchased it, or used defendants' products. To permit conspiracy liability based on proof of parallel action alone, when competitors engage in similar conduct for many nonconspiratorial reasons, would expand the civil conspiracy theory "beyond a rational or fair limit" [citation omitted]. Requiring evidence in addition to parallel conduct ensures that a manufacturer's responsibility for the actions of a competitor is based on more than speculation and conjecture. Accordingly, we hold

that, while mere parallel conduct may serve as circumstantial evidence of an agreement under the civil conspiracy theory, it cannot, in itself, be considered clear and convincing evidence of such an agreement among manufacturers of the same or similar products.

Having decided that parallel action alone will not support liability under the civil conspiracy theory in cases such as the one before us, our review of the evidence becomes a two-step process. First, we must examine whether there is evidence to support a finding by the jury that defendants and the alleged conspirators engaged in parallel conduct. Next, we must determine whether any evidence, other than evidence of parallel conduct, was presented at trial and whether this evidence, considered with any evidence of parallel conduct, was sufficient to establish the existence of an agreement between defendants and Unarco or Johns–Manville to suppress or misrepresent information regarding the health hazards of asbestos.

Plaintiffs presented no direct evidence of an agreement. Instead, they relied entirely on circumstantial evidence to prove the alleged agreement. The majority of this evidence related to plaintiffs' theory that parallel conduct by these companies demonstrated such an agreement. The evidence showed that, in the 1930s, 1940s, and 1950s, there were numerous reports in the medical and scientific literature linking asbestos exposure to asbestosis and cancer. Despite this information, defendants, Unarco, and Johns–Manville produced and sold asbestos-containing products during this time period. Before 1964, none of these companies placed warnings on their asbestos-containing products. Johns–Manville was the first to place a warning label on its products in 1964. In 1966, Owens Corning also added warning labels to its asbestos-containing products. These warnings did not, however, identify the specific diseases caused by asbestos exposure.

There was evidence that Unarco and Johns–Manville prevented information about the health hazards of asbestos from being published. At their request, Asbestos magazine refrained from publishing articles on this topic. In addition, these companies required Saranac Laboratory to omit references to cancer and tumors from the 1951 article it published concerning the results of asbestos research sponsored by Unarco, Johns–Manville, and other asbestos product manufacturers.

While Owens–Illinois did not interfere with Saranac's publication of the results of the asbestos research Owens–Illinois sponsored, there was evidence that, like Unarco and Johns–Manville, Owens–Illinois caused inaccurate information about the health hazards of its asbestos-containing product to be published. Despite knowledge that Kaylo dust caused asbestosis, in 1952 Owens–Illinois published a brochure stating that Kaylo was "non-toxic."

Other evidence indicated that, like Unarco and Johns–Manville, Owens Corning failed to share information about the health hazards of asbestos with the public. In the 1950s, Owens Corning also published a brochure representing Kaylo as "non-toxic." Internal company memoranda showed that (1) Owens Corning chose to

use information on the health hazards of asbestos as a "weapon-in-reserve" during union negotiations rather than freely disclose this information; (2) the company had a policy that required complaints about health hazards of its products to be referred to certain corporate officers or its legal department; (3) the company was concerned that the government would "blow the whistle" on asbestos; (4) despite knowledge of the health hazards of asbestos, the company maintained a position that the medical research indicated no such hazards; and (5) the company tried to limit the influence of Dr. Selikoff, who had publicized and attempted to protect workers from the hazards of asbestos exposure.

There was also evidence that defendants, Unarco, and Johns–Manville failed to warn their employees of, and adequately protect them from, the health hazards of asbestos. Former Unarco employees who worked in the Bloomington plant testified that Unarco failed to warn them of these hazards, did not have a respirator program, had almost no dust-collection equipment, permitted plant conditions that were "unbelievably bad," employed no industrial hygienist, and had no annual X-ray program for employees. Likewise, a former Johns–Manville employee testified that this company also did not tell employees of the adverse health effects of asbestos exposure and, although periodic X rays were required, Johns–Manville did not tell employees of disease that appeared on the X rays unless the disease became disabling.

Owens Corning employees testified that, like Unarco and Johns–Manville, Owens Corning failed to warn its employees of the health hazards of asbestos. Some employees testified that Owens Corning did not warn them of these hazards until the 1970s. Another employee, Jerry Helser, testified that he was never warned of the hazards.

There was conflicting testimony with respect to Owens–Illinois' efforts to warn its employees of the dangers of asbestos. Helser testified that former Owens–Illinois employees with whom he had contact did not communicate any such warnings to him. By contrast, Richard Grimmie testified that Owens–Illinois did warn its employees that asbestos exposure could cause asbestosis.

While there was evidence that the conditions and dust-control measures in Owens Corning's and Owens–Illinois' plants were better than those in Unarco's Bloomington plant, there was also evidence that, like Unarco, these companies did not adequately control the dust in their plants. Some dust samples taken in these plants exceeded the threshold limit value for asbestos. After purchasing the Bloomington plant, Owens Corning did not install dust collection equipment immediately and did not require employees to wear respirators. In addition, by 1972, many employees from the Berlin plant had been diagnosed with asbestosis.

Defendants dispute that the evidence showed that their conduct paralleled that of Unarco or Johns–Manville. For example, they assert, there was evidence that the warnings they gave their employees, the conditions in their plants, and their industrial hygiene programs were better than those of Unarco and Johns–Manville. In reviewing a motion for judgment notwith-

standing the verdict, however, a court may not resolve conflicts in the evidence, and the evidence must be considered in the light most favorable to the nonmoving party. *See Maple*, 151 Ill.2d at 452–53, 177 Ill.Dec. 438, 603 N.E.2d 508. Accordingly, we find that the jury could have found parallel action based on the evidence that, like Unarco or Johns–Manville, defendants (1) knew that asbestos could cause disease at the time they sold asbestos-containing products; (2) sold these products without warning of these diseases; (3) failed to warn employees and consumers of these diseases; and (4) failed to adequately protect their employees from exposure to asbestos dust.

As stated previously, however, evidence of parallel conduct alone is insufficient to establish a civil conspiracy by clear and convincing evidence. Thus, we move to the second step of our review of the evidence. Under this step, we determine whether there was any evidence of agreement other than parallel conduct and whether this additional evidence, when considered along with the evidence of parallel conduct, permitted the jury to conclude that there was clear and convincing evidence of an agreement.

In addition to parallel conduct, plaintiffs rely on the following evidence as proof of an agreement between defendants and Unarco or Johns–Manville to suppress or misrepresent information concerning the health hazards of asbestos: (1) evidence of the relationship between Owens Corning and Owens–Illinois; (2) the fact that Owens Corning received information from Johns–Manville about its plan to place warning labels on its products; (3) Owens Corning's participation in the drafting of the NIMA pamphlet; (4) the indemnity clause contained in Owens Corning's agreement to purchase the Bloomington plant from Unarco; (5) the fact that Owens Corning contacted other asbestos product manufacturers about their responses to the Califano announcement; (6) the 1979 meeting among asbestos-containing product manufacturers; (7) the 1983 meeting among asbestos-containing product manufacturers; and (8) Castleman's opinion that defendants were involved in the alleged conspiracy with Unarco and Johns–Manville.

Even reviewing this evidence in the light most favorable to plaintiffs, we find that it does not permit a reasonable inference of the alleged agreement between defendants and Unarco or Johns–Manville. At most, these facts are as consistent with innocent as with guilty conduct. Thus, they do not support a finding by the jury that there was clear and convincing evidence of an agreement. *See Tribune Co.*, 342 Ill. at 529, 174 N.E. 561; *Regan*, 220 Ill.App.3d at 1091–92, 163 Ill.Dec. 605, 581 N.E.2d 759. Much of plaintiffs" additional evidence of the alleged agreement between defendants and Unarco or Johns–Manville demonstrated only a sharing of information among these companies. Plaintiff showed that Owens–Illinois lent Owens Corning two published articles about the health effects of asbestos, that Owens Corning received information from Johns–Manville about its labeling decision, that Owens Corning sought information from other asbestos product manufacturers about their responses to the Califano announcement, and that asbestos

product manufacturers held meetings in 1979 and 1983 to discuss litigation strategy, bankruptcy, insurance, and the impact of the Califano announcement. The mere exchange of information by manufacturers of the same or similar products is a common practice, however, and does not support an inference of an agreement. *See Payton,* 512 F.Supp. at 1038 (membership in industrywide trade organizations and participation in scientific conferences are common in most industries and do not support an inference of agreement); *Sindell,* 26 Cal.3d at 606, 607 P.2d at 933, 163 Cal.Rptr. at 141 (it is a common practice in industry for manufacturers of the same or similar products to use the experience and methods of others).

Indeed, an inference of agreement based on these exchanges of information is undermined by the circumstances surrounding this conduct. For example, plaintiffs assert that the existence of the alleged agreement is the reason Johns–Manville would have shared information about its labeling decision with Owens Corning. The evidence that Johns–Manville was among the first to place a warning label on its product, however, suggests an innocent explanation for its communication of this decision to its competitors. If Johns–Manville were alone in placing warning labels on its products, consumers might perceive that its products were more dangerous than its competitors' and choose to buy a competitor's product. If it persuaded its competitors, such as Owens Corning, to also place warning labels on their products, Johns–Manville could avoid this problem. Given this nonconspiratorial explanation for Johns–Manville's communication of its labeling decision, this fact fails to support a finding of conspiracy.

In addition, evidence that asbestos product manufacturers acted differently with respect to the shared information also prohibits an inference of agreement. Despite the fact that Owens Corning learned that Johns–Manville was placing warning labels on its products in 1964, Owens Corning did not add warning labels to its products until 1966, and internal memoranda indicated that the company decided to add these labels only after considering whether to do so would be in its own best interest. Likewise, the evidence that Owens Corning contacted other asbestos product manufacturers about their responses to the Califano announcement also showed that Owens Corning acted independently. The actions it decided to take differed from those of Johns–Manville and the other companies it consulted.

The circumstances of the 1979 and 1983 meetings also prohibit a reasonable inference of the alleged agreement. As a preliminary matter, we note that Owens–Illinois did not attend the 1979 meeting. In addition, both meetings occurred after the Califano announcement, which publicized the health hazards of asbestos, and after Owens Corning itself had warned a large number of its employees and former employees about these hazards. Given that these disclosures had already occurred at the time of the meetings, it is highly unlikely that the purpose of the meetings was to suppress information about the health hazards of asbestos. Suppression of such information at that point would have been futile, as well as contrary to Owens Com-

ing's efforts to inform employees about the health risks of asbestos. Evidence that Owens Corning and Owens–Illinois met with other asbestos product manufacturers in 1979 and 1983 cannot, therefore, support a reasonable inference of the alleged agreement.

Evidence of Owens Corning's participation in the drafting of the NIMA pamphlet and the indemnity clause in its agreement to purchase the Unarco plant also does not support an inference of agreement. According to plaintiffs, the fact that an Owens Corning and a Johns–Manville employee were involved in drafting the NIMA pamphlet shows an agreement by these companies to conceal the health hazards of asbestos because, even though the pamphlet did state that asbestos was potentially injurious and had been associated with certain health hazards, it did not specifically identify the diseases associated with asbestos. The evidence does not support this inference. In other cases involving allegations of a civil conspiracy among manufacturers, courts have been unwilling to infer an agreement based on membership in industry trade organizations. *See, e.g., In re Asbestos School Litigation*, 46 F.3d at 1287–90; *Payton*, 512 F.Supp. at 1038. In this case, inference of an agreement is improper because, even though Owens Corning and Johns–Manville employees may have participated in drafting the pamphlet, there is no evidence indicating to what extent these companies controlled the content of the pamphlet. To conclude that the content of the pamphlet demonstrates an agreement between these companies, therefore, is unreasonable.

Likewise, no rational inference of agreement can be made based on the indemnity clause contained in Owens Corning's agreement with Unarco to purchase the Bloomington plant. Plaintiff asserts that the fact that this indemnity clause discussed asbestos claims by employees is proof of an agreement by Owens Corning and Unarco to suppress or misrepresent information about the harmful effects of asbestos. To the contrary, the language of the clause itself demonstrates a legitimate reason for the discussion of asbestos claims: litigation concerning asbestos exposure of the Bloomington plant employees had already begun at the time of Owens Corning's purchase of the plant. The clause does nothing more than identify each parties' responsibilities with respect to that litigation, such as their obligations to pay judgments and to share relevant documents. There is no evidence that Owens Corning's purchase of the Bloomington plant was anything other than an arm's-length transaction between competitors (*see Payton*, 512 F.Supp. at 1038 (such transactions do not permit an inference of conspiracy)).

As proof of the alleged agreement, plaintiffs also presented evidence pertaining to the relationship between Owens Corning and Owens–Illinois. This evidence is only tangentially related to the essential question in this case, which is whether plaintiffs proved the existence of an agreement between defendants and Unarco or Johns–Manville. Proof of a relationship between defendants themselves does not establish the required agreement with Unarco or Johns–Manville.

Castleman's opinion that defendants were involved in the alleged conspiracy with

Unarco and Johns–Manville to suppress information regarding the health hazards of asbestos also did not permit the jury to conclude that an agreement existed. Castleman testified that he "assumed" that there was an agreement among these companies because none of them disclosed the health risks of asbestos. An expert's opinion is only as valid as the bases and reasons for that opinion. *State Bank v. City of Chicago*, 287 Ill.App.3d 904, 918, 223 Ill.Dec. 250, 679 N.E.2d 435 (1997). Castleman's "assumption," therefore, cannot be considered proof of conspiracy, especially when this assumption is based on mere parallel conduct, which we have explained is insufficient to establish a conspiracy. Even assuming the jury found Castleman credible and accepted his opinion, his testimony that defendants participated in the alleged conspiracy does not support the jury's verdict. *See, e.g., Kleiss v. Cassida*, 297 Ill.App.3d 165, 174, 231 Ill.Dec. 700, 696 N.E.2d 1271 (1998) (affirming judgment notwithstanding the verdict after concluding that the plaintiff's expert's opinions were conclusory and unsupported); *Aguilera v. Mount Sinai Hospital Medical Center*, 293 Ill.App.3d 967, 975–76, 229 Ill.Dec. 65, 691 N.E.2d 1 (1997) (same).

Although the scope of our review of jury verdicts is limited, we find that the evidence in this case so overwhelmingly favors defendants that judgment notwithstanding the verdict should have been granted. Plaintiffs' evidence of parallel conduct is insufficient to establish the agreement required by the civil conspiracy theory. When plaintiffs' evidence of contacts between defendants and Unarco or Johns–Manville is added to this parallel conduct, the evidence still cannot support the jury's determination that plaintiffs proved agreement by clear and convincing evidence. The contacts between defendants, Unarco, and Johns–Manville were isolated, particularly with respect to Owens–Illinois, and an inference of agreement based on these contacts is not reasonable. Even when considered in the light most favorable to plaintiffs, evidence of these contacts was as consistent with innocence as with guilt. *See Tribune Co.*, 342 Ill. at 529, 174 N.E. 561; *Bosak*, 192 Ill.App.3d at 804, 139 Ill.Dec. 917, 549 N.E.2d 643. Plaintiffs showed separate acts by the alleged conspirators, but the evidence failed to show that these acts were connected by an agreement. *See Bergeson v. Mullinix*, 399 Ill. 470, 475, 78 N.E.2d 297 (1948) (finding that evidence of the separate acts of the alleged conspirators was insufficient to establish a conspiracy when the evidence showed no "connection or confederation" between them). To conclude, based on the evidence of record, that defendants engaged in a conspiracy requires speculation. Liability based on such speculation is contrary to tort principles in Illinois (*see Smith*, 137 Ill.2d at 254, 259, 148 Ill.Dec. 22, 560 N.E.2d 324) and to the clear and convincing standard of proof applicable in civil conspiracy cases. Given the lack of evidence supporting this agreement element of plaintiffs' conspiracy claims, the jury verdicts cannot stand, and judgment must be granted in favor of defendants.

In defense of the jury verdicts in this case, plaintiffs rely on our recent decision in *Adcock v. Brakegate, Ltd.*, 164 Ill.2d 54, 206 Ill.Dec. 636, 645 N.E.2d 888 (1994).

> While the facts involved in that case are similar to those before us, our holding in *Adcock* does not support a conclusion that the evidence of conspiracy is sufficient in this case. In *Adcock*, the executor of the estate of a deceased Unarco Bloomington plant employee filed suit against Owens Corning and other asbestos-containing product manufacturers. The plaintiff alleged that the decedent worked in the Bloomington plant from 1954 until the end of 1970. According to the plaintiff, the decedent was exposed to asbestos in the plant, as a result of which he developed asbestosis and mesothelioma, which resulted in his death. As in the cases before us, the *Adcock* plaintiff alleged that Owens Corning was liable for the decedent's injuries based on a civil conspiracy theory. The plaintiff claimed that Owens Corning conspired with other asbestos manufacturers to suppress information about the hazards of asbestos and to falsely assert that it was safe to work with tos. *Adcock*, 164 Ill.2d at 57, 206 Ill.Dec. 636, 645 N.E.2d 888.
>
> After the circuit court denied Owens Corning's motion to dismiss the complaint for failure to state a cause of action, Owens Corning answered the complaint. As a sanction for Owens Corning's failure to produce certain witnesses, the circuit court entered judgment against Owens Corning as to liability. There was a trial on damages only. *Adcock*, 164 Ill.2d at 58–60, 206 Ill.Dec. 636, 645 N.E .2d 888.
>
> On appeal before this court, Owens Corning argued only that the circuit court erred in denying its motion to dismiss. Owens Corning contended that civil conspiracy is not actionable without underlying, intentional conduct. *Adcock*, 164 Ill.2d at 60, 206 Ill.Dec. 636, 645 N.E.2d 888. In rejecting this argument, we explained that Owens Corning's answer to the complaint waived any objection to the sufficiency of the allegations, provided that the complaint stated a recognized cause of action. After finding that civil conspiracy, based on either intentional or negligent tortious conduct, is a recognized cause of action, we held that Owens Corning was precluded from challenging the factual sufficiency of the complaint. We refused to express any opinion on the factual sufficiency of the complaint. *Adcock*, 164 Ill.2d at 65–66, 206 Ill.Dec. 636, 645 N.E.2d 888.
>
> Our holding in Adcock, therefore, does not support plaintiffs' position that the evidence was sufficient in this case. Although the facts involved in Adcock were similar to those at issue in this case, Adcock was decided on the pleadings. There was no trial with respect to Owens Corning's liability, and this court did not address the sufficiency of the evidence supporting the plaintiff's conspiracy allegations in that case. By contrast, the sufficiency of the evidence is the determinative issue in this case.
>
> 188 Ill.2d at 133–143 (emphasis added).

(iii) *Rodarmel*

Rodarmel v. Pneumo Abex, L.L.C., 2011 Ill.App. 100463 (Ill.App. 4th Dist. Sept. 15, 2011), involved a claim for "take-home exposure" brought by the former wife of an asbestos worker. In that case, the appellate court reversed a trial court's denial of a

manufacturer-defendant's motion for judgment notwithstanding the verdict (JNOV) regarding a civil conspiracy claim pertaining to alleged conduct of, *inter alia*, Bendix and Abex. The court in *Rodarmel* discussed *McClure* approvingly.

The *Rodarmel* court held that an agreement by a defendant manufacturer (Abex) not to publish a certain research finding (the "Gardner study" finding that 8 or 9 of 11 mice exposed to asbestos developed tumors) was insufficient to show by "clear and convincing" evidence a conspiracy on the part of that defendant. Specifically, the court held it was insufficient to support an inference of an "agreement" between Abex and the other alleged conspirators (Johns–Manville and Unarco) although all three entities had sponsored the study and had agreed not to publish the findings.

The court noted that Abex's purported reason for not publishing the findings was that the findings were not statistically significant. It wrote:

One can readily infer that the financing corporations, including Abex, had self-serving reasons for omitting any mention of the tumorous mice from the published report and for keeping the tumor findings confidential. As plaintiffs note, Johns–Manville's attorney remarked to another Johns–Manville executive: "This finding looks like dynamite." Castleman might be correct about the dynamic effect: if a scientific journal had published an article stating that Gardner had proved, by animal experimentation, that asbestos caused lung cancer, it might have gone a long way toward sealing the acceptance of the causal connection between asbestos and cancer. But that proposition does not address the question of whether such an article would have deserved to be published in a scientific journal.

In other words, in suppressing the cancer references, the sponsors could have done the right thing for the wrong reason. Even if the tumors in the mice scientifically proved nothing, publicizing them could have been prejudicial to Johns–Manville's business, or Johns–Manville could have had that fear. So, yes, it is an eminently reasonable inference that Johns–Manville, Abex, and other companies were concerned more about their own skin than about scientific integrity. The question, though, is not whether Abex's motives were pure. Instead, the question is whether Abex agreed "to commit an unlawful act or a lawful act in an unlawful manner." *Adcock*, 164 Ill.2d at 64, 206 Ill.Dec. 636, 645 N.E .2d 888. As far as we can see, it was not against the law, and it was not tortious, for the financing corporations to conceal the occurrence of tumors in a small group of mice if (1) the tumors were not scientific evidence of a relationship between asbestos and cancer and (2) it was unclear that any of the tumors were in fact cancerous. Granted, from the vantage of hindsight, we now know it is a scientific fact that asbestos causes cancer in humans. But it does not necessarily follow that asbestos caused the tumors (benign or malignant) in the eight or nine mice at Saranac Laboratory, some of which were genetically prone to develop tumors under any conditions. Unless Abex had notice that the tumorous mice were scientific evidence that asbestos caused cancer, Abex did not enter into a conspiratorial

> agreement by agreeing to conceal information about the tumorous mice—because concealing the information was not an unlawful or tortious act. It cannot be unlawful to hide information that is devoid of significance; information that, as Murphy put it, was "not of any tremendous value." *See In re Angotti*, 812 S.W.2d 742, 749 (Mo.Ct.App.1991) ("The desire to keep [a medical advisor's] observations and evaluation confidential does not show actual knowledge of a health hazard to an individual working as an insulator.").
>
> Nevertheless, plaintiffs dispute that the eight or nine tumorous mice were devoid of scientific significance.
>
> ...
>
> In short, absent a qualified expert opinion that the tumorous mice were scientific evidence of a relationship between asbestos and cancer-and, indeed, all the qualified experts appear to have opined to the contrary-Abex's agreement to conceal information about the tumorous mice was not an agreement to perform an unlawful act and hence was not a conspiratorial agreement. It cannot be unlawful to suppress information that apparently is devoid of significance.
>
> The agreement to suppress the tumorous mice really does not match up with the conspiracy allegations in the complaint. According to the complaint, defendants entered into a conspiracy with UNARCO and other companies to withhold information about the harmful effects of asbestos. The record appears to contain no expert opinion, however, that Gardner's finding of tumors in the eight or nine mice really qualified as information about the harmful effects of asbestos.
>
> Besides, in agreeing to suppress the eight or nine tumorous mice, the financing corporations did not agree, generally and perpetually, to withhold any and all information about the carcinogenic effects of asbestos. Rather, as part of the collective rationale for deleting the references to cancer and tumors, Brown cited Gardner's belief that "this aspect should be made the subject of a separate study, which would take from two to three years." The record appears to contain no evidence that Abex agreed to the suppression of the results of this proposed future study.

2011 Ill.App. 100463 (emphasis added). The court rejected the holding and rationale of its earlier decision, *Dukes v. Pneumo Abex Corp.*, 386 Ill.App.3d 425 (Ill.App. 4th Dist.2008).

(iv) *Menssen*

Menssen v. Pneumo Abex Corp., 2012 Ill.App. 100904 (Ill.App. 4th Dist. Aug. 31, 2012), involved asbestos claims brought against defendants Pneumo Abex Corporation and Honeywell International, Inc. In that case, much like *Rodarmel*, the appellate court reversed a trial court's denial of the manufacturer-defendants' JNOV motions regarding a civil conspiracy claim pertaining to alleged conduct of, *inter alia*, Bendix and Abex. The court in *Menssen* discussed *Rodarmel* approvingly, including its explicit rejection of the holding and rationale of *Dukes*. Specifically, the court found the evidence presented was insufficient to prove that the defendant (Abex)

entered into a conspiratorial agreement with other defendants to suppress or misrepresent the dangers of asbestos.

III. Defendant Owens–Illinois's Motion for Summary Judgment

A. Defendant's Arguments

Defendant Owens–Illinois argues that it is entitled to summary judgment because Illinois case law makes clear that the evidence Plaintiff has presented is not sufficient to support a finding of conspiracy on its part (or the part of any defendant now before the Court). Defendant cites to *McClure* and *Rodarmel* and contends generally that the evidence relied upon by Plaintiff in this case is insufficient to support an inference of "agreement" as required for a finding of conspiracy. Defendant contends that Plaintiff's evidence in this case involves only (a) the same evidence already rejected by the Illinois Supreme Court in *McClure*, and (b) some additional evidence that is the same in nature as that considered and deemed insufficient in *McClure*, and therefore warranting the same result (i.e., summary judgment in favor of Defendants).

Defendant Owens–Illinois cites to *McClure* and *Rodarmel* in contending that, under Illinois law, (1) the "clear and convincing" standard applies, (2) the "innocent construction" rule applies, (3) mere "parallel conduct" is insufficient to show conspiracy, (4) the mere exchange of information does not support an inference of "agreement" as required to support a claim of conspiracy, (5) Owens–Illinois's ordinary business contacts are not evidence of conspiracy, (6) common directors between Owens–Illinois and other companies is not sufficient evidence of conspiracy, and (7) evidence of differing conduct (across companies) with respect to provision of warnings prohibits an inference of "agreement" between them. In short, Defendant Owens–Illinois argues any finding of conspiracy would be impermissibly speculative.

Defendant Owens–Illinois also contends that (8) Plaintiff has failed to present the requisite evidence that an "act in furtherance" of the alleged conspiracy caused harm to Decedent, and (9) Owens–Illinois cannot be liable in the conspiracy because it owed no duty to Decedent (given that there is no evidence that Decedent worked with or around an Owens–Illinois product).

According to Owens–Illinois, Plaintiff is required to produce evidence that Decedent was exposed to the asbestos-containing product of one of the alleged conspirators, and must provide evidence sufficient to satisfy the Illinois standard for product identification/causation/exposure (i.e., "frequency, regularity, and proximity"). Defendant contends that merely identifying an alleged conspirator's asbestos-containing product aboard the same ship on which Decedent worked is insufficient.

In connection with its reply brief, Defendant Owens–Illinois objects that the affidavit of Mr. Sheppard submitted by Plaintiff was (1) untimely and (2) from an improperly disclosed witness.

B. Plaintiff's Arguments

Plaintiff contends that (1) *Rodarmel* is not the only Illinois precedent on point and the Court should consider other Illinois decisions, (2) *Rodarmel* "contains numerous errors, both in its recitation and analysis of the evidence," (3) the evidentiary record in this case is different from the records previously evaluated by the courts in *McClure* and *Rodarmel*, and (4) the "clear and convincing" standard and the "innocent construction" rule need not be addressed at the summary judgment stage because, under Illinois law, the opponent of a summary judgment motion need not respond with evidence (i.e., has no burden at the summary judgment stage).

Plaintiff cites numerous cases, relying primarily on: (i) *Adcock*, (ii) *Dukes v. Pneumo Abex Corp.*, 386 Ill.App.3d 425 (Ill.App. 4th Dist.2008), *overruled* by *Rodarmel*, (iii) *Burgess v. Abex Corp.*, 305 Ill.App.3d 859 (Ill.App. 4th Dist. June 17, 1999), *judgment vacated by* 186 Ill.2d 566 (Ill.Dec. 1, 1999) (" BURGESS I"), and (iv) *Burgess v. Abex Corp.*, 311 Ill.App.3d 900 (Ill.App. 4th Dist. Mar. 1, 2000) ("BURGESS II").

Plaintiff has identified the following additional evidence (i.e., new/additional evidence beyond that considered by the *McClure* and *Rodarmel* courts), which she contends is sufficient to survive summary judgment with respect to the conspiracy claim against Defendant Owens–Illinois:

• *Post–McClure Documents re: Owens–Illinois* Plaintiff contends she has documents the *McClure* court never saw. She contends these include evidence that Owens–Illinois increased the amount of Kaylo it produced each year despite the fact that it had received information regarding asbestos hazards.

(Pl. Exs. 1, 2, 3, 4, 6 at Doc. No. 59.)

• *Evidence of the Relationship between Owens–Illinois and Owens Corning* Plaintiff cites evidence about the corporate history between Owens–Illinois and Owens Corning.

(Pl. Exs. 7–19 at Doc. No. 59.)

• *Evidence of Contacts with Co–Conspirators* Plaintiff cites evidence of alleged contact between Owens–Illinois and the other non-defendant alleged co-conspirators.

(Pl. Exs. 25–33 at Doc. No. 59.)

• *Evidence re: Warnings* Plaintiff cites evidence regarding warnings provided (or not provided) by Owens–Illinois and the other alleged co-conspirators.

(Pl. Exs. 34 and 43 at Doc. No. 59.)

C. Analysis

First, Plaintiff contends that the Court should reject the reasoning of *Rodarmel* because it is flawed. However, the role of the MDL court is not to reject or alter controlling state law. Rather, the MDL court is to apply controlling state law as it exists. Therefore, this argument fails and the Court will apply the law as set forth in the recent decision of the Illinois Court of

Appeals (4th District) *Rodarmel* (and its even more recent decision in *Menssen*).

Second, Plaintiff asks this Court to apply *Dukes* and *Burgess I and II*. However, the *Dukes* court has more recently issued the decision in *Rodarmel*, such that this Court deems *Rodarmel* (and *Menssen*) to set forth current Illinois law. The judgment in *Burgess I* was vacated in 1999, and the holding and analysis of *Burgess II* was explicitly identified by *Rodarmel* as "incorrect." As such, the Court deems *Rodarmel* (and *Menssen*) to be controlling Illinois law.

Next, Plaintiff contends that the evidence she presents herein contains not only the same evidence presented in *McClure* and *Rodarmel*, but also new/additional evidence that supports an inference of conspiracy on the part of Defendant. The Court has considered the additional evidence pertinent to Owens–Illinois and concludes that it is not different in nature from the evidence rejected as insufficient in *McClure*, *Rodarmel*, and *Menssen*. Rather, the evidence is, at best, evidence of parallel conduct by Owens–Illinois's predecessor. Accordingly, summary judgment in favor of Defendant is warranted. *See Anderson*, 477 U.S. at 248–50; *McClure*, 188 Ill.2d 102; *Rodarmel*, 2011 Ill.App. 100463; *Menssen*, 2012 Ill.App. 100904.

Finally, Plaintiff argues that, under Illinois law, an opponent of a motion for summary judgment need not produce any evidence in order to oppose the motion. However, matters of procedure in this case are governed by the Federal Rules of Civil Procedure (not Illinois rules). *See Oil Field Cases*, 673 F.Supp. at 362–63. Therefore, this argument fails. Under the Federal Rules of Civil Procedure, Defendant is entitled to summary judgment because Plaintiff has failed to identify any evidence demonstrating that there is a genuine dispute of material fact for trial. *See Anderson*, 477 U.S. at 250. Accordingly, summary judgment in favor of Defendant Owens–Illinois is warranted.

Finally, Plaintiff argues that, under Illinois law, an opponent of a motion for summary judgment need not produce any evidence in order to oppose the motion. However, matters of procedure in this case are governed by the Federal Rules of Civil Procedure (not Illinois rules). *See Oil Field Cases*, 673 F.Supp. at 362–63. Therefore, this argument fails. Under the Federal Rules of Civil Procedure, Defendant is entitled to summary judgment because Plaintiff has failed to identify any evidence demonstrating that there is a genuine dispute of material fact for trial. *See Anderson*, 477 U.S. at 250. Accordingly, summary judgment in favor of Defendant Owens–Illinois is warranted.

AND IT IS SO ORDERED.

E.D.Pa.,2013.
Ellis v. Pneumo Abex Corp.
Not Reported in F.Supp.2d, 2013 WL 1099016 (E.D.Pa.)

END OF DOCUMENT

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

CHARLES MCKINNEY, Plaintiff, v. HONEYWELL INT'L, INC., *et al.*, Defendants.	)	12 L 27

ORDER

This cause coming to be heard on Owens-Illinois, Inc.'s Motion for Summary Judgment, the Court having reviewed the submissions and being fully advised in the premises;

IT IS HEREBY ORDERED THAT Owens-Illinois, Inc.'s Motion is GRANTED, over plaintiff's objection.

Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff.

Judge Paul Lawrence

SCHIFF HARDIN LLP
233 S. Wacker Dr., Ste 6600
Chicago, Illinois 60606
T: (312) 258-5500
F: (312) 258-5600

CH2\12256883.1\12.28.12 03:06

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

HNAB [illegible]
Plaintiff/Petitioner,

vs

PARBOX et al.
Defendant/Respondent.

No. 10 L 156

ORDER

CAUSE coming on for hearing on various motions IT IS ORDERED:

(1) OI's motion for Summary Judgment on the Conspiracy Counts is ALLOWED over TI's objection.

(2) The 4/22/13 CMC is vacated.

(3) Further CMC 4/25/13 at 1:30 pm.

DATE: 3.25.2013

Judge

Name
Attorney for
Address
City
Telephone

AL-TI WCS-367
Scott Alex

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Johnson
Plaintiff/Petitioner,

vs

HW et. al.
Defendant/Respondent.

No. 11L 88

ORDER

Cause coming on for hearing on various motions, parties present, IT IS ORDERED:

(1) OI's MSJ on Conspiracy Counts is allowed over Ps objections.

(2) Case allocated for FPT 6/5/13 at 9 am.

DATE: 3·25·2013

Judge

Name
Attorney for
Address
City
Telephone

AL-P WD-UCC
Scottsdale RME-)) L
RS-Brand DR-OI
A315

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

ERNST
Plaintiff/Petitioner,

vs

HONEYWELL et. al.
Defendant/Respondent.

No. 11 L 150

ORDER

CAUSE coming on for hearing on various motions, parties present, IT IS ORDERED:

(1) OI's motion for Summary judgment on the Conspiracy Counts is ALLOWED over Ps objection;

(2) The 4/22/2013 CMC is Vacated;

(3) Further CMC 4/25/2013 at 1:30 pm.

DATE: 3.25.2013

Judge

Name
Attorney for AK-PI
Address
City Scott Cubx
Telephone

DR-OI

A316

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

THOMAS
Plaintiff/Petitioner,

vs

ICRR et. al.
Defendant/Respondent.

No. 10 L 170

ORDER

Cause coming on for hearing on DI's motion for summary judgment on the Conspiracy Counts, parties present and the Court being fully advised IT IS ORDERED that the motion is ALLOWED over TT's objection.

CMC 4-25-13 1:30 PM

DATE: 3.25.2013

Judge

Name
Attorney for
Address
City
Telephone

AK-T WCS-DCI
South Cebus
02-01

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

NELSON
Plaintiff/Petitioner,

vs

PABEN
Defendant/Respondent.

No. 11 L 165

FILED
MAR 25 2013
McLEAN COUNTY
CIRCUIT CLERK

ORDER

Cause coming on for hearing on various motions,
IT IS ORDERED:

(1) OT's motion for Summary Judgment on the Conspiracy Counts is ALLOWED over TT's objection;

(2) The 4/22/13 cmc is VACATED;

(3) Further cmc 4/25/2013 at 130 pm.

DATE: 3-25-2013

Judge

Name
Attorney for
Address
City
Telephone

TK-TT
Scott Albus
ND

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

BORING (WILSON) / LILIENTHAL
Plaintiff/Petitioner,

vs

PRIOR et. al.
Defendant/Respondent.

No. 05 L 34

FILED
McLEAN COUNTY
MAR 25 2013
CIRCUIT CLERK

ORDER

CAUSE coming on for hearing on various motions, parties present, IT IS ORDERED:

(1) OI's motion for summary judgment on the conspiracy counts is granted over Pl's objection;

(2) FPT set for 6/5/13 at 9 AM

DATE: 3.25.2013

Judge

Name
Attorney for
Address
City
Telephone

AK-II
Scott Cohen
DR-OI

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Allen Funk
Plaintiff/Petitioner,

vs

P. Aber et. al.
Defendant/Respondent.

No. 9 L 212

FILED
MAR 25 2013
McLEAN COUNTY
CIRCUIT CLERK

ORDER

Cause coming on for hearing on OI's motion for summary judgment on the conspiracy counts in Funk (only); parties present and the Court being fully advised IT IS ORDERED the motion is ALLOWED over TI's objection.

Further CMC 4/25/13 at 1:30 pm.

DATE: 3.25.2013

Judge

Name
Attorney for
Address
City
Telephone

AK-TI WCS JDC
Scott Aber

A320

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Traskell/Miller/Prather
Plaintiff/Petitioner,

vs

No. 10 L 78

P. Abex et. al.
Defendant/Respondent.

FILED
MAR 25 2013
McLEAN COUNTY
CIRCUIT CLERK

ORDER

Cause coming on for hearing on various motions, parties present, IT IS ORDERED:

(1) Df's motion for summary judgment on the conspiracy Counts is ALLOWED over Π's objection.

(2) Further CMC to adjust deadlines & set case for trial on 4/25/2013 at 1:30pm

DATE: 3·25·2013

Judge

Name
Attorney for
Address
City
Telephone

[illegible] – Π
[illegible]
Scott [illegible]
[illegible]

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

PRICE
Plaintiff/Petitioner,

vs

PARK et. al.
Defendant/Respondent.

No. 10 L 136

FILED
MAR 25 2013
McLEAN COUNTY
CIRCUIT CLERK

ORDER

CAUSE coming on for hearing on various motions, parties present, IT IS ORDERED:

(1) Df's motion for summary judgment on the conspiracy counts is ALLOWED over Tf's objection.

(2) FPT set for 6/5/13 at 9 AM.

DATE: 3.25.2013

Judge

Name
Attorney for
Address
City
Telephone

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

JOHN PENN and MARY PENN, Independent Administrators of the Estate of ERIC MENSSEN, Deceased	)	
Plaintiffs,	)	No. 10 L 144
v.	)	
PNEUMO ABEX CORPORATION, *et al.*,	)	
Defendants.	)	

McLEAN COUNTY
FILED
MAR 27 2013
CIRCUIT CLERK

ORDER

This cause coming to be heard on Owens-Illinois, Inc.'s Motion for Summary Judgment, due notice having been given, the Court having reviewed the submissions of the parties and being advised in the premises; IT IS HEREBY ORDERED THAT:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED over Plaintiffs' objection. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff.

March 27, 2013

Judge Rebecca S. Foley

12997-6576
CH2\12715740.1

AM-TL

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

RON FEEZOR and ZELDA FEEZOR Plaintiffs, v. HONEYWELL INTERNATIONAL INC., *et al.*, Defendants.	)	No. 11-L-154

ORDER

This cause coming to be heard on the portion of Owens-Illinois, Inc.'s Motion for Summary Judgment Directed at Plaintiffs' Causes of Action Asserting Liability Based on Conspiracy, due notice having been given, the Court having reviewed the submissions of the parties and being advised in the premises; IT IS HEREBY ORDERED THAT:

> Owens-Illinois, Inc.'s Motion for Summary Judgment as to the Conspiracy Counts is GRANTED over Plaintiffs' objection. Owens-Illinois, Inc.'s Motion for Summary Judgment as to the Exposure Counts is deferred to a later date.

March 27, 2013

Judge Rebecca S. Foley

12997-8506
CH2\12715692.1

AR-11

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

JAMES KATCHER and JUANITA KATCHER, and NANCY DUNHAM, Plaintiffs, v. PNEUMO ABEX CORP., *et al.*, Defendants.	)	No. 10-L-172

ORDER

This cause coming to be heard on the portion of Owens-Illinois, Inc.'s Motion for Summary Judgment Directed at Plaintiffs' Causes of Action Asserting Liability Based on Conspiracy, due notice having been given, the Court having reviewed the submissions of the parties and being advised in the premises; IT IS HEREBY ORDERED THAT:

> Owens-Illinois, Inc.'s Motion for Summary Judgment as to the Conspiracy Counts is GRANTED over Plaintiffs' objection. Owens-Illinois, Inc.'s Motion for Summary Judgment as to the Exposure Counts is deferred to a later date.

March 27, 2013

Judge Rebecca S. Foley

12997-8354
CH2\12715290.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

HENRY BURCH and LINDA BURCH, Plaintiffs,	)	
v.	)	No. 11-L-89
HONEYWELL INT'L INC., *et al.*, Defendants.	)	

ORDER

This cause coming to be heard on Owens-Illinois, Inc.'s Motion for Summary Judgment, due notice having been given, the Court having reviewed the submissions of the parties and being advised in the premises; IT IS HEREBY ORDERED THAT:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED over Plaintiffs' objection. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff.

March 27, 2013

Judge Rebecca S. Foley

12997-7255
CH2\12715707.1

AL-T

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

CHRIS SALMON, as Special Administrator of the Estate of ELLIOTT SALMON, SR., Deceased	)	
Plaintiffs,	)	No. 11-L-159
v.	)	
HONEYWELL INTERNATIONAL INC., *et al.*,	)	
Defendants.	)	

ORDER

This cause coming to be heard on Owens-Illinois, Inc.'s Motion for Summary Judgment, due notice having been given, the Court having reviewed the submissions of the parties and being advised in the premises; IT IS HEREBY ORDERED THAT:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED over Plaintiff's objection. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff.

March 27, 2013

Judge Rebecca S. Foley

12997-7377
CH2\12715724.1

AIC-11

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

SUE COLLIER, Individually and as Special Administrator of the Estate of KENNETH COLLIER, Deceased	)	
Plaintiffs,	)	No. 11-L-153
v.	)	
PNEUMO ABEX LLC, *et al.*,	)	
Defendants.	)	

ORDER

This cause coming to be heard on Owens-Illinois, Inc.'s Motion for Summary Judgment, due notice having been given, the Court having reviewed the submissions of the parties and being advised in the premises; IT IS HEREBY ORDERED THAT:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED over Plaintiff's objection. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff.

March 27, 2013

Judge Rebecca S. Foley

12997-7376
CH2\12715721.1

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

DALE
Plaintiff/Petitioner,

vs

PNEUMO ABEX CORP
Defendant/Respondent.

No. 07 L 180

FILED
McLEAN COUNTY
OCT 01 2013
CIRCUIT CLERK

ORDER

THIS CAUSE COMING TO BE HEARD ON DEFENDANT OWENS-ILLINOIS INC'S MOTION FOR SUMMARY JUDGMENT, DUE NOTICE BEING GIVEN, THE COURT HAVING REVIEWED THE SUBMISSIONS OF THE PARTIES AND BEING ADVISED IN THE PREMISES;

IT IS HEREBY ORDERED THAT:

1. WITH REGARD TO THE CONSPIRACY COUNTS (COUNTS 1-3, 9-11), THE ORAL ARGUMENT FROM FEBRUARY 11, 2014, WITH REGARD TO OWENS-ILLINOIS' MOTION FOR SUMMARY JUDGMENT, IS INCORPORATED INTO THIS RECORD
2. OWENS-ILLINOIS INC'S MOTION FOR SUMMARY JUDGMENT IS GRANTED AS TO THE CONSPIRACY COUNTS (1-3; 9-11) AND THE EXPOSURE COUNTS (COUNTS 4-6).
3. THE FINAL PRETRIAL CONFERENCE SET FOR 1/23/14 AND THE TRIAL DATE SET FOR 2/3/14 ARE VACATED.

DATE: OCTOBER 1, 2013

Judge

Name M. FISCHER / SCHIFF HARDIN
Attorney for OWENS-ILLINOIS, INC.
Address 6600 WILLIS TOWER
City CHICAGO IL 60606
Telephone 312 258 5591

State of Illinois
In the Circuit Court of Judicial Circuit #6
Macon County

JACOBY, ELMER ET AL P 001 }
VS. } Case number: 2010-L -000079
PNEUMO ABEX CORPORATION ET AL D 001 }

Notice to:

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OERTLE, HEIDI		
7200 SEARS TOWER		CHICAGO, IL 60606-0000
GRIFFIN, DANIEL		
135 S LASALLE ST STE 2300		CHICAGO, IL 60603-0000
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ONE METROPOLITAN SQUARE	STE 3000	SAINT LOUIS, MO 63102-0000
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100 SOUTH FOURTH STREET	SUITE 1100	SAINT LOUIS, MO 63102-0000
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KELLY, ANDREW		
207 EAST WASHINGTON STE 102		BLOOMINGTON, IL 61701-0000

Take notice that the following entry was made on Tuesday, December 17, 2013

Written Order entered and filed this date. CLERK directed to forward a copy of this order to all counsel of record.

Circuit Clerk, Lois A Durbin

This notice mailed on Friday, December 27, 2013.

Deputy

OERTLE, HEIDI
7200 SEARS TOWER
CHICAGO, IL 60606-0000

SRB

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

MACON COUNTY, ILLINOIS

ELMER JACOBY and LILLIAN JANE JACOBY,

Plaintiffs,

v. Case No. 10-L-79

PNEUMO ABEX CORPORATION, et. al.,

Defendants.

ORDER

THIS CAUSE came before the court on November 18, 2013, for hearings on Pneumo Abex's Updated Motion for Summary Judgment on Civil Conspiracy (filed 8-2-13), Owens Illinois' Motion for Summary Judgment (filed 6-4-12), and Plaintiffs' Motion for Consolidation (filed 10-25-13). After considering the oral arguments of counsel, the court took the matters under advisement. Now, having considered the oral and written arguments of counsel, the relevant authorities, the pleadings, and memorandums along with supporting attachments and documentation, and being fully advised in the premises, the court removes this case from advisement and

FINDS AS FOLLOWS:

1. A civil conspiracy is a combination of two or more persons for the purpose of accomplishing by concerted action either an unlawful purpose or a lawful purpose by unlawful means. In order to recover on a theory of civil conspiracy, a plaintiff must prove an agreement and a tortious act committed in furtherance of the agreement. The agreement must be knowingly and intentionally made. Because a civil conspiracy is almost never susceptible to direct proof, the conspiracy is usually established through circumstantial evidence and inferences drawn from the evidence. Although evidence of parallel conduct by the alleged conspirators may serve as circumstantial evidence of a civil conspiracy, parallel-conduct evidence is insufficient, by itself, to establish the existence of an agreement to commit the civil conspiracy. Menssen v. Pneumo Abex Corporation, 2012 IL App (4^{th}) 100904.

2. In the absence of direct proof, a civil conspiracy must be established from circumstantial evidence and inferences drawn from the evidence, coupled with common-sense knowledge of the behavior of persons in similar circumstances. If circumstantial evidence is used to demonstrate a civil conspiracy, that evidence must meet the standard of "clear and convincing." While parallel conduct may serve as circumstantial evidence of an agreement under the civil conspiracy theory, it cannot,

without more, be considered clear and convincing evidence of an agreement among manufacturers of the same or similar products. McClure v Owns Corning Fiberglass Corporation, 188 Ill. 2d 102 (1999).

3. This court finds that the clear and convincing standard of proof applies at the summary judgment stage. Ray Dancer, Inc. v. DMC Corp., 230 Ill. App. 3d 40 (2d Dist. 1992).

4. It is fundamental that the ultimate burden of proof in the context of a Motion for Summary Judgment always remains with the movant, and consists of establishing both the absence of a genuine issue of material fact, and that the movant is entitled to judgment as a matter of law. A genuine issue of material fact exists when a material fact is disputed, or when more than one reasonable inference can be drawn from the undisputed facts. In determining whether a genuine issue of material fact exists, the court must view the evidence in the light most favorable to the non-movant, and strictly against the movant. Moreover, the Court cannot assess the credibility of the witnesses, weigh the evidence, or otherwise resolve an issue of fact.

5. After considering the ultimate burden of proof in the context of a Motion for Summary Judgment, along with the clear and convincing standard applicable to claims of civil conspiracy, the court finds that there is no genuine issue of material fact and the Motions for Summary Judgment should be allowed.

6. As to those counts of the Complaint relating to exposure claims against Owens Illinois, the court finds there is no genuine issue of material fact and the Motion for Summary Judgment as to these claims should be allowed.

7. As to Plaintiffs' Motion to Consolidate (filed 10-25-13), the court finds that the motion is moot because the court on this date granted summary judgment to the last remaining defendant in 04-L-191.

NOW THEREFORE IT IS ORDERED AS FOLLOWS:

A. Pneumo Abex's Updated Motion for Summary Judgment on Civil Conspiracy (filed 8-2-13), is granted. Judgment entered in favor of Pneumo Abex and against Plaintiff as to claims of civil conspiracy.

B. Owens Illinois' Motion for Summary Judgment (filed 6-4-12), is granted. Judgment entered in favor of Owens Illinois and against Plaintiff as to claims of civil conspiracy and exposure.

C. Plaintiffs' Motion for Consolidation (filed 10-25-13) is stricken.

Dated this 17th day of December, 2013.

Enter: _____, Judge.

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

KESSINGER
Plaintiff/Petitioner,

vs

HONEYWELL INTERNATIONAL, et al
Defendant/Respondent.

No. 13 L 82

ORDER

THIS CAUSE COMING TO BE HEARD ON OWENS-ILLINOIS, INC.'S MOTION FOR SUMMARY JUDGMENT, THE PARTIES BEING PRESENT BY COUNCEL AND THE COURT BEING ADVISED IN THE PREMISES, IT IS HEREBY ORDERED THAT:

1) OVER PLAINTIFF'S OBJECTION, OWENS-ILLINOIS, INC'S MOTION IS GRANTED ON THE EXPOSURE COUNTS;
2) WITH REGARD TO THE CONSPIRACY COUNTS, THE PARTIES ARE GRANTED LEAVE TO SUPPLEMENT THE RECORD WITH A RESPONSE FROM PLAINTIFF AND A REPLY FROM OWENS-ILLINOIS;
3) THE COURT BEING FAMILIAR WITH THE RECORD AND THE GOVERNING LAW ON THE CONSPIRACY COUNTS, AND BEING ADVISED THAT THE SUPPLEMENTAL BRIEFS WILL NOT CONTAIN ANY NEW INFORMATION OWENS-ILLINOIS, INC.'S MOTION IS GRANTED.

DATE: FEBRUARY 3, 2014

Judge

Name M. FISCHER / SCHIFF HARDIN
Attorney for OWENS-ILLINOIS, INC.
Address 233 S. WACKER DRIVE
City SUITE 6600
Telephone CHICAGO IL 60606
(312) 258-5500

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Kinsel
Plaintiff/Petitioner,

vs

Electrolux Home Care et al.
Defendant/Respondent.

No. 11-L-71

FILED
McLEAN COUNTY
APR 10 2014
CIRCUIT CLERK

ORDER

Cause coming to be heard on Owens-Illinois's Motion For Summary Judgment, parties present and the Court being advised it is HEREBY ORDERED THAT:

Consistent with the Court's prior Rulings as to Conspiracy and the Statute of Limitations, Owens-Illinois's motion is GRANTED over Plaintiff's objection.

DATE: April 10 2014

Judge

Name Copenhaver / Schiff Hardin
Attorney for OI
Address 233 S. WACKER DR.
City CHICAGO, IL
Telephone 312 259 5500

AK-T
as to form

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
COUNTY OF MACON

CHERYL McCURDY, Individually, and as Special Administrator of the Estate of JERRY McCURDY, Deceased,	)	
Plaintiff,	)	
v.	)	10-L-128
PNEUMO ABEX CORPORATION, et al.,	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, it is hereby agreed and ORDERED that:

Over Plaintiff's objection, Owens-Illinois, Inc.'s Motion for Summary Judgment on Plaintiff's Claims based on Conspiracy and Exposure is **GRANTED**. Summary judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff.

Judge Thomas E. Little

Dated: 7-21-14

Agreed to as to form by:

Counsel for Plaintiff

Agreed to by:

Counsel for Owens-Illinois, Inc.

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.

DS 10

STATE OF ILLINOIS
CIRCUIT COURT
SEVENTEENTH JUDICIAL CIRCUIT

J. EDWARD PROCHASKA
Circuit Judge

Winnebago County Courthouse
400 West State Street
Rockford, Illinois 61101
PHONE (815) 319-4804 * FAX (815) 319-4801

July 30, 2014

Steven Wood, Esq.
Wylder Corwin Kelly, LLP
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Matthew Fischer
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Gidget Turville, as Special Administrator of the Estate of Dale Turville, Deceased v. Honeywell International INC., et al
CASE No. 11 L 42

MEMORANDUM DECISION and ORDER

THIS matter comes for Decision on Defendant Owens-Illinois Inc.'s Motion for Summary Judgment, pursuant to 735 ILCS 5/2-1005(b), on the civil conspiracy counts (1-2 and 5-6) filed by Plaintiff Gidget Turville in her Amended Complaint. The Court, having reviewed the motion, briefs, attached exhibits, and relevant case law, and having heard arguments of Counsel, does hereby Find and Order as follows:

I. Background Information

Dale Turville worked for Rockford Products Corporation from 1961 to 1999. (Plaintiff's Amended Complaint, Count One, ¶ 1). On April 9, 2011, Mr. Turville died after having been diagnosed with lung cancer and asbestosis. (Id. at ¶'s 12, 23). The Court appointed Gidget Turville as Special Administrator of the Estate of Dale Turville. (Id. at ¶ 29). Plaintiff Gidget Turville alleges that Mr. Turville, while working at Rockford Products Corporation, was exposed to asbestos-containing products. (Id. at ¶'s 2-3). Plaintiff alleges that Defendant Owens-Illinois (O-I) took part in a conspiracy, with a number of other asbestos-manufactures, to conceal the dangers of asbestos. (Id. at ¶'s 21-22). O-I's participation in the alleged conspiracy, Plaintiff claims, proximately caused Mr. Turville's death by concealing the harmful effects of asbestos exposure. (Id. at ¶ 24).

Defendant O-I is primarily a glass manufacturer but, between 1948 and April 1958, the company made a substance called "Kaylo." (Defendant's Motion For Summary Judgment, at 1). Kaylo contained asbestos. (Id.) In April 1958, O-I sold the Kaylo business to Owens Corning, who continued to make the product until some point in the early 1970's. (Id.). O-I has moved for summary judgment on the civil conspiracy counts. (Id. at 7), arguing that the Plaintiff's circumstantial evidence does not raise a genuine issue of material fact when examined under the clear and convincing standard required in a civil conspiracy case. (Id.).

The Court has considered all of the evidence presented by both parties to the motion and will refer to it as needed throughout the Analysis and Decision section.

II. Applicable Law

A civil conspiracy is an intentional tort that exists when two or more parties join together to "accomplish[] by concerted action either an unlawful purpose or a lawful purpose by unlawful means." McClure v. Owens Corning Fiberglas Corp., 188 Ill. 2d 102, 133 (Ill. 1999) (quoting Buckner v. Atlantic Plant Maintenance, Inc., 182 Ill. 2d 12, 23 (Ill. 1998)). To prove a civil conspiracy, a plaintiff must show that the parties involved had an agreement and that one or more parties committed a tortious act with the intent of furthering the conspiracy. McClure, 188 Ill. 2d at 133. Once two or more parties form such an agreement, each party is liable for all tortious acts done to further the agreement by the others. Adcock v. Brakegate, Ltd., 164 Ill. 2d 54, 64 (Ill. 1994). A party's agreement to enter a conspiracy must be knowing and voluntary. McClure, 188 Ill. 2d at 133-134.

Having direct evidence of a civil conspiracy is rare. Id. at 134; Gillenwater v. Honeywell International, Inc., 2013 IL App (4th) 120929 at *28 (Ill. App. 4th Dist. 2013). In most conspiracy cases, there will only be circumstantial evidence available. McClure, 188 Ill. 2d at 134. A party can prove civil conspiracy with circumstantial evidence, but that evidence must be clear and convincing. Id. The clear and convincing standard mandates that if a court finds that "the facts and circumstances relied upon are as consistent with innocence as with guilty," the court must find that a conspiracy does not exist. Id. at 140-141 (quoting Tribune Co. v. Thompson, 342 Ill. 503, 529 (Ill. 1930)).

In a civil conspiracy case, certain evidentiary rules apply. Id. at 135. First, evidence of similar conduct between a defendant and other members of the alleged group is circumstantial evidence. Id. This evidence, called parallel conduct, is not sufficient proof, by itself, of an agreement to enter a civil conspiracy. Id. Second, the "mere exchange" of information between two companies in the same industry is typical and not evidence of a conspiracy. Id. at 147. Third, evidence that shows behavior just as consistent with innocence as with guilt is not proof of a conspiracy under the clear and convincing standard. Rodarmel v. Pneumo Abex, L.L.C., 2011 IL App (4th) 100463 at *26 (Ill. App. 4th Dist. 2011). Finally, the fact that two companies had a common member on their board of directors is not evidence of a conspiracy. Id. at *27.

In general, a party does not have the duty to warn of dangers that are beyond its control. *See* Turner v. N. Ill. Gas Co., 401 Ill. App. 3d 698, 707 (Ill. App. 2nd Dist. 2010). According to the Illinois Supreme Court, "'duty' is not sacrosanct in itself but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection. Kirk v. Michael Reese Hosp. and Med. Ctr., 117 Il. 2d 507, 527 (Ill. 1987) (quoting W. Prosser & W. Keeton, THE LAW OF TORTS sec 53, at 358 (5th ed. 1984)). Illinois does not apply the market-share liability theory in tort cases. Smith v. Eli Lilly & Co., 137 Il. 2d 222, 251 (Ill. 1990). In holding that parallel conduct alone will not suffice for proving a civil conspiracy, the McClure court warned that "this case illustrates the potential for industrywide [sic] liability." McClure, 188 Il. 2d at 142. The court stated that it wanted to ensure that "manufacturer's responsibility for the actions of their competitor[s] is based on more than speculation and conjecture." Id.

A court can enter summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." 735 ILCS 5/2-1005(c). On a summary judgment motion, the court determines whether there is a genuine issue of material fact by construing the "pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent." Gilbert v. Sycamore Mun. Hosp., 156 Ill. 2d 511, 518 (Ill. 1993). A court may draw inferences from the facts when they are undisputed. Garde v. Country Life Ins. Co., 147 Ill. App. 3d 1023, 1029 (Ill App. 4th Dist. 1986). There is no issue of fact if a court determines through its inferences that there is only one reasonable way that a juror could view the facts. Id. The court then enters summary judgment because a party cannot prove a necessary element of their case and a trial would be useless. Ray Dancer, Inc. v. DMC Corp., 230 Ill. App. 3d 40, 50 (Ill. App. 2nd Dist. 1992).

III. Clear and Convincing Evidentiary Standard

This Court must first decide whether the clear and convincing evidentiary standard applies to a summary judgment motion. Defendant O-I argues that the clear and convincing evidence standard for circumstantial evidence applies at the summary judgment stage. (Defendant's Motion for Summary Judgment, at 10). O-I points to the Illinois Supreme Court's decision in McClure, another asbestos civil conspiracy case, to support its contention. (Id.). Plaintiff argues that McClure did not alter the summary judgment test because the court entered a judgment notwithstanding the verdict. (Plaintiff's Opposition to Owens-Illinois' Motion for Summary Judgment, at 9-10). To apply the clear and convincing standard at the summary judgment stage, Plaintiff argues, "would stand the test for summary judgment on its head" because courts cannot weigh evidence when considering a motion. (Id. at 10). Instead, a court must simply construe the evidence "against" the movant. (Id.).

This Court finds that the clear and convincing standard of proof applies at the summary judgment stage. In Reed, the Illinois Supreme Court adopted the United States Supreme Court's holding that the "'substantive evidentiary burden of proof'" applies

during a summary judgment motion. Reed v. Nw. Publ'g Co., 124 Ill. 2d 495, 512 (Ill. 1988) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). The court stated that the U.S. Supreme Court's holding "was equally applicable to actions in State court." Id. Although Reed was a libel case, nothing in that court's opinion or logic dictates that the clear and convincing rule is only applicable for libel causes of actions.

The Illinois Supreme Court's ruling in McClure, an asbestos civil conspiracy case, reinforces this Court's finding. While McClure did not directly address whether a trial court must apply the clear and convincing evidentiary standard at the summary judgment stage, the court's reasoning is instructive. In McClure, the court reversed a jury verdict in a asbestos civil conspiracy case and entered judgment in favor of the defendant in the case, Owens-Corning. McClure, 188 Ill. 2d at 151-52. The plaintiff in that case only presented circumstantial evidence to support its civil conspiracy claim. Id. at 143. Stating that the plaintiff's evidence of contact between the alleged conspirators was too isolated, the court concluded:

> "Even when considered in the light most favorable to plaintiffs, evidence of these contacts was as consistent with innocence as with guilt. (citation omitted). Plaintiffs showed separate acts by the alleged conspirators, but the evidence failed to show that these acts were connected by an agreement. (citation omitted). To conclude, based on the evidence of record, that defendants engaged in a conspiracy requires speculation. Liability based on such speculation is contrary to tort principles in Illinois (citation omitted) and to the clear and convincing standard of proof applicable in civil conspiracies cases". Id. at 151-52.

The Illinois Supreme Court in McClure did not construe every fact "against" the moving party in the case, as the Plaintiff suggests a court should. Instead, the court applied the clear and convincing standard and *then* viewed the facts in a light most favorable to the plaintiff (the non-moving party in the case). The supreme court's analytical steps show that a trial court can apply the clear and convincing standard without inappropriately "weighing" the evidence.

In antitrust conspiracy cases, the clear and convincing evidentiary standard applies at the summary judgment stage. Ray Dancer, 230 Ill. App. 3d at 50-51. The court in McClure looked to antitrust conspiracy law to guide it in making its holding because an important element in both civil and antitrust conspiracy cases is an agreement. McClure, 188 Ill. 2d at 135-36; Prods. Liab. Ins. Agency, Inc. v. Crum & Forster Ins. Cos., 682 F.2d 660, 663(7th Cir. 1982). In the antitrust context, the 7th Circuit states that it "would be a waste of time" to hold a trial if the plaintiff cannot establish a necessary element of its case. Prods. Liab., 682 F.2d at 663.

Summary judgment is only appropriate when the right of the moving party is certain. Gilbert, 156 Ill. 2d at 518. But, to hold a trial when no jury could reasonably find for a plaintiff is, as the 7th Circuit noted, a "waste of time." Prods. Liab., 682 F.2d at 663. It is clear that this Court has a duty to apply the clear and convincing standard given the

Illinois Supreme Court's broad language in Reed and that court's reasoning in McClure. Therefore, the Court will apply the clear and convincing evidentiary lens to Plaintiff's circumstantial evidence.

IV. Analysis and Decision

A. Conspiratorial Agreement

Plaintiff has no direct evidence of a conspiratorial agreement between O-I and other asbestos manufacturers to conceal the health-risks of asbestos. The Plaintiff relies on circumstantial evidence in trying to prove its civil conspiracy case. This circumstantial evidence, therefore, is subjected to the clear and convincing standard of proof. The evidence presented to this Court must, in a light most favorable to the Plaintiff, establish that a reasonable jury could find for Plaintiff on both elements of the civil conspiracy cause of action.

The 4th District Court of Appeals has already examined most of Plaintiff's evidence, in Gillenwater v. Honeywell Int'l, Inc., and determined that there was no clear and convincing proof of a conspiratorial agreement. Gillenwater, 2013 IL App (4th) 120929 at *17-18. First, the court stated that evidence of a shared director did not "'reasonably tend[] to exclude'" the possibility that the two companies were acting independently. Id. at *16. The evidence thus was only parallel conduct and not enough evidence, by itself, to prove a conspiracy. Id. The court went on, however, to say that in a light most favorable to the plaintiff, a distribution agreement between O-I and Owens-Corning could have signaled an implied understanding to conceal or not disclose the dangerous nature of asbestos. Id. at *18. Between 1953 and 1958, O-I manufactured Kaylo, an asbestos-containing product, and Owens-Corning distributed it. Id. at *17-18. The court stated that both companies knew that asbestos products were "potentially a respiratory hazard" and also understood that placing a warning label on Kaylo would reduce sales, an unsatisfactory business result for both companies. Id. at *18. But, the court concluded that because the agreement to distribute Kaylo ended in 1958 when O-I sold the Kaylo division to Owens-Corning, the scope of the conspiracy did not extend past the 1958 sale. Id. at *18-21.[1]

This Court's finding, in regards to the evidence of shared directors and a distribution agreement, mirrors the 4th District Court of Appeals' finding. While O-I and

[1] The Gillenwater court relied on a number of U.S. Supreme Court decisions about the scope of a criminal conspiracy to come to their conclusion. Rodarmel, 2011 IL App (4th) 100463 at *18-21. First, the court stated that the object of the alleged conspiracy between O-I and Owens-Corning would have been accomplished upon the 1958 sale. Id. at *20. While O-I certainly would not have wanted to be sued, the court said it would stretch the conspiracy to "absurd lengths" to say that it still existed in the 1970's when the plaintiff in the case was exposed to asbestos. Id. Second, the court stated that regardless of the length of time, O-I's sale of the Kaylo division signified a withdrawal from the conspiracy. Id. at *21.

Owens-Corning did share directors, this is only parallel conduct among two businesses and not enough on its own to prove a conspiracy. Further, although a reasonable jury could find that O-I and Owens-Corning had an implied conspiratorial agreement between 1953 and 1958 when the companies had a distribution agreement, the possible conspiracy terminated when O-I sold the Kaylo division in 1958. Therefore, any potential conspiracy O-I entered with Owens-Corning during the distribution agreement ended before Mr. Turville's employment at Rockford Products from 1961 to 1999.

Plaintiff points to a number of other facts as proof of a conspiratorial agreement between O-I and other asbestos manufacturers. Plaintiff says that the common ownership of stock between O-I and Owens-Corning shows a conspiratorial agreement. This Court finds, however, that common ownership of stock is just as consistent with innocence as with guilt.

Next, Plaintiff claims that the sharing of information between O-I and Owens-Corning illustrates an implied conspiratorial agreement. The sharing of information between companies, though, is "common practice" according to the Illinois Supreme Court and shows no evidence of an agreement. McClure, 188 Ill. 2d at 148. Therefore, the Court finds that O-I and Owens-Corning's sharing of pamphlets about asbestos does not show a conspiratorial agreement.

The fact that a director of both Bendix and Johns-Manville (two other asbestos companies) attended a Johns-Manville board meeting and the birthday party for Michael Owens in September of 1959 also does not show a conspiratorial agreement. Again, evidence that is just as consistent with innocence as with guilt is not clear and convincing evidence of a conspiracy. Rodarmel, 2011 IL App (4th) 100463 at *26. Further, the sharing of a member of a board of directors between companies is not evidence of a conspiracy. Id. at *27. In this case, the attendance of a Johns-Manville meeting by a member of Johns-Manville's and Bendix's board of directors is not evidence of a conspiratorial agreement. Business and personal explanations abound for why the board member attended the celebration. The Court finds this is not evidence of a conspiratorial agreement.

The Plaintiff presents other evidence which it believes supports the civil conspiracy counts. The Court, however, places little weight on it because it deals with other companies or has no relevance to establishing a conspiratorial agreement involving O-I.

This Court finds that, in a light most favorable to the Plaintiff, there is no evidence of any agreement by O-I to enter a conspiracy after 1958. An agreement is an essential element to proving a conspiracy. Because Plaintiff does not meet the agreement prong, the conspiracy counts fail. The Court, therefore, believes it is unnecessary to examine the second prong of a civil conspiracy cause of action—a tortious act committed in furtherance of the conspiracy.

B. Duty to Warn

Defendant O-I argues that it owed no duty to warn Plaintiff of the dangers of other producer's asbestos products. Because O-I had no relationship with Plaintiff and did not assume a duty to warn Plaintiff, O-I asserts that it had no duty to warn him of the dangers of asbestos. O-I states that to impose a duty on it for the actions of other manufacturers post-1958, when O-I no longer had an asbestos division, would be akin to market share liability and contrary to the Illinois case law. O-I points to Smith (which rejected market share liability) and McClure, among a number of other cases, as support for its argument.

Plaintiff maintains that O-I knew of the dangers of asbestos and failed to post warnings on its products when it was still in the asbestos business. Plaintiff, however, cites no case law directly supporting its proposition that O-I owes a duty for actions it took prior to Mr. Turville's exposure to asbestos products.

Imposing a duty on O-I in this instance would realize the McClure court's fears that civil conspiracy counts in cases such as this one could detach liability from manufacturer responsibility. This Court must consider the policy implications of finding a duty for O-I in this case. To impose a duty, this Court finds, would create a system akin to market share liability and the Illinois Supreme Court rejected market share liability in Smith. Plaintiff points to no cases that suggest otherwise. O-I's responsibility for warning of asbestos dangers ended when its control over its asbestos products ceased—in 1958. After that point, O-I had no control over other Companies' decisions to warn or not. Because Mr. Turville's exposure to asbestos at Rockford Products Corporation occurred after O-I sold its asbestos division, O-I had no duty to warn Mr. Turville about the dangers of asbestos during the years of his employment, 1961-1999.

V. Conclusion

For the foregoing reasons, Defendant Owens-Illinois motion for summary judgment, pursuant to 735 ILCS 5/2-1005(c), is granted as to Counts 1-2 and 5-6 of Plaintiff Gidget Turville's Amended Complaint. The Court finds and Orders as follows:

1. Defendant's Owens-Illinois Motion for Summary Judgment as to Counts 1-2 and 5-6 of the Amended Complaint is Granted.

2. There is no just reason for delaying enforcement or appeal from this judgment.

7/30/2014
Date

Hon. J. Edward Prochaska

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
MORGAN COUNTY, ILLINOIS

HILL,
Plaintiff

vs.

Case No. 1263

PNEUMO ABEX,
Defendant.

ORDER

This cause coming before the court on Defendant Owens-Illinois, Inc.'s motion for summary judgment, it being hereby agreed and ordered that:

Over Plaintiff's objection, Owens-Illinois, Inc.'s motions for summary judgment are GRANTED. Summary judgment is hereby entered in favor of Owens-Illinois, Inc.

FILED
AUG 29 2014
Theresa Lonergan
Clerk of Circuit Court Morgan Co. IL

ENTERED this 29th day of August, 2014.

Christopher E. Reif, Circuit Judge

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Angston
Plaintiff/Petitioner,

vs

Owens-Illinois, Inc. et al
Defendant/Respondent.

No. 12 L 28

ORDER

This cause coming to be heard for CMC and Owens-Illinois, Inc.'s Motion for Summary Judgment, it is hereby ORDERED that:

1) This cause is set for further case management conference on January 9, 2015 at 9:00 a.m.;

2) Owens-Illinois, Inc.'s Motion for Summary Judgment is granted as to the conspiracy counts in Plaintiff's Complaint; and

3) Owens-Illinois, Inc.'s Motion for Summary Judgment is continued to a later date as to the exposure counts in Plaintiff's Complaint.

DATE: 9/23/14

Judge

Name M. Fischer / Schiff Hardin
Attorney for Owens-Illinois, Inc
Address 233 S. Wacker Drive
City Suite 6606
Telephone Chicago IL 60606
312 258

P-URC

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Heggie
Plaintiff/Petitioner,

vs

Owens-Illinois, Inc, et al
Defendant/Respondent.

No. 12 L 87

ORDER

This couse coming to be heard on Owens-Illinois, Inc's Motion for Summary Judgment, the Court having reviewed the submissions and being advised in the premises, it is hereby ordered that

1) Over Plaintiff's objection and for the reasons this Court has granted similar motions in the past, Owens-Illinois' Motion for Summary Judgment is GRANTED as to the conspiracy counts of the complaint; AND

2) Owens-Illinois Inc's motion is continued to a later date with regard to exposure counts of Plaintiffs complaint; AND

3) Couse set for case management conference on 1/9/2015 at 9:00 a.m.

Ocal

DATE: 9/23/14

Judge

Name M. Chmiel
Attorney for Owens-Illinois
Address 233 S. Wacker Dr, Suite 6600
City Chicago IL 60606
Telephone 312 258 5500

1. Lexis
2. D40

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
County of McLean

E-SERVICE 56076490 Sep 23 2014 03:48PM File & ServeXpress

FILED SEP 23 2014 McLEAN CIRCUIT CLERK

Hardy
Plaintiff(s)

vs.

Pneumo Abex LLC, et al.
Defendant(s)

Case Number 12 L 122

CASE MANAGEMENT ORDER

This cause coming to be heard for a Case Management conference pursuant to Supreme Court Rule 218, due notice having been given, the Court finds that counsel for the following parties were present for the conference:

______

FURTHER IT IS HEREBY ORDERED:

Written discovery shall be initiated by ______

Written discovery shall be answered by ______

All party depositions shall be completed by ______

Plaintiff shall respond to Rule 213 interrogatories by October 1, 2014

Plaintiff's Rule 213 witnesses shall be deposed by December 1, 2014

Defendant shall respond to Rule 213 interrogatories by January 3, 2015

Defendant's Rule 213 witnesses shall be deposed by March 1, 2015

Motions for summary judgment or other dispositive motions be filed by April 1, 2015

Pretrial motions, including Motions in Limine, and notices pursuant to Supreme Court Rule 237(b) be filed by April 1, 2015

All rebuttal witnesses disclosed by ______

All rebuttal witnesses deposed by ______

Case be set for trial on the jury calendar commencing June 2015 calendar

Subsequent Case Management Conference is set for 1/19/2015 at 9 AM

Other: OWENS-ILLINOIS, INC.'s MOTION FOR SUMMARY JUDGMENT IS GRANTED AS TO CONSPIRACY COUNTS AND CONTINUED AS TO EXPOSURE COUNTS.

Entered: 9/23/14

[signature]
Circuit Judge

MS-OI, CB   MF-VT

Case Management Order
April 2010

MAC – IMJ & WP UCC HLS Scott abex   RS-[illegible]   AK-TI   MMESSC   QR Gould

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

RICHARD RICE, Special Administrator of the Estate of DORIS RICE, Deceased,	)	
	)	11-L-50
Plaintiffs,	)	
v.	)	
HONEYWELL INTERNATIONAL, INC., *et al.*,	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, it is hereby agreed and ORDERED that:

Over Plaintiff's objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED**. Summary judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff.

Judge Rebecca Foley

Dated: 9.23.14

Agreed to by:

Counsel for Owens-Illinois, Inc.

Agreed to as to form by:

Counsel for Plaintiff

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-8470

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

CHARLES WILCOX, JR.,
Plaintiff,

v.

PNEUMO ABEX LLC, et. al.,
Defendants.

No. 11 L 90

ORDER

THIS CAUSE coming to be heard before the Court for CMC and various motions, parties present and the Court being fully advised, IT IS ORDERED:

1. OI's Motion for Summary Judgment on the civil conspiracy counts (1 and 4) are ALLOWED over Plaintiff's objection for the same reasons the Court has allowed previous motions for summary judgment on such counts in prior cases.

2. This matter remains set for trial on February 2, 2015 at 9:00am.

3. Final Pre-Trial is scheduled for January 26, 2015 at 9 AM.

5. John Crane Inc.'s Motion for Summary Judgment is ALLOWED as to Plaintiff's lack of product identification over Plaintiff's objection.

Dated: September 23, 2014

Entered: _____
Circuit Judge

AK-tt
RS. Brad 9/16-302
MWC-01

Files:Wilcox 11 L 90:Orders:O-09232014.doc

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

LYSLE WILLEY, individually and POLLY RAGUSA, as Special Administrator of the Estate of MARCELLINE WILLEY, Deceased; Plaintiffs,	)	
v.	)	No. 11 L 166
PNEUMO ABEX LLC, et. al. Defendants.	)	

ORDER

THIS CAUSE coming to be heard before the Court, IT IS ORDERED:

1. OI's Motion for Summary Judgment on the civil conspiracy counts (16-18, 22-24) are ALLOWED over Plaintiff's objection for the same reasons the Court has allowed previous motions for summary judgment on such counts in prior cases.

2. Unimin Corporation's Motion for Summary Judgment based on lack of product identification is ALLOWED over Plaintiffs' objection.

3. John Crane's Motion for Summary Judgment based on lack of product identification is ALLOWED over Plaintiffs' objection.

4. Unimin Corporation's Motion for Summary Judgment based on lack of product identification is ALLOWED over Plaintiffs' objection.

5. US Silica's Motion for Summary Judgment will be heard after the following briefing schedule: (a) Plaintiffs to respond to the pending motion by November 23, 2014; (b) US Silica to reply prior to the hearing date to be set at a date agreeable to the parties and the Court's schedule sometime after November 23, 2014.

6. This matter remains set for trial on February 2, 2015 at 9:00am.

7. Final Pre-Trial is scheduled for January 26, 2015 at 9 AM

8. CMC set 1-9-15 @ 9am.

Dated: September 23, 2014 Entered: /s/ Rebecca Foley
Circuit Judge

Files:Willey 11 L 166:Orders:O-09232014.doc

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

EMIL RAGUSA, Plaintiff, v. HONEYWELL INTERNATIONAL, INC., *et al.*, Defendants.	)	No. 12-L-180

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, it is hereby agreed and ORDERED that:

Over Plaintiff's objection, and for the reasons this Court has granted similar motions in the past, Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED as to the conspiracy counts of the complaint.

Judge Rebecca Foley

Dated: October 30, 2014

Agreed to by:

Counsel for Owens-Illinois, Inc.

Agreed to as to form by:

Steve Wood
Counsel for Plaintiff

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-9175

PT- Borgwarner Morse TEC Inc.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

KIMBERLY LAWSON, Individually and as Special Administrator of the Estate of MARY LAWSON, Deceased,	)	
Plaintiffs,	)	No. 08-L-161
v.	)	
HONEYWELL INTERNATIONAL, INC., *et al.*,	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, it is hereby agreed and ORDERED that:

Over Plaintiff's objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED**. Owens-Illinois's motion is granted as to the exposure counts due to lack of product identification. Owens-Illinois's motion is granted as to the conspiracy counts for the same reasons this Court has granted similar motions in the past. Summary Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff on all counts.

Judge Rebecca Foley

Dated: 10.30.14

Agreed to by:

Counsel for Owens-Illinois, Inc.

Agreed to as to form by:

Counsel for Plaintiff

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

DAVID BRAY and RICHELLE BRAY,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	10-L-175
	)	
PNEUMO ABEX CORPORATION, et al.,	)	
	)	
Defendants.	)	

ORDER

This cause coming to be heard on Owens-Illinois, Inc.'s Motion for Summary Judgment, it is hereby agreed and ORDERED that:

Over Plaintiffs' objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** as to all remaining counts. Summary judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiffs.

Judge Rebecca Foley

Dated: 11/24/14

Agreed to as to form by:

Counsel for Plaintiffs

Agreed to by:

Counsel for Owens-Illinois, Inc.

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.

12997-8353 CH2\14613313.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

RODNEY WHITTINGTON and CATHY WHITTINGTON, Plaintiffs, v. PNEUMO ABEX LLC., *et al.*, Defendants.	)	No. 12-L-101

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, it is hereby agreed and ORDERED that:

> Over Plaintiffs' objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** on all counts. Owens-Illinois's motion is granted as to the conspiracy counts for the same reasons this Court has granted similar motions in the past. Summary Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiffs on all counts.

Judge Rebecca Foley

Dated: January 9, 2015

Agreed to by:

Counsel for Owens-Illinois, Inc.

Agreed to as to form by:

Counsel for Plaintiffs

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-7841
CH2\15867335.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

MARGE SIMMONS, Individually, and as Special Administrator of the Estate of GENE SIMMONS, deceased, and RUTH KROEZE, Individually, and as Special Administrator of the Estate of JACK KROEZE, Deceased,	)	
Plaintiffs,	)	
v.	)	13-L-83
PNEUMO ABEX LLC, *et al.*,	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment re: Kroeze, it is hereby agreed and ORDERED that:

Over Plaintiffs' objection, and for the reasons this Court has granted similar motions in the past, Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED as to the conspiracy counts pled by Plaintiff Kroeze. Summary Judgment is hereby entered in favor of Owens-Illinois and against Plaintiffs on all remaining counts pled by Plaintiff Kroeze.

Judge Rebecca Simmons Foley

Dated: 9/11/15

Agreed to by:

Counsel for Owens-Illinois, Inc.

Agreed to as to form by:

Counsel for Plaintiffs

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-9274 CH2\17058289.1

DS to

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

SAM NEAL, Individually and as Special Administrator of the Estate of RUTH NEAL, Deceased,	)	
Plaintiff,	)	
v.	)	12-L-190
PNEUMO ABEX CORPORATION, *et al.*,	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, the Court having reviewed the submissions and being advised in the premises, it is hereby ORDERED that:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** on all counts over Plaintiff's objection. Summary Judgment is granted in Owens-Illinois's favor as to the Conspiracy Counts of the Amended Complaint for the same reasons this Court has granted similar motions in the past. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff on all counts.

Judge Rebecca Simmons Foley

Dated: 11.30.15

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-9192
CH2\17504193.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

JILL SUNDERLAND, Individually, and as Special Administrator of the Estate of TIMOTHY SUNDERLAND, Deceased,	)	
Plaintiff,	)	
v.	)	12-L-107
PNEUMO ABEX LLC, *et al.*,	)	
Defendants.	)	

McLEAN COUNTY
FILED
NOV 30 2015
CIRCUIT CLERK

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, the Court having reviewed the submissions and being advised in the premises, it is hereby ORDERED that:

Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** on all counts over Plaintiffs' objection. Summary Judgment is granted in Owens-Illinois's favor as to the Conspiracy Counts of the Complaint for the same reasons this Court has granted similar motions in the past. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff on all counts.

Judge Rebecca Simmons Foley

Dated: 11.30.15

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-7844
CH2\17504200.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

SHANNON NELSON, Individually and as Special Administrator of the Estate of CHARLES NELSON, Deceased,	)	
Plaintiff,	)	
v.	)	14-L-85
PNEUMO ABEX LLC, *et al.*,	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, the Court having reviewed the submissions and being advised in the premises, it is hereby ORDERED that:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** on all counts over Plaintiffs' objection. Summary Judgment is granted in Owens-Illinois's favor as to the Conspiracy Counts of the Complaint for the same reasons this Court has granted similar motions in the past. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff on all counts.

Judge Rebecca Simmons Foley

Dated: 11.30.15

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-9496
CH2\17504172.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

JANET STARKEY, Individually, and as Special Administrator of the Estate of RUSSELL STARKEY, SR., Deceased,	)	
Plaintiff,	)	
v.	)	13-L-103
ILLINOIS CENTRAL RAILROAD COMPANY, *et al.*,	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, the Court having reviewed the submissions and being advised in the premises, it is hereby ORDERED that:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** on all counts over Plaintiffs' objection. Summary Judgment is granted in Owens-Illinois's favor as to the Conspiracy Counts of the Complaint for the same reasons this Court has granted similar motions in the past. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff on all counts.

Judge Rebecca Simmons Foley

Dated: 11.30.15

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-9293
CH2\17504165.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

DORIS THOMAS, Individually, and as Special Administrator of the Estate of JOHN THOMAS, Deceased,	)	
Plaintiff,	)	
v.	)	No. 13-L-84
PNEUMO ABEX LLC., *et al.*,	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, the Court having reviewed the submissions and being advised in the premises, it is hereby ORDERED that:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** on all counts over Plaintiffs' objection. Summary Judgment is granted in Owens-Illinois's favor as to the Conspiracy Counts of the Complaint for the same reasons this Court has granted similar motions in the past. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff on all counts.

Judge Rebecca Simmons Foley

Dated: 11-30-15

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.

12997-9272 CH2\16818042.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

JEFF ANDERSON, Individually and as Special Administrator of the Estate of GRACE ANDERSON, Deceased,	)	
Plaintiff,	)	
v.	)	14-L-101
HONEYWELL INTERNATIONAL, *et al.*,	)	
Defendants.	)	

McLEAN COUNTY
FILED
NOV 30 2015
CIRCUIT CLERK

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, the Court having reviewed the submissions and being advised in the premises, it is hereby ORDERED that:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** on all counts over Plaintiffs' objection. Summary Judgment is granted in Owens-Illinois's favor as to the Conspiracy Counts of the Complaint for the same reasons this Court has granted similar motions in the past. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff on all counts.

Judge Rebecca Simmons Foley

Dated: 11.30.15

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-9514
CH2\17504175.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

CYDNEY WILLIAMS, Executrix of the Estate of WERNER THEOBALD, Deceased,	)	
Plaintiff,	)	
v.	)	15-L-66
PNEUMO ABEX LLC, *et al.*,	)	
Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, the Court having reviewed the submissions and being advised in the premises, it is hereby ORDERED that:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** on all counts over Plaintiff's objection. Summary Judgment is granted in Owens-Illinois's favor as to the Conspiracy Counts of the Complaint for the same reasons this Court has granted similar motions in the past. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff on all counts.

Judge Rebecca Simmons Foley

Dated: 11-30-15

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-9570
CH2\17504154.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

MELISSA MARTIN, Special Administrator of The Estate of DENNIS DOUGHERTY, Deceased, Plaintiff,	)	
v.	)	13-L-91
AKZO NOBEL PAINTS, LLC, f/k/a THE GLIDDEN CO., *et al.*, Defendants.	)	

ORDER

This cause coming before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, the Court having reviewed the submissions and being advised in the premises, it is hereby ORDERED that:

> Owens-Illinois, Inc.'s Motion for Summary Judgment is **GRANTED** on all counts over Plaintiff's objection. Summary Judgment is granted in Owens-Illinois's favor as to the Conspiracy Counts of the Complaint for the same reasons this Court has granted similar motions in the past. Judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiff on all counts.

Judge Paul Lawrence

Dated: 11-30-15

Order prepared by:
Matthew V. Chimienti
Schiff Hardin LLP
233 S. Wacker Dr., Ste. 6600
Chicago, IL 60606
Counsel for Owens-Illinois, Inc.
12997-9288
CH2\17504211.1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

ROBIN GOULD and LYNDA RUSH, as Co-Executors of the Estate of GENE SCHAAB, Deceased,
Plaintiffs,

v.

AIR & LIQUID SYSTEMS CORP., et. al.,
Defendants.

No. 13 L 105

ORDER

CAUSE coming on for various motions, parties present and the Court being fully advised, IT IS ORDERED:

1. Plaintiffs' motion to compel General Electric is CONTINUED at Plaintiffs' request and set for hearing on January 7, 2016 at 9:00am without further notice required;

2. JP Bushnell's motion to strike the prayer for punitive damages in the negligence counts is ALLOWED over Plaintiffs' objection.

3. Ameron, Brand, CertainTeed and Sterling's motions for summary judgment based on lack of product identification are ALLOWED over Plaintiffs' objection.

4. Abex and OI's motions for summary judgment based on civil conspiracy and lack of product identification are ALLOWED over Plaintiffs' objection.

5. Honeywell's motion for summary judgment based on civil conspiracy is ALLOWED over Plaintiffs' objection; a briefing schedule on the product identification portion of the motion is as follows: Plaintiff to respond by January 5; any reply to be on file by January 7.

6. The case remains set for February trial and CMC January 7, 2016 @9am.

Dated: 12.18.15

Entered: _____
Circuit Judge

Approved:
CAB - JCI
MVC-01

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STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF T
ELEVENTH JUDICIAL CIRCUIT

Daniel and Peggy McGowan
Plaintiff/Petitioner,

vs

Owens-Illinois, et al
Defendant/Respondent.

No. 13 L 129

ORDER

Cause coming to be heard on Owens-Illinois, Inc's previously filed motion for summary judgment parties present by counsel and the Court having been fully advised in the premises, it is hereby ordered:

Over Plaintiffs' objection, Owens-Illinois's Motion for Summary Judgment is granted. Owens-Illinois's motion is granted as to the conspiracy counts for the same reasons this Court has granted similar motions in the past. Owens-Illinois's motion is granted as to the exposure counts due to lack of product identification. Summary Judgment is hereby entered in favor of Owens-Illinois and against Plaintiffs on all counts.

DATE: 1/7/16

Judge

Name M. Chimienti
Attorney for Owens-Illinois, Inc.
Address
City
Telephone

AKT

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
RICHLAND COUNTY

JOHN JONES and
DEBORAH JONES,

Plaintiffs,

vs.

AKZO NOBEL PAINTS, LLC, et al.,

Defendants.

No. 2013-L-21

ORDER ON DEFENDANT OWENS-IL'S MOTION FOR SUMMARY JUDGMENT ON CIVIL CONSPIRACY

This cause now coming on to be heard on this, the 12th day of January, 2016, on Defendant, OWENS-ILLINOIS's, Motion for Summary Judgment on Civil Conspiracy, and the Plaintiffs appearing by their attorney, and Defendant appearing by its attorney, and the Court, considering all the pleadings, exhibits, arguments of counsel, and case law cited, and now being fully advised, FINDS:

Jurisdiction

The Court has jurisdiction over the parties and subject matter.

Standard of Review for the Motion

The Illinois Supreme Court has provided guidance for the standard of review, "The United States Supreme Court has held that a ruling on a motion for a directed verdict or summary judgment 'necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits.'" *Reed v. Nw. Pub. Co.*,

124 Ill. 2d 495, 512, 530 N.E.2d 474, 481 (1988).

A conspiracy is almost never susceptible to direct proof. *Walsh v. Fanslow*, 123 Ill.App.3d 417, 422, 78 Ill.Dec. 846, 462 N.E.2d 965 (1984). Usually, it must be established "from circumstantial evidence and inferences drawn from evidence, coupled with common-sense knowledge of the behavior of persons in similar circumstances." *Adcock*, 164 Ill.2d at 66, 206 Ill.Dec. 636, 645 N.E.2d 888. If a civil conspiracy is shown by circumstantial evidence, however, that evidence must be clear and convincing. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 134, 720 N.E.2d 242, 258 (1999).

Under this clear and convincing standard, "if the facts and circumstances relied upon are as consistent with innocence as with guilt it is the duty of the court to find that the conspiracy has not been proved." *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 140-41, 720 N.E.2d 242, 261 (1999).

Facts

The Court was presented with a generous amount of pleadings, exhibits, and documents from Plaintiffs and Defendant. Counsel for Plaintiffs and Defendant readily admitted at argument that the body of evidence in the instant matter is the same as that in *Gillenwater v. Honeywell International, Inc.*, 2013 IL App (4th) 120929, 996 N.E.2d 1179.

Analysis

The Court in the instant matter, after reviewing the facts,

CC9194

A2

pleadings, and law, especially *Gillenwater*, finds that this matter is indistinguishable from *Gillenwater* on the material issues. There is no Fifth District case on these issues and this Court is persuaded by the Fourth District case of *Gillenwater*; therefore, this Court adopts the findings and analysis of *Gillenwater* and finds that summary judgment in favor of Defendant is proper.

IT IS HEREBY ORDERED AND ADJUDGED:

A. OWENS-ILLINOIS's Motion for Summary Judgment on Civil Conspiracy is GRANTED.

B. This is a final and appealable order.

ENTERED: April 12, 2016

CIRCUIT JUDGE

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

RON TERVEN SR. and LORETTA TERVEN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 13-L-59
	)	
HONEYWELL INTERNATIONAL, INC., et al.,	)	
	)	
Defendants.	)	

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s previously-filed Motion for Summary Judgment, the Court having been fully advised in the premises, it is hereby agreed and ORDERED:

Over Plaintiffs' objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED. Owens-Illinois, Inc.'s Motion is granted as to the Conspiracy Counts for the same reasons this Court has granted similar motions in the past. Owens-Illinois, Inc.'s Motion is granted as to the Exposure Counts due to lack of product identification. Summary judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiffs on all remaining counts.

Date: 5/9/16

Hon. Rebecca Simmons Foley

SL - P

Order prepared by:

Matthew V. Chimienti
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

DENNIS WYATT, Special Administrator of the Estate of THOMAS WYATT, Deceased, and EVELYN WYATT, Individually,

Plaintiffs,

v.

BORG WARNER MORSE TEC, INC. (as successor by merger to Borg Warner Corporation), et al.,

Defendants.

No. 13-L-135

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s previously-filed Motion for Summary Judgment, the Court having been fully advised in the premises, it is hereby agreed and ORDERED:

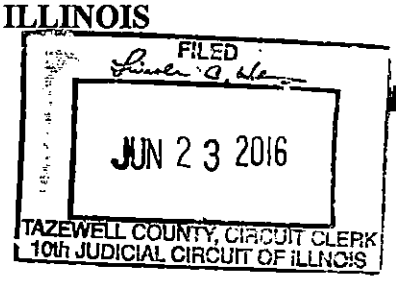
Over Plaintiffs' objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED. Owens-Illinois's Motion is granted as to the Exposure Counts due to lack of product identification. With regard to the Conspiracy Counts, the parties are granted leave to supplement the record with a response from Plaintiffs and a reply from Owens-Illinois. The Court being familiar with the record and the governing law on the Conspiracy Counts and being advised that the supplemental briefs will not contain any new information, Owens-Illinois's Motion is granted as to the Conspiracy Counts for the same reasons this Court has granted similar motions in the past. Summary judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiffs on all remaining counts.

Date: 5-26-16

Hon. Rebecca Simmons Foley

Order prepared by:
Matthew V. Chimienti
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ILLINOIS
TAZEWELL COUNTY



James & Frankie Johnson Petitioner,
Vs.

CASE NO. 13 L 50

Pneumo Abex LLC, et al Respondent.

Present

☐ Petitioner ☐ Attorney for Petitioner:
☐ Respondent ☐ Attorney for Respondent:
☐ No one appears ☐ Other: ☐ Other:

ORDER

Hearing held on 5-3-16 on Abex's MSJ and separately on Owens-IL MSJ after which the Court took the matter under advisement and now issues this order.

Evidence Standard

1. To prove civil conspiracy at trial, Johnson must show by clear and convincing evidence (as noted in Dancer v DMC, 230 IL App 3d 40 (2nd Dist., 1992) that 1.) Defts entered into an agreement to suppress the hazards of asbestos and 2.) then committed unlawful/tortious acts in furtherance of that agreement

2. At summary judgment, the Court determines whether there are any genuine issues of material fact in dispute by construing the evidence in its most favorable light to the non-moving party with all reasonable inferences made in favor of the non-moving party also.

3. The Court finds the standard used at trial is related to the standard used at Summary Judgment.

- Related to Directed Verdict Standard. The court grants summary judgment if there is "no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c). The standard in the statute mirrors the directed verdict standard applied at trial. Fooden v Brd of Governors, 48 IL 2d 580, 587 (1971); Doe v Dilling, 371 IL App 3d 151, 174-75, (1st Dist., 2006)
- How Viewed. The court views the supporting and opposing materials in the light most favorable to the responding party. cite omitted. The court construes the materials

"strictly" against the moving party and "liberally" in favor of the responding party. cite omitted.

- Test. The court grants a traditional-type summary judgment motion if the balance of the evidence is so overwhelming that the court would have to direct a verdict. Id. The court grants a Celotex-type summary judgment motion if the responding party's evidence is so weak that the court would have to direct a verdict. Koziol v Hayden, 309 IL App 3d 472, 476-77 (4th Dist., 1999)."

4. Therefore this Court believes the correct standard to use at this Summary Judgment stage is Clear and Convincing Evidence while viewing it in a light most favorable to Johnson and drawing all reasonable inferences in his favor.

5. This Court also believes that evidence of parallel conduct alone is insufficient to show a conspiracy. McClure v Owens Corning, 188 IL 2d 102 (1999).

Conspiracy Evidence and Abex

(This recitation of evidence is abbreviated due to it being more fully developed in many, many other cases).

1. In 1937, Abex agreed to join a group of manufacturers who were sponsoring research at Saranac involving asbestos. Abex contributed $250 per year for 3 years. The research was not geared toward determining a link between asbestos and cancer.

2. The research lingered. In 1943, the researcher sent an outline of his findings to the group. Part of his research revealed that 9 of 11 mice contracted cancer, but the researcher opined that his findings should not be published. He cited various shortcomings of his experiment and wrote that he hoped he could obtain funding from another organization to do this type of research under properly controlled conditions. The researcher did in fact pursue the funding from the National Cancer Institute. They denied his request, finding that his discovery of cancer "meant nothing" along with other criticisms of his research. Abex 652.

3. The research/report continued to linger. In October of 1946, the researcher died. Other researchers at Saranac picked up the pieces and sent a preliminary report to the group in

1948. On 10-27-48, Abex was invited to attend a meeting of the group to discuss the preliminary report. Abex reviewed the preliminary report, determined there was nothing in the report that caused concerned, and declined to attend the meeting instead nominating another member of the group to act for Abex.

4. The meeting of the group was held. On 11-12-48, the nominated member sent a letter to Abex notifying them that the group had decided to instruct Saranac to omit all references to cancer or tumors. On 12-14-48, the group so informed Saranac by stating "It was the feeling of this group that all references to cancer or tumors should be omitted..." Pltf Ex. H, 37. After even more lingering, the final report with no references to cancer or tumors was published in 1951.

5. While various reports involving health risks of asbestos existed in the 1930s and 1940s, all members of the group continued in their conduct of not notifying employees and consumers of any health risks related to asbestos.

Analysis of Abex Conspiracy Evidence

1. In order to have a conspiracy, there must be an agreement and unlawful/tortious acts committed in furtherance of that agreement. This Court agrees with Rodarmel that it "cannot be unlawful to hide information that is devoid of significance...." Rodarmel v Abex, 2011 IL App (4th)100463, ¶124.

2. As to this specific act of suppression, the alleged conspirators did not have the power to carry out their so-called conspiratorial aspirations. The official word from the alleged conspirators to Saranac was that all references to cancer or tumors "should" be omitted. Saranac was ultimately the report writer, and one can easily argue this language was optional, not mandatory. But resolving this question of evidence in a light most favorable to Johnson, this Court can reasonably infer that Saranac understood they "should" to be a "must." The problem is no further inference is necessary when Dr. Pratt, one of the named authors of the Saranac report, testified he was under no pressure to remove certain paragraphs related to cancer. Abex K, 36.

3. This Court can't even infer there was an agreement. By the time the final report was issued in 1951, Abex was no longer contributing financially to the research nor had done so for a decade preceding the final report. When Abex informed the group they were not going to attend the 1948 meeting, they stated they had no undue concern over anything in the draft report. Abex 746. This is an inference against an agreement to keep quiet about the dangers of asbestos. It also is a logical inference that this position of Abex, of which all other group members were informed (Abex 748), qualifies as a withdrawal from the conspiracy under US v US Gypsum, 438 US 422 (1978) and its progeny.

4. Courts in Gillenwater v Honeywell, 2013 IL App (4th) 120929, Menssen v Abex, 2012 IL App (4th) 1009094, and Rodarmel at 100463 and McClure, at 188 IL 2d 102 (1999), looked at alleged actions taken in furtherance of the conspiracy (dubbed "parallel conduct") beyond Saranac. This Court likewise cannot reasonably infer that other conduct by Abex; such as sharing a director, failing to inform its own employees, having its medical director publish an article that basically encourages dealing with employees' health deceptively, membership in a trade organization, inter alia; magically means a conspiracy exists.

5. Since this Court finds as a matter of law that a conspiracy cannot be shown and was not formed, evidence from Dr. Frank (Pltf F & G) or Dr. Lynch (Abex 711) as to the Saranac publication is moot. Regarding Dr. Frank, this Court acknowleges that Frank opines the research was valid and should have been published with references to cancer included. But Frank also acknowledged flaws in the Saranac research. This Court infers that either Frank believes in publishing flawed science (which damages his credibility) or he really believes that the research should be published without the flawed part (which supports the Saranac researcher's contention).

Conspiracy Evidence and Owens-IL

(This recitation of evidence is abbreviated due to it being more fully developed in many, many other cases).

1. Owens-IL ("OI") produced and sold Kaylo, an asbestos-containing product, from 1948 to 1958. They marketed Kaylo as "non toxic" even though they had plenty of notice that asbestos caused health problems.

2. In March of 1953, OI entered into a marketing agreement with Owens-Corning ("OC") whereby OC would purchase Kaylo from OI, but OC would market it and sell it with OI's branding on it. Just like OI, OC marketed Kaylo as "non toxic."

3. In April of 1958, OI got out of the Kaylo producing business by selling it off to OC.

4. From 1938 to 1948, OI and OC shared as many as 4 directors.

5. While various reports involving health risks of asbestos existed in the 1930s and 1940s, including some research sponsored by OI, both companies continued in their conduct of not notifying employees and consumers of any health risks related to asbestos.

Analysis of Owens-IL Conspiracy Evidence

1. This Court cannot infer there was an agreement between OI and any other alleged conspirator. This Court reviewed the evidence of shared directors. This Court agrees with Pltf Johnson that the director situation in this case is much more expansive than in Rodarmel. However there is no evidence from the BOD minutes that any agreements or coordination of activities amongst OI and OC regarding asbestos was ever discussed. For this Court to infer that such discussions occurred would be an impermissible leap. There was evidence that OI regularly discussed its stock ownership in OC, which it did along side its other financial interests in other holdings. The Court can make no inference from this.

2. The 1953 marketing agreement between OI and OC was carefully looked at by this Court. This Court notes that the Gillenwater court found this agreement was evidence of a conspiracy but found that OI had withdrawn from the conspiracy under the logic of Grunewald v US, 353 US 391 (1957) and Gypsum. This Court was troubled the advertisement (Pltf 33) where OC touted Kaylo to be non-toxic and listed OI as the manufacturer. In scrutinizing the Marketing agreement (OI 24), this Court could find no reference as to how OC was to market the product, such as if OC required to have OI's

approval of certain practices. It only required OC to buy certain amounts of Kaylo. Whether or not this Court feels this fact defeats the showing of a conspiracy, it remains that OI withdrew from the so-called conspiracy in 1958. Since Johnson did not have any exposure to products that could possibly be traceable to OI-OC's conspiracy, the Court's concern is moot.

3. The "Texas documents" clearly show OI and OC had an on-going business relationship. Also those documents show that OI and/or OC had more-than-sporadic contact with other conspirators. However, there is no evidence that this Court has seen that shows that those contacts were anything more than just regular business contacts. In spite of the fact that OI and OC may have led other Courts to believe their business contacts were minimal, it does not mean the more frequent contacts were of a conspiratorial nature--especially when there is no evidence to show what those contacts were tortious or unlawful.

4. Courts in Gillenwater v Honeywell, 2013 IL App (4th) 120929, Menssen v Abex, 2012 IL App (4th) 1009094, and Rodarmel at 100463 and McClure, at 188 IL 2d 102 (1999), looked at alleged actions taken in furtherance of the conspiracy (dubbed "parallel conduct"). This Court likewise cannot reasonably infer that other conduct by OI; such as failing to inform its own employees, purchasing asbestos from other alleged conspirators, loaning articles to OC about asbestos, membership in a trade organization, inter alia; magically means a conspiracy exists.

Defts Abex and OI motions for summary judgment are granted as to the conspiracy counts. Summary Judgment is entered in favor of Abex and OI and against the Johnsons as to counts 1 and 2 of the Complaint. There is no just reason to delay enforcement or appeal.

Entered: 6/23/2016

Judge of the Tenth Judicial Circuit Court

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

DAVID JONES and JANET JONES, Plaintiffs, v. BECHTEL CORPORATION, et al., Defendants.	)))))))	No. 14-L-19

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s previously-filed Motion for Summary Judgment, the Court having been fully advised in the premises, it is hereby ORDERED:

Over Plaintiffs' objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED. Owens-Illinois, Inc.'s Motion is granted as to the Conspiracy Counts for the same reasons this Court has granted similar motions in the past. Owens-Illinois, Inc.'s Motion is granted as to the Exposure Counts due to lack of product identification. Summary judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiffs on all remaining counts.

Date: 1/5/2017

Rebecca Simmons Foley
Hon. Rebecca Simmons Foley

Order prepared by:

Matthew V. Chimienti
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.

4836-5037-8048, v. 1

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3. SW List

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MC LEAN

LARRY SALVATOR, SR. and MARCIA SALVATOR Plaintiffs,	)	
v.	)	No. 16 L 20
AIR & LIQUID SYSTEMS CORPORATION, Successor to BUFFALO PUMPS INC., et. al., Defendants.	)	

ORDER

Cause coming for hearing on Owens-Illinois, Inc.'s Motion for Summary Judgment as to conspiracy, the parties having adopted arguments previously given to the court in prior cases, and the parties having agreed that the record in this case may be supplemented by filing of responses, replies and transcripts of argument from prior cases in order to complete the record for this case for purposes of appeal,

IT IS ORDERED:

1. Owens-Illinois, Inc.'s Motion for Summary Judgment is allowed over the objection of Plaintiff.

Date: 1-27-17 Entered: Rucca D

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WYLDER CORWIN KELLY LLP
207 E. Washington St., Suite 102
Bloomington, IL 61701
Ph. 309-828-5099
Fax: 309-828-4099
JR/eh

M. Chimienti - OI

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

GERLOF HOMAN and ROELIE HOMAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 15-L-118
	)	
HONEYWELL INTERNATIONAL INC., et al.	)	
	)	
Defendants.	)	

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s previously-filed Motion for Summary Judgment, the Court having been fully advised in the premises, it is hereby ORDERED:

Over Plaintiffs' objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED. Owens-Illinois, Inc.'s Motion is granted as to the Conspiracy Counts for the same reasons this Court has granted similar motions in the past. Summary judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiffs on all remaining counts.

Plaintiffs are granted leave to supplement the record with a response to Owens-Illinois's motion. Owens-Illinois is granted leave to supplement the record with a reply.

Date: 5/2/17

Hon. Rebecca Simmons Foley

Order prepared by:

Matthew V. Chimienti
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.
4824-6499-1281, v. 1

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S.S.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

JEFF KRUMWIEDE, Special Administrator of the Estate of WILLARD KRUMWIEDE, Deceased, and RUTH KRUMWIEDE, Individually,	)	
Plaintiffs,	)	
v.	)	No. 13-L-79
PNEUMO ABEX LLC, et al.	)	
Defendants.	)	

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s previously-filed Motion for Summary Judgment, the Court having been fully advised in the premises, it is hereby ORDERED:

> Over Plaintiffs' objection, Owens-Illinois, Inc.'s Motion for Summary Judgment is GRANTED. Owens-Illinois, Inc.'s Motion is granted as to the Conspiracy Counts for the same reasons this Court has granted similar motions in the past. Owens-Illinois, Inc.'s Motion is granted as to the Exposure Counts due to lack of product identification. Summary judgment is hereby entered in favor of Owens-Illinois, Inc. and against Plaintiffs on all remaining counts.

Date: 5/2/17

Hon. Rebecca Simmons Foley

Order prepared by:

Matthew V. Chimienti
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.
4826-8040-7857, v. 1

PLK

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

CRAVER/GARRETS
Plaintiff/Petitioner,

vs

OWENS-ILLINOIS d.d.
Defendant/Respondent.

No. 14 L 86

ORDER

CAUSE coming on for hearing on OI's MSJ based on lack of product ID. Parties present & the Court being fully advised IT IS ORDERED that the motion is granted over Pl's objection.

OI is hereby dismissed from this cause, all parties to pay their own costs

DATE: Oct 2, 2017

Judge

Name
Attorney for
Address
City
Telephone

AK-Pl
EM-OI

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2. Sroust

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

CRAIG BOWRON, as Special Administrator of the Estate of DENIS BOWRON, Deceased and NANCY BOWRON, Individual	)	
Plaintiffs,	)	No. 16-L-138
v.	)	
HONEYWELL INTERNATIONAL, INC., *et al.*,	)	
Defendants.	)	

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s (hereafter "Owens-Illinois") Motion for Summary Judgment, the Court having reviewed the submissions and being fully advised in the premises, it is hereby ORDERED:

Over Plaintiffs' objection, Owens-Illinois's Motion for Summary Judgment is GRANTED as to all counts naming Owens-Illinois. Judgment is hereby entered in favor of Owens-Illinois and against Plaintiffs.

Date: 12.18.17

Circuit Judge

Order prepared by:

Joy Anderson (IARDC No. 6320219)
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

DENNIS GUSTAVSON Plaintiff, v. AIR & LIQUID SYSTEMS CORPORATION, *et al.*, Defendants.	)	No. 17-L-85

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s (hereafter "Owens-Illinois") Motion for Summary Judgment, the Court having reviewed the submissions and being fully advised in the premises, it is hereby ORDERED:

> Over Plaintiffs' objection, Owens-Illinois's Motion for Summary Judgment is GRANTED as to all counts naming Owens-Illinois. Judgment is hereby entered in favor of Owens-Illinois and against Plaintiffs.

Date: 12.18.17

Circuit Judge

Order prepared by:

Joy Anderson (IARDC No. 6320219)
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.

5v-P

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

KENNETH RISEN,	)	
	)	
Plaintiffs,	)	No. 16-L-76
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, *Successor to Buffalo Pumps, Inc., et al.*,	)	
Defendants.	)	

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s (hereafter "Owens-Illinois") Motion for Summary Judgment, the Court having reviewed the submissions and being fully advised in the premises, it is hereby ORDERED:

Over Plaintiffs' objection, Owens-Illinois's Motion for Summary Judgment is GRANTED as to all counts naming Owens-Illinois. Judgment is hereby entered in favor of Owens-Illinois and against Plaintiffs.

Date: 12-18-17

Circuit Judge

Order prepared by:

Joy Anderson (IARDC No. 6320219)
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

KENNETH RISEN,	)	
	)	
Plaintiffs,	)	No. 16-L-76
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, *Successor to Buffalo Pumps, Inc., et al.*,	)	
Defendants.	)	

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s (hereafter "Owens-Illinois") Motion for Summary Judgment, the Court having reviewed the submissions and being fully advised in the premises, it is hereby ORDERED:

Over Plaintiffs' objection, Owens-Illinois's Motion for Summary Judgment is GRANTED as to all counts naming Owens-Illinois. Judgment is hereby entered in favor of Owens-Illinois and against Plaintiffs.

Date: 12-18-17

Circuit Judge

Order prepared by:

Joy Anderson (IARDC No. 6320219)
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Harden
Plaintiff/Petitioner,

vs

Owens-Illinois
Defendant/Respondent.

No. 14-L-179

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s Motion for summary Judgment, the court having been fully advised in the premises, it is hereby ORDERED:

Owens-Illinois, Inc's motion for summary Judgment is granted, over Plaintiff's ob objection, as to all ~~count~~ Exposure for lack of Product identification and ~~as~~ on the conspiracy counts, for the usual reasons stated on the record.

DATE: 1/30/18

Judge

Name Joy Andersch
Attorney for Owens-Illinois
Address 70 W Madison Ste 2900
City
Telephone

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

CHRIS MILLIGAN, Special Administrator of the Estate of LARRY MILLIGAN, Deceased, Plaintiff, v. AIR & LIQUID SYSTEMS CORP., et al. Defendants.	)	No. 14-L-84

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s (hereafter "Owens-Illinois") Motion for Summary Judgment, the Court having reviewed the submissions and being fully advised in the premises, it is hereby ORDERED:

Over Plaintiffs' objection, Owens-Illinois's Motion for Summary Judgment is GRANTED as to all counts naming Owens-Illinois. Judgment is hereby entered in favor of Owens-Illinois and against Plaintiffs.

↳ including conspiracy and product ID (based on lack of product ID evidence).

Date: 1.30.18

Circuit Judge

Order prepared by:

Joy Anderson (IARDC No. 6320219)
Riley Safer Holmes & Cancila LLP
Three First National Plaza
70 W. Madison St., Suite 2900
Chicago, IL 60602
Counsel for Defendant Owens-Illinois, Inc.

PMRC

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Rodman
Plaintiff/Petitioner,

vs

Owens-Illinois
Defendant/Respondent.

No. 14-L-178

ORDER

This cause coming to be heard on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment, the court having been fully advised in the premises, it is hereby ORDERED:

Owens-Illinois Inc.'s motion for Summary Judgment is GRANTED, over Plaintiff's objection. Judgment is hereby entered in favor of Owens-Illinois as to lack of product ID and as to conspiracy

DATE: 1/30/18

Judge

Name Jay Andersan
Attorney for Owens-Illinois
Address 70 W. Madison Ste 2900
City Chicago, IL 60602
Telephone

PLRC

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF LASALLE

MICHAEL McGURK, as Special Administrator of the Estates of BERNARD and GRACE McGURK, Deceased,

Plaintiff,

v.

PNEUMO ABEX LLC, *et al.*,

Defendants.

No. 16-L-12

This cause coming to be heard on Defendant Owens-Illinois, Inc.' s (hereafter "Owens-Illinois") Motion for Summary Judgment, the Court having reviewed the submissions and being fully advised in the premises, it is hereby ORDERED:

> Over Plaintiff's objection, Owens-Illinois's Motion for Summary Judgment is GRANTED as to all counts naming Owens-Illinois. Judgment is hereby entered in favor of Owens-Illinois and against Plaintiff.

Date: 4/30/18

Judge Eugene Daugherity

Order prepared by:
Joy Anderson (IARDC No. 6320219)
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4833-3293-1939, v. 1

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STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Enicksar
Plaintiff/Petitioner,

vs

Owens-Illinois
Defendant/Respondent.

No. 14 L 100

ORDER

The court having been fully advised in the premises, it is hereby ordered:

Over plaintiffs' objection, summary judgment is hereby entered in favor of Owens-Illinois, Inc., and against plaintiffs on all counts.

DATE: 5.1.18

Judge

Name
Attorney for
Address
City
Telephone

CLC=TT

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

Young
Plaintiff/Petitioner,

vs

~~Young~~ Owens-Illinois
Defendant/Respondent.

No. 14 L 23

ORDER

Cause coming to be heard on Owens-Illinois Inc.'s Motion for Summary Judgment ("Owens-Illinois") it is hereby ordered: over Plaintiff's objection, ~~Judgment is~~ ~~if~~ Owens-Illinois's motion for summary judgment is granted as to all counts naming Owens-Illinois. Judgment is hereby entered in favor of Owens-Illinois and against Plaintiff. ~~Plaintiff's motion for summary judgment is denied.~~

DATE: 5.1.18

Judge

Name Jay Anderson
Attorney for Owens-Illinois
Address 70 W Madison, Ste 2900
City Chicago, IL 60602
Telephone 312-471-8732

SW-r

FILED
Date: 7/30/14
Clerk of the Circuit Court
By: DS Deputy

STATE OF ILLINOIS
CIRCUIT COURT
SEVENTEENTH JUDICIAL CIRCUIT

J. EDWARD PROCHASKA
Circuit Judge

Winnebago County Courthouse
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Rockford, Illinois 61101
PHONE (815) 319-4804 * FAX (815) 319-4801

July 30, 2014

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Gidget Turville, as Special Administrator of the Estate of Dale Turville, Deceased v. Honeywell International INC., et al
CASE No. 11 L 42

MEMORANDUM DECISION and ORDER

THIS matter comes for Decision on Defendant Owens-Illinois Inc.'s Motion for Summary Judgment, pursuant to 735 ILCS 5/2-1005(b), on the civil conspiracy counts (1-2 and 5-6) filed by Plaintiff Gidget Turville in her Amended Complaint. The Court, having reviewed the motion, briefs, attached exhibits, and relevant case law, and having heard arguments of Counsel, does hereby Find and Order as follows:

I. Background Information

Dale Turville worked for Rockford Products Corporation from 1961 to 1999. (Plaintiff's Amended Complaint, Count One, ¶ 1). On April 9, 2011, Mr. Turville died after having been diagnosed with lung cancer and asbestosis. (Id. at ¶'s 12, 23). The Court appointed Gidget Turville as Special Administrator of the Estate of Dale Turville. (Id. at ¶ 29). Plaintiff Gidget Turville alleges that Mr. Turville, while working at Rockford Products Corporation, was exposed to asbestos-containing products. (Id. at ¶'s 2-3). Plaintiff alleges that Defendant Owens-Illinois (O-I) took part in a conspiracy, with a number of other asbestos-manufactures, to conceal the dangers of asbestos. (Id. at ¶'s 21-22). O-I's participation in the alleged conspiracy, Plaintiff claims, proximately caused Mr. Turville's death by concealing the harmful effects of asbestos exposure. (Id. at ¶ 24).

DEFENDANT'S EXHIBIT H
ALL-STATE LEGAL

C05544

Defendant O-I is primarily a glass manufacturer but, between 1948 and April 1958, the company made a substance called "Kaylo." (Defendant's Motion For Summary Judgment, at 1). Kaylo contained asbestos. (Id.) In April 1958, O-I sold the Kaylo business to Owens Corning, who continued to make the product until some point in the early 1970's. (Id.). O-I has moved for summary judgment on the civil conspiracy counts. (Id. at 7), arguing that the Plaintiff's circumstantial evidence does not raise a genuine issue of material fact when examined under the clear and convincing standard required in a civil conspiracy case. (Id.).

The Court has considered all of the evidence presented by both parties to the motion and will refer to it as needed throughout the Analysis and Decision section.

II. Applicable Law

A civil conspiracy is an intentional tort that exists when two or more parties join together to "accomplish[] by concerted action either an unlawful purpose or a lawful purpose by unlawful means." McClure v. Owens Corning Fiberglas Corp., 188 Ill. 2d 102, 133 (Ill. 1999) (quoting Buckner v. Atlantic Plant Maintenance, Inc., 182 Ill. 2d 12, 23 (Ill. 1998)). To prove a civil conspiracy, a plaintiff must show that the parties involved had an agreement and that one or more parties committed a tortious act with the intent of furthering the conspiracy. McClure, 188 Ill. 2d at 133. Once two or more parties form such an agreement, each party is liable for all tortious acts done to further the agreement by the others. Adcock v. Brakegate, Ltd., 164 Ill. 2d 54, 64 (Ill. 1994). A party's agreement to enter a conspiracy must be knowing and voluntary. McClure, 188 Ill. 2d at 133-134.

Having direct evidence of a civil conspiracy is rare. Id. at 134; Gillenwater v. Honeywell Internation, Inc., 2013 IL App (4th) 120929 at *28 (Ill. App. 4th Dist. 2013). In most conspiracy cases, there will only be circumstantial evidence available. McClure, 188 Ill. 2d at 134. A party can prove civil conspiracy with circumstantial evidence, but that evidence must be clear and convincing. Id. The clear and convincing standard mandates that if a court finds that "the facts and circumstances relied upon are as consistent with innocence as with guilty," the court must find that a conspiracy does not exist. Id. at 140-141 (quoting Tribune Co. v. Thompson, 342 Ill. 503, 529 (Ill. 1930)).

In a civil conspiracy case, certain evidentiary rules apply. Id. at 135. First, evidence of similar conduct between a defendant and other members of the alleged group is circumstantial evidence. Id. This evidence, called parallel conduct, is not sufficient proof, by itself, of an agreement to enter a civil conspiracy. Id. Second, the "mere exchange" of information between two companies in the same industry is typical and not evidence of a conspiracy. Id. at 147. Third, evidence that shows behavior just as consistent with innocence as with guilt is not proof of a conspiracy under the clear and convincing standard. Rodarmel v. Pneumo Abex, L.L.C., 2011 IL App (4th) 100463 at *26 (Ill. App. 4th Dist. 2011). Finally, the fact that two companies had a common member on their board of directors is not evidence of a conspiracy. Id. at *27.

In general, a party does not have the duty to warn of dangers that are beyond its control. *See* Turner v. N. Ill. Gas Co., 401 Ill. App. 3d 698, 707 (Ill. App. 2nd Dist. 2010). According to the Illinois Supreme Court, "'duty' is not sacrosanct in itself but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection. Kirk v. Michael Reese Hosp. and Med. Ctr., 117 Il. 2d 507, 527 (Ill. 1987) (quoting W. Prosser & W. Keeton, THE LAW OF TORTS sec 53, at 358 (5th ed. 1984)). Illinois does not apply the market-share liability theory in tort cases. Smith v. Eli Lilly & Co., 137 Il. 2d 222, 251 (Ill. 1990). In holding that parallel conduct alone will not suffice for proving a civil conspiracy, the McClure court warned that "this case illustrates the potential for industrywide [sic] liability." McClure, 188 Il. 2d at 142. The court stated that it wanted to ensure that "manufacturer's responsibility for the actions of their competitor[s] is based on more than speculation and conjecture." Id.

A court can enter summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." 735 ILCS 5/2-1005(c). On a summary judgment motion, the court determines whether there is a genuine issue of material fact by construing the "pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent." Gilbert v. Sycamore Mun. Hosp., 156 Ill. 2d 511, 518 (Ill. 1993). A court may draw inferences from the facts when they are undisputed. Garde v. Country Life Ins. Co., 147 Ill. App. 3d 1023, 1029 (Ill App. 4th Dist. 1986). There is no issue of fact if a court determines through its inferences that there is only one reasonable way that a juror could view the facts. Id. The court then enters summary judgment because a party cannot prove a necessary element of their case and a trial would be useless. Ray Dancer, Inc. v. DMC Corp., 230 Ill. App. 3d 40, 50 (Ill. App. 2nd Dist. 1992).

III. Clear and Convincing Evidentiary Standard

This Court must first decide whether the clear and convincing evidentiary standard applies to a summary judgment motion. Defendant O-I argues that the clear and convincing evidence standard for circumstantial evidence applies at the summary judgment stage. (Defendant's Motion for Summary Judgment, at 10). O-I points to the Illinois Supreme Court's decision in McClure, another asbestos civil conspiracy case, to support its contention. (Id.). Plaintiff argues that McClure did not alter the summary judgment test because the court entered a judgment notwithstanding the verdict. (Plaintiff's Opposition to Owens-Illinois' Motion for Summary Judgment, at 9-10). To apply the clear and convincing standard at the summary judgment stage, Plaintiff argues, "would stand the test for summary judgment on its head" because courts cannot weigh evidence when considering a motion. (Id. at 10). Instead, a court must simply construe the evidence "against" the movant. (Id.).

This Court finds that the clear and convincing standard of proof applies at the summary judgment stage. In Reed, the Illinois Supreme Court adopted the United States Supreme Court's holding that the "'substantive evidentiary burden of proof'" applies

during a summary judgment motion. Reed v. Nw. Publ'g Co., 124 Ill. 2d 495, 512 (Ill. 1988) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). The court stated that the U.S. Supreme Court's holding "was equally applicable to actions in State court." Id. Although Reed was a libel case, nothing in that court's opinion or logic dictates that the clear and convincing rule is only applicable for libel causes of actions.

The Illinois Supreme Court's ruling in McClure, an asbestos civil conspiracy case, reinforces this Court's finding. While McClure did not directly address whether a trial court must apply the clear and convincing evidentiary standard at the summary judgment stage, the court's reasoning is instructive. In McClure, the court reversed a jury verdict in a asbestos civil conspiracy case and entered judgment in favor of the defendant in the case, Owens-Corning. McClure, 188 Ill. 2d at 151-52. The plaintiff in that case only presented circumstantial evidence to support its civil conspiracy claim. Id. at 143. Stating that the plaintiff's evidence of contact between the alleged conspirators was too isolated, the court concluded:

> "Even when considered in the light most favorable to plaintiffs, evidence of these contacts was as consistent with innocence as with guilt. (citation omitted). Plaintiffs showed separate acts by the alleged conspirators, but the evidence failed to show that these acts were connected by an agreement. (citation omitted). To conclude, based on the evidence of record, that defendants engaged in a conspiracy requires speculation. Liability based on such speculation is contrary to tort principles in Illinois (citation omitted) and to the clear and convincing standard of proof applicable in civil conspiracies cases". Id. at 151-52.

The Illinois Supreme Court in McClure did not construe every fact "against" the moving party in the case, as the Plaintiff suggests a court should. Instead, the court applied the clear and convincing standard and *then* viewed the facts in a light most favorable to the plaintiff (the non-moving party in the case). The supreme court's analytical steps show that a trial court can apply the clear and convincing standard without inappropriately "weighing" the evidence.

In antitrust conspiracy cases, the clear and convincing evidentiary standard applies at the summary judgment stage. Ray Dancer, 230 Ill. App. 3d at 50-51. The court in McClure looked to antitrust conspiracy law to guide it in making its holding because an important element in both civil and antitrust conspiracy cases is an agreement. McClure, 188 Ill. 2d at 135-36; Prods. Liab. Ins. Agency, Inc. v. Crum & Forster Ins. Cos., 682 F.2d 660, 663(7th Cir. 1982). In the antitrust context, the 7th Circuit states that it "would be a waste of time" to hold a trial if the plaintiff cannot establish a necessary element of its case. Prods. Liab., 682 F.2d at 663.

Summary judgment is only appropriate when the right of the moving party is certain. Gilbert, 156 Ill. 2d at 518. But, to hold a trial when no jury could reasonably find for a plaintiff is, as the 7th Circuit noted, a "waste of time." Prods. Liab., 682 F.2d at 663. It is clear that this Court has a duty to apply the clear and convincing standard given the

Illinois Supreme Court's broad language in Reed and that court's reasoning in McClure. Therefore, the Court will apply the clear and convincing evidentiary lens to Plaintiff's circumstantial evidence.

IV. Analysis and Decision

A. Conspiratorial Agreement

Plaintiff has no direct evidence of a conspiratorial agreement between O-I and other asbestos manufacturers to conceal the health-risks of asbestos. The Plaintiff relies on circumstantial evidence in trying to prove its civil conspiracy case. This circumstantial evidence, therefore, is subjected to the clear and convincing standard of proof. The evidence presented to this Court must, in a light most favorable to the Plaintiff, establish that a reasonable jury could find for Plaintiff on both elements of the civil conspiracy cause of action.

The 4th District Court of Appeals has already examined most of Plaintiff's evidence, in Gillenwater v. Honeywell Int'l, Inc., and determined that there was no clear and convincing proof of a conspiratorial agreement. Gillenwater, 2013 IL App (4th) 120929 at *17-18. First, the court stated that evidence of a shared director did not "'reasonably tend[] to exclude'" the possibility that the two companies were acting independently. Id. at *16. The evidence thus was only parallel conduct and not enough evidence, by itself, to prove a conspiracy. Id. The court went on, however, to say that in a light most favorable to the plaintiff, a distribution agreement between O-I and Owens-Corning could have signaled an implied understanding to conceal or not disclose the dangerous nature of asbestos. Id. at *18. Between 1953 and 1958, O-I manufactured Kaylo, an asbestos-containing product, and Owens-Corning distributed it. Id. at *17-18. The court stated that both companies knew that asbestos products were "potentially a respiratory hazard" and also understood that placing a warning label on Kaylo would reduce sales, an unsatisfactory business result for both companies. Id. at *18. But, the court concluded that because the agreement to distribute Kaylo ended in 1958 when O-I sold the Kaylo division to Owens-Corning, the scope of the conspiracy did not extend past the 1958 sale. Id. at *18-21.[1]

This Court's finding, in regards to the evidence of shared directors and a distribution agreement, mirrors the 4th District Court of Appeals' finding. While O-I and

[1] The Gillenwater court relied on a number of U.S. Supreme Court decisions about the scope of a criminal conspiracy to come to their conclusion. Rodarmel, 2011 IL App (4th) 100463 at *18-21. First, the court stated that the object of the alleged conspiracy between O-I and Owens-Corning would have been accomplished upon the 1958 sale. Id. at *20. While O-I certainly would not have wanted to be sued, the court said it would stretch the conspiracy to "absurd lengths" to say that it still existed in the 1970's when the plaintiff in the case was exposed to asbestos. Id. Second, the court stated that regardless of the length of time, O-I's sale of the Kaylo division signified a withdrawal from the conspiracy. Id. at *21.

Owens-Corning did share directors, this is only parallel conduct among two businesses and not enough on its own to prove a conspiracy. Further, although a reasonable jury could find that O-I and Owens-Corning had an implied conspiratorial agreement between 1953 and 1958 when the companies had a distribution agreement, the possible conspiracy terminated when O-I sold the Kaylo division in 1958. Therefore, any potential conspiracy O-I entered with Owens-Corning during the distribution agreement ended before Mr. Turville's employment at Rockford Products from 1961 to 1999.

Plaintiff points to a number of other facts as proof of a conspiratorial agreement between O-I and other asbestos manufacturers. Plaintiff says that the common ownership of stock between O-I and Owens-Corning shows a conspiratorial agreement. This Court finds, however, that common ownership of stock is just as consistent with innocence as with guilt.

Next, Plaintiff claims that the sharing of information between O-I and Owens-Corning illustrates an implied conspiratorial agreement. The sharing of information between companies, though, is "common practice" according to the Illinois Supreme Court and shows no evidence of an agreement. McClure, 188 Ill. 2d at 148. Therefore, the Court finds that O-I and Owens-Corning's sharing of pamphlets about asbestos does not show a conspiratorial agreement.

The fact that a director of both Bendix and Johns-Manville (two other asbestos companies) attended a Johns-Manville board meeting and the birthday party for Michael Owens in September of 1959 also does not show a conspiratorial agreement. Again, evidence that is just as consistent with innocence as with guilt is not clear and convincing evidence of a conspiracy. Rodarmel, 2011 IL App (4th) 100463 at *26. Further, the sharing of a member of a board of directors between companies is not evidence of a conspiracy. Id. at *27. In this case, the attendance of a Johns-Manville meeting by a member of Johns-Manville's and Bendix's board of directors is not evidence of a conspiratorial agreement. Business and personal explanations abound for why the board member attended the celebration. The Court finds this is not evidence of a conspiratorial agreement.

The Plaintiff presents other evidence which it believes supports the civil conspiracy counts. The Court, however, places little weight on it because it deals with other companies or has no relevance to establishing a conspiratorial agreement involving O-I.

This Court finds that, in a light most favorable to the Plaintiff, there is no evidence of any agreement by O-I to enter a conspiracy after 1958. An agreement is an essential element to proving a conspiracy. Because Plaintiff does not meet the agreement prong, the conspiracy counts fail. The Court, therefore, believes it is unnecessary to examine the second prong of a civil conspiracy cause of action—a tortious act committed in furtherance of the conspiracy.

B. Duty to Warn

Defendant O-I argues that it owed no duty to warn Plaintiff of the dangers of other producer's asbestos products. Because O-I had no relationship with Plaintiff and did not assume a duty to warn Plaintiff, O-I asserts that it had no duty to warn him of the dangers of asbestos. O-I states that to impose a duty on it for the actions of other manufacturers post-1958, when O-I no longer had an asbestos division, would be akin to market share liability and contrary to the Illinois case law. O-I points to Smith (which rejected market share liability) and McClure, among a number of other cases, as support for its argument.

Plaintiff maintains that O-I knew of the dangers of asbestos and failed to post warnings on its products when it was still in the asbestos business. Plaintiff, however, cites no case law directly supporting its proposition that O-I owes a duty for actions it took prior to Mr. Turville's exposure to asbestos products.

Imposing a duty on O-I in this instance would realize the McClure court's fears that civil conspiracy counts in cases such as this one could detach liability from manufacturer responsibility. This Court must consider the policy implications of finding a duty for O-I in this case. To impose a duty, this Court finds, would create a system akin to market share liability and the Illinois Supreme Court rejected market share liability in Smith. Plaintiff points to no cases that suggest otherwise. O-I's responsibility for warning of asbestos dangers ended when its control over its asbestos products ceased—in 1958. After that point, O-I had no control over other Companies' decisions to warn or not. Because Mr. Turville's exposure to asbestos at Rockford Products Corporation occurred after O-I sold its asbestos division, O-I had no duty to warn Mr. Turville about the dangers of asbestos during the years of his employment, 1961-1999.

V. Conclusion

For the foregoing reasons, Defendant Owens-Illinois motion for summary judgment, pursuant to 735 ILCS 5/2-1005(c), is granted as to Counts 1-2 and 5-6 of Plaintiff Gidget Turville's Amended Complaint. The Court finds and Orders as follows:

1. Defendant's Owens-Illinois Motion for Summary Judgment as to Counts 1-2 and 5-6 of the Amended Complaint is Granted.

2. There is no just reason for delaying enforcement or appeal from this judgment.

7/30/2014
Date

Hon. J. Edward Prochaska

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF MORGAN

FILED
JUN 29 2012
THERESA LONERGAN
Clerk of Circuit Court Morgan, Co. IL

SUE WISEMAN, Special Administrator of the Estate of ROBERT POOLE, Deceased,
Plaintiffs,

-vs-

PNEUMO ABEX LLC, et al.,
Defendants.

No. 06-L-9

ORDER

This matter is before the Court on Defendant Honeywell's Motion for Summary Judgment, along with Owens-Illinois, Inc.'s Motion to Reconsider its Motion for Summary Judgment of Plaintiff's civil conspiracy claims.

After a review of the Motion for Summary Judgment, pleadings, memorandums, supporting documentation and the arguments of counsel, the Court makes the following findings:

That the "clear and convincing" burden of proof does apply at the summary judgment stage. *Ray Dancer, Inc. v. DMC Corp.*, 230 Ill.App. 3d 40; 594 NE 2d 1344 (2nd Dist. 1992).

As part of the analysis of the case, the "innocent construction rule" applies. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d at 140; 720 NE 2d at 262.

Evidence of parallel conduct alone is insufficient to support the agreement element of a civil conspiracy claim. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d at 102; 720 NE 2d at 242 (1999).

Rodarmel v. Pneumo Abex, 2011 Ill. App. (4th Dist.); 957 NE 2d 107 (modified opinion issued in September 2011), is the most recent case on civil conspiracy and should be followed.

That considering the facts and allegations in the light most favorable to the non-movant Plaintiff the Court finds that the Plaintiff's evidence is insufficient to prove either the alleged conspiratorial agreement, or an act in furtherance of that agreement that caused the injury alleged in the case, by the required standard of clear and convincing evidence.

Therefore, the Court finds that there is no genuine issue of material fact and the Motions for Summary Judgments are granted.

Entered: June 29, 2012

Judge

DEFENDANT'S EXHIBIT I
ALL-STATE LEGAL

C0555

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

MCLEAN COUNTY, ILLINOIS

AL GARRELTS and CAROLYN GARRELTS, Plaintiffs, vs. JOHN CRANE INC., et al., Defendants. McLean Co. Case No. 11-L-121

MOTIONS FOR SUMMARY JUDGEMENT

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED and CERTIFIED that on, to wit: the 7th day of February, 2012 the following proceedings were held in the aforesaid cause before the Honorable SCOTT D. DRAZEWSKI, Presiding Judge.

APPEARANCES:

MR. JIM WYLDER and MR. ANDREW KELLY
Wylder Corwin Kelly LLP
On behalf of the Plaintiffs.

MR. MARK TIVIN and MR. WILLIAM SWALLOW
O'Connell, Tivin, Miller & Burns, LLC
On behalf of Defendant John Crane Inc.

MR. MATTHEW FISCHER and MS. RENEE KELLY
SchiffHardin LLP
On behalf of Defendant Owens-Illinois.

Georgia B. Rollins
Official Court Reporter
Rm. 313 Law & Justice Center
104 West Front Street
Bloomington, IL 61701

THE COURT: All right, we've reconvened in 11-L-121 for continued pretrial motions. More specifically, the first motion to address this morning would be the motion for summary judgment filed by defendant OI, for which argument was rendered yesterday afternoon by counsel.

Present at this time would be Mr. Wylder and Mr. Kelly on behalf of the plaintiffs; Mr. Fischer and Ms. Kelly on behalf of defendant OI; and Mr. Swallow and Mr. Tivin on behalf of defendant John Crane.

Were there any other matters, counsel, that, with the night to think about things, that you wanted to go ahead and relate to the Court as far as argument, or are you prepared for the Court to rule at this time?

MR. WYLDER: Nothing from plaintiff.

MR. FISCHER: We're prepared, Your Honor.

THE COURT: Okay. All right, the plaintiff has a four-count complaint, and as noted to the Court prior to the argument commencing on defendant OI's motion for summary judgment, the plaintiff confessed Counts 2 and 3 of the defendant's motion. And therefore, defendant OI is granted summary judgment as to Counts 2 and 3.

The contested issue, however, relates to Counts 1

and 4. In Count 1 -- each of those counts I should say being conspiracy, so the conspiracy counts. And Count 1, the named defendants are Pneumo-Abex LLC, Metropolitan Life Insurance Company, Owens-Illinois Incorporated, and Honeywell International Incorporated. And additional co-conspirators but not named as defendants would be Johns-Manville, Raybestos-Manhattan, UNARCO, and Owens-Corning.

In Count 4, again, also a count alleging civil conspiracy, the two named defendants are Owens-Corning and Owens-Illinois, and there are no additional alleged co-conspirators named in that particular count.

The parties also have made reference and argument that there is no evidence of exposure by the plaintiff to one of Owens-Illinois' products, as evidenced by the confession on the part of the plaintiff to Counts 2 and 3. There's some evidence whether the plaintiff was exposed to an Owens-Corning product, more specifically Kaylo, that being on steam lines and/or hot water lines at Chanute Air Force -- Air Force Base, excuse me; results of some evidence that the plaintiff's ex-husband would have been exposed to Johns-Manville asbestos and/or Kaylo during the period of time that he was employed at Kraft Foods. So there is some evidence, if

you would, of exposure by the plaintiff to one of Owens-Corning's products, an alleged co-conspirator in each of the counts.

With respect to an issue of duty, which the attorneys also talked about yesterday, and discussion more specifically as it relates to the Holmes and Rodarmel cases. At present, I'm not prepared to go ahead and give an expansive ruling to the Holmes decision, or Rodarmel. I would indicate that there is a duty under the law in the 4th District that is owed to the plaintiff for conduct occurring after 1964. The Illinois Appellate Court for the 4th District recognizes such a duty, and so does the Spain and Johnson cases.

Rodarmel, and the principles enunciated within the opinion -- albeit OI was not a party to that case -- are equally applicable to a defendant alleged to be involved in a civil conspiracy; that such a named co-conspirator entered into an agreement with another co-conspirator or conspirators to falsely assert that asbestos was safe or to keep quiet about the dangers of asbestos. Rodarmel reinforced the maxim set down in McClure that, quote: An activity that is just as consistent with innocence as with guilt [illegible] clear and convincing evidence of an im

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conspiratorial agreement, unquote.

The Court once again reiterates that on addressing the motions for summary judgment on civil conspiracy claims, that if a party relies solely on circumstantial evidence to prove a civil conspiracy claim, such as we have in this case, that being no direct evidence of an agreement, the heightened clear and convincing standard is implicated to determine whether a genuine issue of material fact exists. The trial court must consider the clear and convincing standard of proof. In McClure, the Illinois Supreme Court held that no verdict against OI could ever stand, applying the JNOV standard, based on that record.

McClure was a case where OC and OI were sued by the wives of former UNARCO workers, who alleged OC and OI were in a civil conspiracy with UNARCO and Johns-Manville. In this case, the Court has already indicated what the different conspiracy theories are, and who the named defendants and/or alleged co-conspirators are in Counts 1 and 4. Nonetheless, McClure is still of assistance to the Court, along with Rodarmel in assessing or determining the motion for summary judgment as to Counts 1 and 4, as it relates to defendant OI.

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In McClure, there was evidence presented at trial to show that OC and OI's actions, with respect to their own products and distribution of asbestos-containing products, were similar to UNARCO and Johns-Manville; particularly as to the manufacture and distribution of Kaylo.

The Court discussed the activities of Owens-Illinois and Owens-Corning for the time period between 1948 and 1972, which was when Owens-Corning stopped making Kaylo. The Court also discussed OI's involvement with Saranac Laboratory, commencing in 1943, and the publication by Saranac Laboratory of an article sometime in the 50s. The Illinois Supreme Court further discussed evidence that OI failed to share information it had about health hazards of Kaylo with its employees and/or consumers; that OI failed to place warning labels on Kaylo. In 1952, OI issued an advertising brochure where it represented that Kaylo was nontoxic. It also discussed testimony from an OC employee at that time, a Jerry Heiser, H-E-L-S-E-R, that he was never told by employees of OC or OI that asbestos used in Kaylo caused lung scarring and cancer; that his testimony was contradicted by the testimony of Richard Grimmie, G-R-I-M-M-I-E. The Court further discussed evidence of

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the plant conditions, dust collectors, sweepers, respirators, dust sampling, x-rays, and industrial hygiene surveys.

As to Owens-Corning, the plaintiff introduced evidence at the trial court level of a 1942 internal memorandum, the weapon in reserve for negotiations with the union memorandum. OC also received information from Saranac Laboratory in 1956 that asbestos had been fairly well-incriminated as a carcinogen. OC also had a sales brochure in 1956, describing Kaylo as non-irritating to the skin and nontoxic, the 1966 label on Kaylo cartons, as well as the 1970 label on cartons of Kaylo. The Court also discussed 1966, '67, '68, and '70 internal memoranda relating to OC's endeavors to conceal the health risks of asbestos; also discussed that OC first began notifying employees of health hazards of asbestos some time in the 70s, as early as 1971 and as late as 1978 at different plants.

The evidence considered as well related to the conditions at the plants of OC that produced asbestos, including the Sayreville and Berlin plants. There's also evidence of contact between OC and OI. OC was founded in 1938 by Owens-Illinois and Corning Glass. An OC attorney borrowed two published articles from an OI

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industrial hygienist. The agreement to distribute Kaylo in 1953 and to later purchase the Kaylo division from OI in 1958 was discussed. Also a distribution agreement, requiring the use of OI's trademark and tradename for Kaylo was discussed within the McClure opinion.

The Court further talked about the drafting of the NIMA, N-I-M-A, pamphlet and the indemnity clause in OC's agreement to purchase the UNARCO plant, as well as the fact that that did not support an inference of an agreement.

The essential issue in the case, however, was whether the plaintiffs proved the existence of an agreement between OI/OC and UNARCO or JM. Proof of a relationship between defendants themselves does not establish the required agreement with UNARCO or JM. So the decision of the Illinois Supreme Court, however, was to reverse the judgments that were rendered against OI and OC. They did not reverse and remand for a new trial. Nonetheless, the Court recognizes the difference between the theories espoused in the McClure case versus the theories that are presented in this case.

The plaintiffs, in opposition to the defendant's motion for summary judgment, list additional documents in their brief in opposition. That would include Group

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Exhibit 1, and then there are Exhibits D-1 through 26; there are Exhibits E, F, G, and H, by group, and then there's also Group Exhibit 2. Upon review of those documents, which includes deposition testimony, pleadings, correspondence, advertisings, listing of boards of directors, et cetera, the Court confirms that all of the proposed additional evidence is in fact circumstantial. None of it is direct evidence that OI agreed with another company or companies to suppress or misrepresent the health hazards of asbestos. The additional evidence therefore falls into one or more of the categories previously noted by the Illinois Supreme Court in McClure and the 4th District Appellate Court in Rodarmel as insufficient as a matter of law to establish a civil conspiracy.

The categories and/or explanations for the plaintiffs' new evidence are: One, unilateral; two, an activity that is just as consistent with innocence as with guilt, the innocent construction rule; three, parallel conduct; four, ordinary commerce; five, independent activity; six, not in agreement to suppress or misrepresent; seven, merely sharing information; eight, activities of a purchaser with a supplier; nine, activities of a trade organization; ten, inadmissible

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hearsay; eleven, a shared director without any evidence that the shared director controlled any decision making by the corporate entity, or without any evidence that the shared director controlled decisions on what to say to the public about asbestos, falls further into category twelve within the rebranding agreements, which the Court has addressed in Rodarmel; and thirteen, payments to a noted expert, either as a consultant or as an expert witness does not lead to an inference that OI was involved in a conspiracy to hide the effects of the exposure so asbestos.

So since the additional exhibits fall into one or more of the aforementioned categories for which both Rodarmel and McClure have indicated is insufficient as a matter of law to establish that there is a civil conspiracy, and the plaintiff does not have in this case any direct evidence that OI entered into an agreement with other asbestos companies. More specifically, the alleged co-conspirators in Counts 1 and 4, that they agreed among themselves to assert what was not true; that it was safe for people to be exposed to asbestos and asbestos-containing materials; and two, suppress information about the harmful effects of asbestos.

The plaintiff is required to prove the existence

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of the conspiracy by clear and convincing evidence. The evidence considered by the Court establishes that no genuine issue of material fact exists under this more demanding standard of proof, and that the defendant is entitled to judgment as a matter of law as to Counts 1 and 4. If you will draft the order, Mr. Fischer.

MR. FISCHER: I will.

THE COURT: Thank you, counsel.

MR. FISCHER: Thank you.

THE COURT: All right. A copy of the order as it relates to defendant OI's motion for summary judgment in Counts 1 through 4, I guess it would be, have now been distributed. We're ready to continue at this time based upon the representation made by counsel for John Crane yesterday that they did wish to argue the motion for summary judgment. The Court would note that there is a John Crane motion for summary judgment filed on January 13th of 2012, and a plaintiff's opposition to John Crane's motion for summary judgment filed on January 31st of 2012. Confirm to me, counsel, that there is no reply.

MR. SWALLOW: That's correct, Your Honor.

THE COURT: Okay. Who is going to be arguing the motion on behalf of the defendant, John

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Crane?

MR. SWALLOW: I will.

THE COURT: All right. You may proceed, counsel.

MR. SWALLOW: May it please the Court. Your Honor, before I delve into my motion for summary judgment, I believe there's two housekeeping matters in respect to the motion for summary judgment. As you noted, we filed our motion for summary judgment on the 13th, and plaintiffs filed their response on the 31st. As both co-defendants yesterday and plaintiffs indicated, the deposition of Al Garrelts, which was the basis for the exposure at Kraft, was due in yesterday. I have copies of his evidence deposition, transcripts of his evidence and his discovery deposition. I have given copies to plaintiffs' counsel, Your Honor, and I would ask to move to supplement our motion for summary judgment with the amended Exhibit 1, being the transcript of the evidence depositions of Al Garrelts, and the amended Exhibit 2, which would be the discovery deposition of Al Garrelts.

THE COURT: Is this your motion, Mr. Kelly? Or it is Mr. Wylder's?

MR. KELLY: To argue? Yes, it is mine.

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THE COURT: Rather than me assume anything, my assumption, based upon reading each of the motions was that when the defendant filed its motion for the numerous depositions of witnesses, it had not yet even been taken.

MR. KELLY: Yes. As Mr. Garrelts' dep had not even occurred.

THE COURT: Well --

MR. KELLY: I mean, his deposition was taken the day that we filed out response. So John Crane did not have it when they filed their motion; that's true.

THE COURT: And there were other witnesses, too, I think that were taken between the 13th and the 31st, right? Or is that wrong?

MR. KELLY: There were other witnesses. Al Garrelts and I think maybe one or two other coworkers. But yes.

THE COURT: All right.

MR. SWALLOW: One of those being Doug Caraker, which is attached to plaintiff's motion.

THE COURT: All right. And to go along with that, and tell me if I'm wrong, my assumption is that perhaps each of you would want to go ahead and supplement with some deposition transcripts; that being

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testimony that wasn't attached to your original motions. But maybe that's wrong.

MR. KELLY: I mean, we filed what we have in response, and I don't object to them supplementing Garrelts' because it is an evidence deposition.

THE COURT: Okay. No problem. We'll do that. All right, and just to confirm, that being for Mr. Kelly, you have John Crane amended Exhibit 1, which is the evidence deposition transcript. Then you have John Crane amended Exhibit No. 2, which is the discovery deposition of Mr. Garrelts.

MR. KELLY: Right.

THE COURT: All right. Those will be considered then as well. You may proceed, counsel.

MR. SWALLOW: The second kind of household matter is that John Crane is going to adopt the argument that co-defendants made on duty and household exposure cases. We just heard your ruling in regards to Owens-Illinois, so for the record we would adopt that argument.

Your Honor, you have before you the deposition of Al Garrelts, and in this case, in regards to exposure to John Crane products, Al Garrelts -- a plaintiff has to prove that two people were exposed to asbestos; one, Al

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Garrelts; and two, Carolyn Garrelts. Your Honor, in front of you, you have the evidence deposition of Al Garrelts. In that deposition, there's no evidence of John Crane. John Crane is never mentioned at all in that evidence deposition.

Your Honor, you also have the discovery deposition of Al Garrelts, in which Al Garrelts testifies that he knows what John Crane packing is. He testified he never worked with it at Kraft. He worked with it at Mobil after he left Kraft. He testified that he didn't work with John Crane packing at Kraft, and he testified that he didn't work with packing at all at Kraft.

Now Your Honor, Al Garrelts' testimony that he was never exposed to a John Crane product at Kraft is corroborated by the one witness that actually puts a John Crane product at Kraft. That gentleman is a man by the name of David Walters. David Walters testified that he worked with John Crane packing when he was part of the general maintenance unit at Kraft from 1974 until well after Al Garrelts left Kraft in 1979. Mr. Walters testified in his deposition that he never saw Al Garrelts work with John Crane packing, and he testified that Al Garrelts was never around him when he worked

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with John Crane packing. So Your Honor, you have with respect to the Kraft exposure, the two most important and two only depositions that tell you that Al Garrelts was never exposed to a John Crane product. Based on that, he can't take any asbestos fibers from a John Crane product home to his wife if he never worked with or was around a John Crane product.

Second person that the plaintiff has to prove was exposed to a John Crane product is Carolyn Garrelts. Outside of the exposure through her husband at Kraft -- or alleged exposure, there is the time at Chanute Air Force Base, from September 1980 to December of 1980. Your Honor, in the deposition of Carol Garrelts, she has no idea who John Crane is. She's shot familiar with the company. She's never heard of it. And the only testimony that you have in front of you, which is attached to Plaintiff's Exhibit as Exhibit C is the deposition of Doug Caraker. Doug Caraker testified that John Crane packing was used at Chanute Air Force Base by his father and a coworker of his father four to five times over the course of 1970 to 1988. He testified that Carolyn Garrelts was never around when he worked with that product.

So you have four depositions that are key to

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plaintiff's case in proving exposure against John Crane, and not a single one of them can place Al Garrelts or Carolyn Garrelts around a John Crane product.

Your Honor, there is testimony that David Walters worked with John Crane pipe dope at Kraft. John Crane pipe dope doesn't contain asbestos. So that should not be factored into your opinion.

Your Honor, in reviewing plaintiff's opposition to our motion for summary judgment, they base their opposition on the fact of a fiber drift theory. But Your Honor, there's no evidence in front of you from any expert that testifies, at Kraft, that fiber could have drifted from the work that David Walters did to anywhere in that plant that Al Garrelts may have been. Since Al Garrelts was never anywhere -- there's no testimony that Al Garrelts was anywhere near David Walters when he worked with a John Crane product. There needs to be some way to prove that those fibers could have got from where he was to where Al Garrelts was. There's no evidence of that. There's no expert testimony, there's no lay testimony. Because David Walters testified that there's no -- that cutting of John Crane packing at Kraft, removing the John Crane packing at Kraft, and installing the new John Crane packing at Kraft ever

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created dust.

You have heard much testimony -- or excuse me, much argument in the last day about the conditions at Kraft; that it was clean. Al Garrelts testified in his deposition that he would have eaten food off the floor at Kraft it was so clean. There's no dust in the air, there's ventilation systems. There's no testimony before this Court that could possibly say that John Crane asbestos fibers from a packing product would have got to Al Garrelts; and therefore, it couldn't have gotten to Carolyn Garrelts.

Likewise at Chanute, there's no testimony that the product, the John Crane product used, which was used outside and only in steam pits ever could have gotten into the air and drifted into any of these buildings. There's no testimony that -- there's no expert opinion that this dust could have gotten into the air, that this dust could have gone any matter of distance and somehow entered any of these buildings and somehow attached itself to Carolyn Garrelts in the three months of exposure that's alleged. She never testified that she saw work going on in these steam pits, and Doug Caraker testified that she was never around when they did the John Crane packing work four to five times over the

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course of 18 years. So once every three years, they did John Crane packing work. There's no testimony that that occurred in the three-month period in which she was -- she alleged exposure at Chanute.

Your Honor, you know that the standard in these cases is a factor standard; that the plaintiff has to prove that the plaintiffs -- or in this case, Al Garrelts or Carolyn Garrelts, worked in an area where John Crane's asbestos was frequently used, in that Al Garrelts or Carolyn Garrelts were sufficiently close to the area to come into contact with defendants' products.

Your Honor, with the evidence that's before you, we don't even get to the Thacker case. We don't even get the Thacker standard because there's no evidence that Al Garrelts ever worked with John Crane product or was ever around a John Crane product. There's no evidence that Carolyn Garrelts ever worked with a John Crane product or was around a John Crane product. There's complete lack of evidence regarding product exposure to John Crane products.

Now Your Honor, also attached to plaintiff's opposition to our motion for summary judgment, you have the testimony of a gentleman from Garlock. Your Honor, you know that in motions for summary judgment, you can

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only hear evidence that would be admissible at trial. The testimony of a Garlock employee cannot be used to prove a John Crane case. Moreover, the testimony that is attached to that deposition is -- the only people present at that trial were Garlock, Sprinkmann, and plaintiffs. We weren't even there.

So Your Honor, I would submit to the Court that due to the lack of evidence of product exposure of John Crane, that we are entitled to and we would ask this Court to grant our motion for summary judgment.

THE COURT: Educate me on, not the law necessarily, but on what pipe dope is.

MR. SWALLOW: Your Honor, pipe dope is used to seal in threads on pipe. It is a gooey substance that does not produce dust when it was put on, and it's not meant to be removed.

THE COURT: All right. So you would have two pieces of pipe that were being attached to one another. I'm assuming that it would be screwed in some manner as opposed to just --

MR. TIVIN: Your Honor, if I could speak. You could assume it is somewhat like that plumber's paste, where you put it on the threads and then you screw it together.

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THE COURT: That's what I was thinking of. Okay. And although Mr. Kelly I'm sure is going to refute this, you had an assertion, counsel, that pipe dope does not contain asbestos. Is pipe dope referenced in Plaintiff's Exhibit D attached to it, plaintiff's opposition?

MR. SWALLOW: Plaintiff's Exhibit D, Your Honor?

THE COURT: Yes.

MR. SWALLOW: No. It's my understanding that Plaintiff's Exhibit D is excerpts from a John Crane catalog packing.

MR. TIVIN: Your Honor, I believe that the plaintiff's response to summary judgment, the only product that they put at issue in their response for a summary judgment motion is packing.

MR. KELLY: That's true.

THE COURT: Okay. So I don't have to -- we just had an intellectual discussion about pipe dope that I can go ahead and file away for a later date.

MR. KELLY: Chalk it up to a learning experience, I guess.

THE COURT: All right. Thank you, counsel. Mr. Kelly.

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MR. KELLY: Sure. And just so we're all clear, pipe dope, as much as it has a cool name, is not something that we're alleging was an asbestos-containing product that he was exposed to. But the reason it was cited in the papers is the fact that when asked the question by John Crane's lawyers at the deposition, Mr. Walters said that he remembered using John Crane pipe dope and packing; those were the two products he recalled. He remembered the pipe dope was used on air fittings and plumbing, just as Mr. Tivin described that that's how that sort of thing would be used. And he remembered them using graphite packing from John Crane on the valves, valve stems and such that would be used on things like a steam line, for instance. Those are the products that he remembered of John Crane's when he was asked at deposition, are you familiar with the company, John Crane. And his response was yeah, I think I used those products.

I agree with a couple of other things that John Crane said, actually. One is Al Garrelts said he didn't remember being exposed to a John Crane product. The product they asked him about was gaskets. They didn't ask him about packing, and there's a distinction between the two. You have had enough trials in these types of

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cases now that you understand how a gasket is basically a piece of material that is either preformed in the shape of an inside of a pipe, or you cut it out of a sheet and put it between two pipes in order to create a seal.

Packing's a little bit different. Packing can be used with respect to the two flange pieces of pipes. Typically though, it is something that goes in a valve. If you could sort of imagine like on cartoons, when they show the big wheel that you spin to turn off or turn on a pipe and what's flowing through it, oftentimes what they have -- the valve itself will have a bonnet and some other mechanical pieces, and you actually drop in what looks like a piece of string or rope, it depends on what kind it is. But that's how it's used and it comes in different fashions. Sometimes it's square, sometimes round, sometimes it's braided, sometimes it's lubricated with graphite or other things, too. Teflon, for instance. And that's what's put in these valves and that's what's used to open and close the valves, so when you open or close it, you don't have steam or whatever's running through it come flying out and hit whoever is manning the valve.

So that's the material we're talking about here,

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and they didn't ask Al Garrelts about packing. They asked him about gaskets. Now even if they asked Al Garrelts about packing, I don't know what he would have said anyway as to whether or not he recalled John Crane. And we already know what he said about the products that were actually at Kraft, which is he doesn't know if anything there, one way or the other, contained asbestos.

But what we do know is that he worked in maintenance. His first stint back in the early years of his career, he worked in food production. He became a line maintenance guy, came back after a stint at the post office and pretty quickly thereafter, within the space of a couple years, became a maintenance supervisor, and supervised guys like David Walters and actually handled maintenance in the building, and then the outside contractors that came in and did that work itself.

One of the things that came up yesterday in the discussions was the fact that one thing Al Garrelts remembered was David Walters actually working on a gasket up in the rafters, and he was about -- I can't remember what the testimony was, but 20 to 75 feet away. That's one of the things that he remembered.

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And we actually took David Walters' deposition. David Walters, as I mentioned before, was the one that said when he was in maintenance at Kraft. Throughout the time that he was there, he utilized John Crane pipe dope and packing. That's what he recalled having used, and he recalled it throughout the time that he worked there. What he recalled was a graphite packing, he recalled it on the steam lines, and it was often a dry material, because it would get dried out, which was usually typically what would cause it to start to create a leak.

He described how, in order to remove the old packing, they would open up the valve, they would use a pick or a screwdriver or a wire brush to remove it. And it came out in what he recalled to be pieces and chunks. He says he did this about once a month. And the other thing he said -- and this is all on pages 66 to 67 -- is it always happened on weekends. That's when they did that work, that's when he did it. And as we know from the stuff that we discussed yesterday in terms of the testimony in this case, Mr. Garrelts was a maintenance supervisor. It was his job, on rotating every third weekend, to be in the plant during maintenance operations, which is the exact time when this work was

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done.

The other information we were provided yesterday and I'll reiterate today is the fact that Al Garrelts' job -- when he was there, he was a hands-on supervisor, number one. That was described by Mr. Bruggini in his testimony. But in addition to that, when he was there on weekends, his job was to supervise and oversee what the outside contractors were doing, and supervise his maintenance crews, guys like Walters, with respect to what they were doing.

One of the other things that Mr. Walters talked about at both page 47 when I was asking questions -- or maybe it was Steve actually from our office -- and at page 67 when Mr. Swallow was asking questions, was that he said he commonly worked with Al Garrelts. They were scheduled together as well. And as I mentioned before, this was largely on weekends.

He also described that there were steam lines running throughout the plant, all three sections of it; the oil and paste side, the cheese side, the refrigeration part in the middle, and it was a maze throughout the plant where they would have these leaky pipes up on the rafters where they would do the work. So the evidence is that he recalls using that. It was

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the only one he recalled having used over the years at Kraft.

And you heard a moment ago that, well, you know, all plaintiff has is testimony of James Heffron, this guy from Garlock, to establish that these were asbestos. And I mean, we did attach it as Exhibit E. I think it's good testimony. I think it's helpful for the Court for understanding, in terms of these products; they are little bit different than insulations. And the reason they're a little bit different is because one of the first things that OSHA did when it came out was require the eventual nonuse of asbestos in things such as insulation, such that I think most people agree that by the late 70s, most if not all of the insulation being sold didn't contain asbestos at all.

When we talk about things like packing, they were not part of the original OSHA promulgations, with respect to friable asbestos and labeling and the effort to try to get asbestos out. And in fact, if we go with Garlock for a moment, Mr. Heffron, they continued to make packing gaskets up into the 2000s.

John Crane was a little bit quicker than that. They got out in the late 80s in terms of when they last put asbestos in these products. But the evidence is in

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the case -- and you can look at it based on the very catalogs of John Crane, which we attached as Exhibit D, is that all of these graphite lubricated high pressure packing and steam line packing materials, based on John Crane's very own catalogs, based on what other people in the industry say, they contained asbestos during this timeframe, clear up into the 1980s. That's what they were; they contained asbestos.

The other thing that was mentioned was dust. I provided the testimony of Doug Caraker. I agree with one thing; the Chanute packing was probably not the greatest exposure in the world. I think the Kraft one is much better in terms of Al actually being present, working around and with the kinds of guys that worked with this product, and then the dust coming home on his clothes.

Doug Caraker worked at Chanute. What he said was that the packing he worked with was John Crane -- that's page 15 of his deposition -- and he says that John Crane packing, based on his knowledge, was in all of the steam pipes running through the place. That's what his testimony was, was that's what was used at the base.

But the other thing he talked about was that when you removed old, dry packing from a valve, and you used

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a screwdriver or a chisel or a pick, he described the process as dusty. He described it as creating dust; Mr. Walters described it as pieces and chunks. But the process itself, based on Doug Caraker's analysis and what he observed from a factual standpoint, was that the removal of packing is a dusty process. That's what he provided. So it does create dust, it was asbestos, and it was identified as John Crane at Kraft. And based on all those -- all that testimony that we have provided, I believe it's good enough to deny summary judgment, based on what's before you.

THE COURT: All right. Response?

MR. SWALLOW: Thank you, Your Honor. The first thing that I would like to address is with respect to the questioning of Al Garrelts. Mr. Kelly said to this Court that Al Garrelts was questioned about gaskets, and not about packing. And Your Honor, that's actually not true. I refer you to the amended Exhibit No. 2, which is the discovery deposition, and I would ask you to -- I would direct your attention to page 41. On that page, if you look at line 21, Al Garrelts is asked by myself: Okay. Did you work with John Crane packing at Kraft? No.

Page 42, Your Honor, line 4. Question: Sure.

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When you were at Kraft, did you ever work with packing? Answer: Not that I know of. Al Garrelts was asked specifically about John Crane, and he said he never worked with John Crane packing at Kraft. So he wasn't questioned about gaskets. Gaskets aren't at issue in this case. And the one testimony, or the one piece of evidence that he said or offered in testimony regarding that he thought that David Walters changed gaskets. He also testified in both the evidence deposition and discovery deposition that he has no idea who made the gasket. He has no idea who made the gasket that was taken off. So that's not relevant for either the motion for summary judgement or the testimony at trial.

The fact that Al Garrelts testified -- and the other thing I would like to point the Court to is further up on page 41, I asked the question: Do you associate any products with John Crane? Answer: I want to say don't they may rope packing for pumps and stuff. Question: Artfully, I said, um. And his answer was: I'm trying to think of all these names. I remember a black and kind of grayish looking rope packing I used use out at Mobil on packing on a lot of the pumps. He knows what John Crane packing is, and he knows he didn't use it at Kraft.

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Now we also have the testimony of David Walters. And Judge, there needs to be some nuance added to the information provided about David Walters. David Walters started at Kraft as a line mechanic in 1971, in the natural cuts department. In 1974, David Walters left and went to the general maintenance division. He testified that Al Garrelts arrived in natural cuts after he did, and left natural cuts before he did to become a supervisor. David Walters testified that he did not work with John Crane packing while he was a line mechanic. He testified that after he went to general maintenance in 1974 that he worked with John Crane packing on steam lines only. He then testified that Al Garrelts -- that he never worked with Al Garrelts in general maintenance. Al Garrelts was never his supervisor in general maintenance, and Al Garrelts never worked on a steam line that David Walters observed when he was in general maintenance. So all the testimony of the times that David Walters would have worked with a John Crane product, Al Garrelts was never around. And the testimony is on page 42 and on page 46 that shows that Al Garrelts was never around David Walters when he worked on John Crane products.

The other thing I would like to point out in

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regards to the testimony of David Walters is that he actually testified that dust wasn't produced. If I could direct your attention to page 40, line 4, David Walters was asked if any dust, quote: Was any dust created when you cut the packing? Answer: No. Page 41, line 9, Question: Okay. And when you removed the packing, did that create dust? No. Page 16, Question: Okay. And when you -- let me ask you this; when you replaced the packing, you put in new packing. Did the installment of that new packing create any dust? No.

Now Mr. Kelly mentioned that he also testified that the packing came out in pieces and chunks. But Your Honor, for that I would direct your attention to page 70, line 2. Question: You were asked about old packing that came out in chunks, correct? Answer: Yes. Line 5: But this wasn't dusty, correct? His answer: No. So Your Honor, there's no evidence that this removal of packing is this dusty process. Further, there's no evidence that Al Garrelts was anywhere near any of this work.

David Walters worked with John Crane packing steam lines once a month on the weekends. Al Garrelts testified in his evidence and discovery deposition that

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he worked one out of every three weekends. David Walters told you that Al Garrelts was never around when he worked on any of these products. There's no evidence that he was around.

THE COURT: What page are you referring to in his deposition? Or pages?

MR. SWALLOW: Excuse me?

THE COURT: What page or pages are you referring to in Mr. Walters' deposition to support that statement?

MR. SWALLOW: Well I would direct you page 70 that you should be on, line 23. Question: Regardless, you never saw Al Garrelts around you when you were working on pipe dope or the packing, correct? Answer: Not that I recall. Question: You never saw Al Garrelts work with John Crane pipe dope or John Crane packing, correct? Answer: Not that I had seen.

So there's -- to say that Al Garrelts was ever around is -- one, it's a misstatement, and two, it is not enough under the case law to say that our product was in a plant. And it's not enough to argue that because our products contained asbestos that that means that it would have gotten on Al Garrelts' clothing, and therefore to Carolyn Garrelts. You have to show that Al

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Garrelts was regularly and frequently and proximately exposed to asbestos fibers from John Crane products. It's not enough that it was there, and it's not enough that it contains asbestos. It has to get to him, and there's no evidence from Al Garrelts and there's no evidence from David Walters directly from the record that Al Garrelts was ever around.

The second point that I briefly want to talk about in regards to the exposure at Chanute is Doug Caraker. And Doug Caraker's amended exhibit is attached to plaintiff's opposition to our motion as Exhibit C. And Andy is right, on page 15 he testified -- on being asked by Mr. Kelly, that John Crane packing was in steam pipes at Chanute. That was on page 15. However, Your Honor, likewise at Kraft, the fact that a product is at a place does not equate to exposure.

If I could direct your attention, Your Honor, to page -- one moment -- page 34 of Mr. Caraker's deposition. Line 16, Question: Okay. You never -- when your father and when Roger was working -- or with the John Crane packing, you never saw Carolyn Garrelts around? Answer: No. Oh, no.

Carolyn Garrelts testified she never heard of John Crane. Doug Caraker testified that she was never

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around. Further, the fact that installing new packing at Chanute didn't create dust. Page 36, line 12: Okay. And when you were -- well when your father and Roger put the packing in, that didn't create any dust, correct? No. Question: Okay. Answer: It's an oily substance. It's packing. It didn't create a dust.

So Your Honor, what we have here, and as we've stated, David Walters stated that Al Garrelts was never around. Al Garrelts said that he never worked with it or was around. Doug Caraker said Carolyn Garrelts was never around, and Carolyn Garrelts has never heard of it. The fact that our product may have been at Kraft, may have been at Chanute, may have contained asbestos, is not sufficient to get past a motion for summary judgment. You have to prove that there was some sort of exposure.

Your Honor, it has been -- this Court knows that causation cannot not be based on speculation, guess, or conjecture. That's all we have here. All the witnesses say that Al Garrelts and Carolyn Garrelts were never around a John Crane product. To assume that because a product was in a place, that it would have magically -- when neither of the products that were worked on created dust, but that some invisible dust got to somewhere

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where these people were, be it in Kraft or be it that it wandered into some building that Carolyn Garrelts may have worked with -- one, it defies logic; and two, it is unreasonable. And it would be probably the definition of speculation, guess, and conjecture.

Your Honor, based upon the weight of the evidence that is in front of you and the arguments that were made, John Crane believes and we would ask that you grant our motion for summary judgment.

THE COURT: Mr. Kelly, you have probably been over there reviewing Mr. Walters' deposition, particularly during counsel's argument. Are there specific pages and line numbers that you think could or might refute what he has stated?

MR. KELLY: Well in terms of -- they are working together, that's at pages 47 to 67, as I mentioned before. And --

THE COURT: All right. So 20 pages?

MR. KELLY: What's that?

THE COURT: 20 pages?

MR. KELLY: No. 47 and 67.

THE COURT: Okay. Just a minute then.

MR. KELLY: And then --

THE COURT: Whoa, whoa. Wait. Wait until I

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read 47 and 67.
MR. KELLY: Sure.
THE COURT: All right. Go ahead.
MR. KELLY: 67 is where he talked about all the work would have been above where Al Garrelts would have been working. And then actually at the bottom of that is the description of the fact that they actually disassembled full valves six times a year.
The next page, which I think I already mentioned before, was page 41, where he talked about how the material was dry when he would pull it out, the packing material, whether it be with a pick or screwdriver or whatever it was they chose to use. And it's the Doug Caraker testimony at 15 to 16, where he talks about the fact the process itself was dusty.
THE COURT: You had mentioned something before about 20 to 75 feet away. Where is that located?
MR. KELLY: You know, I've only actually gotten through -- I just got this testimony this morning. I have actually only gotten through the evidence deposition, and I have not found where it says that yet. But that could have very well been something that came up in the discovery deposition. But I know people yesterday referenced it that were actually at Al

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Garrelts' deposition, and I was not there for that.
THE COURT: All right. So it was part of Garrelts' testimony, not --
MR. SWALLOW: Your Honor, I can --
THE COURT: -- David Walters.
MR. SWALLOW: I can agree with counsel that the testimony in Garrelts' deposition was that in the one instance that he saw David Walters work at Kraft, it was on one, the gasket, and two, that he was 20 to 75 feet away in that Mr. Walters was on a man lift about 40 feet in the air. And it was only -- it was on a gasket, which he does not know the manufacturer which was removed, or which was installed.
THE COURT: All right. And I'm assuming, Mr. Kelly, that you're going to tell me it doesn't make a difference whether Mr. Garrelts was actually present while Mr. Walters was performing maintenance on an asbestos-containing product because of the dust that would have been deposited or dispersed into the air at the time that he did so. It would have have been close enough in proximity, that being to his regular workplace.
MR. KELLY: Right. And that's why I mentioned the 20 to 75 feet. I mean Walters says, you

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know, I can't think of a particular time when I was doing packing work and Al was standing with me doing the work. But we have Garrelts himself saying, I recall seeing him working on these types of things, a gasket in this instance, but working on pipes when they were working at the same place, and he remembers been within a distance of him. The fact is that it creates dust, and the fiber drift theory is something that has been mentioned in a number of appellate court opinions, including the 3rd and 4th District, where they talk about the fact that once dust is created from the act of a particular activity, anybody going through that area can be exposed. In this instance, obviously we have that extra step; it's Al getting exposed, Al then taking the dust home. But I don't think the logic is any different, and it has been sufficient for purposes of summary judgment in the past.
THE COURT: Any final response, Mr. Swallow?
MR. SWALLOW: One moment, Your Honor.
THE COURT: Sure.
MR. SWALLOW: Your Honor, there's I think a few points I would like to make. First, the fact that Al Garrelts testified that he was 25 -- 20 to 75 feet away from David Walters working on a gasket is

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irrelevant. It is not a gasket case. There's no testimony from Al Garrelts he ever worked with packing. There's no testimony from David Walters that Al Garrelts ever worked with or was around packing.
Now Your Honor, I want to direct your attention to page 47 and page 48 of David Walters' deposition. And Andy directs you to page 47, but I think it would help the Court if you looked at page 47 and 48. Page -- or line 18, Question: After you worked together in the line mechanic -- which is a bad question -- you never worked together again, correct? Answer: No. Question: In fact, you probably -- Al Garrelts could have been in Kraft -- could have been in the plant, but you were never together again, right? Answer: No. Question: That's a terrible question. Answer: No. Question: Strike that. You guys never worked on steam lines together? Answer: No. Not at all.
And Your Honor, with respect to this fiber drift theory, appellate courts have held that the fiber drift theory can satisfy the proximity prong of the factor standard. It doesn't -- the fact that a fiber can drift does not satisfy the full factor standard. You still have to prove frequency, you still have to prove regularity, and more importantly, in Thacker, it also

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tells you that you still have to prove that that fiber would have contacted -- would have contacted a plaintiff.

In the Thacker case, the facts of the case are completely -- are distinguishable from the facts at hand. As I'm sure you know, Thacker was a UNARCO case, and Thacker testified -- or in Thacker, there was a haze in the UNARCO plant that is one building, that uses raw asbestos, and that -- in that it was dirty, in that it was -- and that in and of itself is distinguishable. Now in the Thacker decision, they write: We agree with the appellate court that even though the plaintiff offered no evidence of where in the plant Manville asbestos was processed, the fact that Manville asbestos was inside the plant necessarily contributed to dust and the plant air, was sufficient to meet the proximity requirement, particularly in light of; one, the friable and potent nature of raw asbestos Manville shipped to the plant; and two, testimony, albeit slight, indicating that Manville asbestos necessarily generated dust, which became part of the dust which circulated throughout the facility.

First, John Crane packing is not friable; it's encapsulated. You heard Andy tell you and I have told

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you, it's graphite encapsulated. It's not friable, it's not insulation that just gives off asbestos fibers. Two, there is no testimony that there's dust in this facility. If you look at the asbestos -- or if you look at the opinions in the 3rd and 4th District, Thacker, with Johnson, with Spain, they all indicate that the fiber drift theory can satisfy the proximity prong. However, each one of these cases dealt with visible dust and dealt with evidence that actually showed; one, the plaintiff was regularly and frequently in the area where these products were worked on; and two, there's invisible dust. What we have in this case, there's testimony that there's no dust. The fact that Mr. Kelly can point to part of the deposition transcript of Mr. Walters that says that it was dry doesn't mean that there's dust. Mr. Walters was asked and I pointed out earlier that the chunks that came out of this packing, it wasn't dusty.

This isn't a case where you have a facility like UNARCO, where there's raw asbestos, there's clouds, and there's testimony that raw asbestos was released in the air. You don't have that here. What you have at the Kraft facility, with exhaust ventilations, that is so clean that Al Garrelts would eat off the floor, and it's

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a food processing facility, and that there's no record that dust was from any of the these products.

Based on that, Your Honor, the lack of evidence, the fact that there needs to be more for the fiber drift -- that fiber drift only satisfies proximity, it doesn't satisfy regularity and frequency, the evidence in this case is insufficient. And on that basis, we ask that you grant our motion for summary judgment.

THE COURT: All right. This motion is a motion for summary judgment on negligence, if you would, product liability, product exposure count -- or counts, I suppose -- to civil conspiracy.

The standard of the review then by the trial court is different. Summary judgment is a remedy which should be granted with caution and should only be granted when the pleadings, depositions, admissions, and affidavits show that there's no genuine issue of material fact, and that the moving party is entitled to a judgment, as a matter of law.

The Court, in considering the defendant's motion, must construe all of the evidence strictly against the moving defendant and liberally in favor of the plaintiff. The Court is required to view all of the evidence in the light most favorable to the nonmoving.

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If reasonable inferences could draw more than one conclusion or inference from the facts, including one unfavorable to the moving, the motion should be denied.

What the plaintiff has here is testimony by Mr. Walters that places the defendant's products at the Kraft facility. The jury could make an inference, based upon the testimony that was or will be presented by Mr. Walters, that the plaintiff's ex-husband, basically, regularly worked in an area where the defendant's asbestos was frequently used, and that the plaintiff worked close enough to this area to come into contact with the defendant's product. So under the Thacker criteria, there is some evidence, when viewed in the light most favorable to the nonmoving, that being the plaintiff, which would defeat the defendant's motion for summary judgement, and that's what the Court's ruling will be.

Break time?

MR. TIVIN: Sure, Your Honor.

MR. WYLDER: Sure.

(WHEREUPON, A BRIEF RECESS WAS TAKEN)

THE COURT: All right, we're reconvened in 11-L-121, the Garrelts matter. Present at this time is counsel for defendant John Crane, and also Mr. Kelly on

behalf of the plaintiff. There have been some discussions with respect to scheduling, the possibility of deferring some of the trial to a later date yet during this calendar. Mr. Kelly is presently drafting an order that would be consistent with an agreement between the Court and counsel. What other matters do you wish to address the purposes of the record?

MR. TIVIN: None.

THE COURT: Okay. Then why don't you go ahead and recite, Andy, what those dates are, even though it's in the written order.

MR. KELLY: I think we said the 17th and the 21st for final pretrial, and beginning with jurors then on the 22nd of February. And what we anticipate at this point is it will be about a two-week trial, give or take.

THE COURT: Okay. All right. Then we're off the record.

MR. TIVIN: Thank you.

(WHICH WERE ALL MATTERS HEARD AND RECEIVED IN THE HEARING OF THE ABOVE-ENTITLED CAUSE ON THIS DATE)

_____

Official Reporter

License No. 084-004742

Dated this_____day of

_____, 2012.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

I, GEORGIA B. ROLLINS, an Official Reporter for the Eleventh Judicial Circuit, State of Illinois, reported these proceedings had on the trial in the aforementioned cause in shorthand; that I thereafter transcribed said proceedings, which I hereby certify to be a true and accurate transcription of those notes taken as aforesaid.

IN THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT FOR
ADAMS COUNTY, ILLINOIS

VIRGINIA BOWLES, Individually, and as Independent Executor of the Estate of JERALD BOWLES, Deceased, Plaintiff,	)	
v.	)	No. 09-L-65
PNEUMO ABEX CORPORATION, PNEUMO ABEX LLC, METROPOLITAN LIFE INSURANCE COMPANY, OWENS-ILLINOIS, INC., HONEYWELL INTERNATIONAL, INC., GARLOCK SEALING TECHNOLOGIES LLC, JOHN CRANE, INC., AURORA PUMP COMPANY, BUFFALO PUMPS, INC., WARREN PUMPS, INC., and TYCO FLOW CONTROL INC. f/k/a YARWAY CORPORATION	)	
Defendants.	)	

ORDER

I. Introduction

The court has considered the Motions for Summary Judgment filed on behalf of the Defendants and the Plaintiff's Responses. The claims against the remaining Defendants can be divided into what the parties have referred to as the "conspiracy" and "exposure" claims.

The Plaintiff confessed the exposure claim as to Honeywell and the Plaintiff had no evidence of exposure while Bowles was on the USS Enterprise, USS Oriskany or the USS Constellation.

Accordingly, there are conspiracy claims remaining against Pneumo-Abex, hereinafter "Abex", Honeywell and Owens-Illinois, hereinafter "OI" and exposure claims against OI and John Crane, hereinafter "JC."

The court heard final arguments on June 24, 2012 and has listened again to portions of the previous oral arguments on the various motions through electronic recording. In addition, the court, during oral argument, requested that the Plaintiff provide the three "best" cases in her favor and the Defendants provide the three "best" cases in their favor on the exposure claims and the court received various submissions via e-mail. Those e-mail transmissions are printed and filed in this case so that the record is complete.

II. Conspiracy Claims

The first issue common to all of the conspiracy claims is the standard to be applied at the motion for summary judgment stage under 735 ILCS 5/2-1005(c). The court finds the Defendants' arguments, supported by the case law cited, to be persuasive.

The court in *Ray Dancer, Inc. v. DMC Corp.*, 230 Ill.App.3d 40, 594 N.E.2d 1344 (2nd Dist. 1992) stated:

> Dancer does not dispute the additional rule pointed out by DMC that a plaintiff seeking to establish the existence of an alleged anti-trust conspiracy solely through circumstantial evidence, as here, would have to satisfy the high "clear and convincing" standard of proof at a trial on the merits which standard is necessarily implicated when the court rules on a motion for directed verdict or summary of judgment. That is, in determining whether a "genuine" issue of material fact exists in the instant case, we must consider whether a fact finder applying the "clear and convincing" evidentiary standard as to the conspiracy count or the "preponderance of the evidence" standard as to the monopoly count could reasonably find for either Dancer or DMC as opposed to finding that the evidence is so one sided that one of those two must prevail as a matter of law. (Citations omitted)

It appears to this court that *Ray Dancer* stands for the proposition that, on a motion for summary judgment, the court must weigh the submissions, with all inferences in favor of the non-movant, under the standard of proof for what would be required at trial. This only makes sense.

The court has not been directed to any case nor has it found any case which suggests that a lower standard of proof or a different standard of proof be applied at the summary judgment stage. Accordingly, for the conspiracy counts the burden at trial would be "clear and convincing" provided the proof is based upon circumstantial evidence, and for the exposure counts the burden would be by a preponderance of the evidence.

Although, as the Plaintiff correctly points out, the court in *Lozman v. Putnam* did not have to rule on the standard to be applied since the plaintiffs in that case apparently conceded or did not argue against the higher standard being applied, this court finds the language in *Lozman* persuasive on this issue. *Lozman v. Putnam,* 379 Ill.App.3d 807, 884 N.E. 2d 756 (1st Dist. 2008)

Under either standard, the court is well aware that all inferences are to be construed strictly against the movant and liberally in favor of the non-movant and that the court must deny a motion for summary judgment if there is a genuine issue of material fact.

Evidence of parallel conduct alone is insufficient to support the agreement element of a civil conspiracy claim. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill.2d 102, 720 N.E.2d 242 (1999). Mere knowledge of the fraudulent or illegal actions of another is also not enough to show a conspiracy. *McClure*, 188 Ill.2d at 134 citing

Tribune Co. v. Thompson, 342 Ill. 503, 174 N.E. 561 (1930). Accidental, inadvertent, or negligent participation in a common scheme does not amount to conspiracy. *McClure*, 188 Ill.2d 133-134, citing *Adcock v. Brakegate Ltd.*, 164 Ill.2d 54 at 64, 645 N.E. 2d 888 (1994).

The *McClure* court also applied the innocent construction rule which requires a finding that there was no conspiracy if the evidence is circumstantial and if facts are as consistent with innocence as they are with guilt. The *McClure* court specifically noted the innocent construction rule as being "under" the clear and convincing standard. *McClure*, 188 Ill.2d at 140, 720 N.E.2d at 262.

A. Pneumo-Abex

Stare decisis requires this court follow the decisions of higher courts, but does not bind it to follow decisions of equal or inferior courts. *See Sunbelt Reynolds, Inc. v. Ehlers*, 394 Ill.App.3d 421, 915 N.E.2d 862 (4th Dist. 2009). This court will follow the decision by the 4th District Appellate Court in *Rodarmel v. Pneumo Abex Corp.*, 2011 Ill.App. (4th Dist.) 100463, 957 N.E.2d 107 (modified opinion issued September 15, 2011 upon denial of rehearing) for the reasons stated herein. At the hearing in this case on May 30, 2012, the court was advised that the Illinois Supreme Court had, that day, denied the Petition for Leave to Appeal filed in *Rodarmel*.

Rodarmel is the latest decision by the Fourth District Appellate Court on the conspiracy issue which involved both Abex and Honeywell. Plaintiff argues that the *Rodarmel* decision is wrong and that this court can and should apply *Burgess v. Abex Corp. ex. rel. Pneumo Abex Corp.*, 311 Ill.App.3d 900, 725 N.E.2d 792 (4th Dist. 2000) and *Dukes v. Pneumo Abex Corp.*, 386 Ill.App.3d 425, 900 N.E.2d 1128 (4th Dist. 2008).

The Plaintiff is trying to give this court more latitude than the court feels it can take with regard to which case to apply. The majority in *Rodarmel* addressed both *Burgess* and *Dukes* and for the reasons stated in *Rodarmel* found aspects of those decisions "incorrect" and the court "declined" to follow them. Given that language, this court does not feel it can "decline" to follow *Rodarmel* and find *Burgess* and *Dukes* to be "correct."

Although the Defendants and the Plaintiff have attached a variety of decisions by other trial judges with similar cases, this court cannot take decisions of equal courts as binding precedent and does not do so for this opinion.

Saranac occupied much of the opinion in *Rodarmel*. This court must follow the higher court's decision that it is not an unlawful or a wrongful act to suppress information that is devoid of significance.

The main inquiry of this court to the Plaintiff was whether this case was different from *Rodarmel* in some way. The Plaintiff has argued that this case is at a different stage and the court has already addressed that issue.

The court knows that it does not have the complete appellate record in *Rodarmel* before it. There have been some arguments back and forth on whether this case is "identical" factually to *Rodarmel* or not. The court's approach to reviewing the submissions was to see if there was anything new in this case that was not in *Rodarmel*.

The court looked at the evidence against the backdrop of both the two-step test of *McClure* and the *Rodarmel* opinion to see if the evidence was outside the categories of parallel conduct, purchases from other suppliers, shared directors, membership in trade

organizations, sharing of information and all of the other connections referred to in both cases.

It appears that the Plaintiff is offering Dr. Frank in order to satisfy the *Rodarmel* court's concern that no qualified expert could opine that the tumorous mice were evidence of a relationship between asbestos and cancer that would pass scientific muster.

This court agrees with the Abex that Dr. Frank was not disclosed as an expert witness designated to give an opinion on the Saranac studies and therefore would be barred from giving an opinion of the significance of Saranac at trial. This court also has concerns about the admissibility of his opinion given his concessions about the flaws in the study.

However, for the analysis under summary judgment and for the sake of argument, what if Dr. Frank was properly disclosed as an expert as to Saranac and a foundation could be laid so he could give his opinion in an attempt to fill the gap in *Rodarmel*?

Regardless of what any expert on either side says in 2012 about the significance of the 1948 Saranac study, this court keeps coming back to the memo of Dr. Hamlin in light of what *McClure* said about the joint drafting of the NIMA pamphlet.[1] Although not exactly stated in *McClure*, the court assumes that the pamphlet was intended for distribution to the trade.

In *McClure*, OI participated in the drafting of a pamphlet which the plaintiff claimed showed an agreement to conceal since it did not specifically identify the diseases associated with asbestos. The *McClure* court found that the inference of an agreement improper even though it was a joint project since there was no evidence as to what extent

[1] Dr. Hamlin (Abex's medical director) memo dated November 3, 1948, Abex Exhibit 746

the companies controlled the content of the pamphlet. So, under *McClure*, joint drafting was not enough and evidence of control over content was necessary.

Abex Exhibit 746 shows that (1) Abex was not concerned with content and (2) Abex had ceded control over content to another company. Mr. Kelly, vice-president of Abex, sent Dr. Hamlin's memo to Mr. Brown at Johns-Manville and said he could act for them in any decisions that needed to be made.

The following portions of the memo are pertinent to this court's analysis:

> I gain the impression from Mr. Brown's letter that he is concerned with possible repercussions from the legal point of view but I must confess I do not see anything in the report in its present form which need cause undue concern. Similar reports are frequent in the literature not only in this country but also from abroad.
>
> I think the idea of reviewing the manuscript prior to publication is a good one in order to achieve mutual understanding with Saranac, but I feel that this can be accomplished quite satisfactorily without my presence.
>
> Mr. Brown has stated that it would be advisable for us to designate a representative of another company to act for us in connection with the decisions to be made. I think this would be a satisfactory alternative and would like to suggest that we request (Mr. Brown) to act for us. It would be most difficult for me to attend personally at this time because of the meetings I mentioned to you over the phone. I am sure our interest in the matter could be adequately protected by Mr. Brown.

This court views this memo in an entirely different light than the Plaintiff. Abex is on record that it was not concerned about the content of Saranac and ceded control of the Saranac content to another.

The bottom line is that Dr. Hamlin did not see anything in Saranac which caused him concern, stated much of what was in the Saranac study was already known and, finally, said he was too busy with other meetings to even attend. None of this suggests an agreement by Abex to conceal and, in fact, points to the opposite conclusion.

If *McClure* found no inference of an agreement in a jointly drafted trade pamphlet where there was no evidence of who controlled content, then certainly there cannot be an inference of an agreement when it comes to a scientific study where there is evidence that a company did not see any problem with the content and then let others control the content.

This is not the act of a co-conspirator entering into a plan to do an overt wrongful act. While the court might agree with the Plaintiff that no reasonable person would believe that what was foremost in Mr. Brown's mind was the integrity of the scientific process, Mr. Brown was not with Abex.

Even if an argument can be made that Abex was pretty sure Brown would delete the mice study, knowledge of that action is not sufficient for conspiracy under *McClure*. The actions of Abex with regard to the publishing of Saranac study are, in this court's opinion, not only consistent as much with innocence as guilt, they are evidence of Abex's claim in this case that asbestos was not a primary concern for them.

B. Owens-Illinois (OI)

In opposition to the motion for summary judgment the Plaintiff filed the exhibits from the Dunham case in McLean County and argues that OI's motions for summary judgment have been denied in every case since *McClure*. Although OI was in the *McClure* case, the Plaintiff argues this case is different since this involves OI and Owens-Corning. The Plaintiff again argues against the reasoning in *Rodarmel* and urges the court to follow *Burgess* and *Dukes I*.

Going through the Plaintiff's submissions, the claim of shared directors, without more, must fail under *McClure*. The fact that Biggers was at a board meeting concerning

a plant where the "dust liability" amounted to one million dollars does not lead this court to find the conspiracy complained of.

The documents of the arbitration between OI and Owens-Corning (Exhibits 2 & 3) over indemnification for asbestos claims actually supports the notion that these two companies treated each other at arm's length and support Defendant's contention of no conspiracy.

The plaintiff has certainly presented the court with more documents against OI in support of the conspiracy claim as compared to Abex or Honeywell. The court has reviewed each submission, some multiple times, and while they do show parallel conduct they do not show evidence other than parallel conduct which would be sufficient to conclude there was an agreement under the *McClure* standard.

While the quantity of documents Plaintiff has attached to the Response to OI is impressive, the Response really does not set out with sufficient clarity why these documents make a difference in terms taking this case outside *Rodarmel* or are different from the categories in *McClure* mentioned previously. Repeated contact between these asbestos companies over the years is simply not enough to show conspiracy.

C. Honeywell

Plaintiff seemed to concede at oral argument that there is really nothing new in Bowles that was not in *Rodarmel* in light of the fact that Honeywell was not involved in Saranac. Plaintiff does attach many exhibits to the Response which the court has reviewed. It appears to the court that they all fall into the classification of parallel conduct or do not tend to show an agreement to conspire or an unlawful act in furtherance of a conspiracy.

Most of the documents are page after page of sales orders between Honeywell (Bendix) and other asbestos manufacturers. This court declines to find that rebranding of products constitutes an unlawful act in furtherance of the alleged conspiracy per the decision in *Rodarmel.*

III. Exposure Claims

Before examining the exposure claims, the court wants to state that it knows the big picture. For years, asbestos manufacturers hid the dangers of these products from their workers and those who used their products. As a result, these manufacturers have been held accountable. However, this accountability can only be in the form of cash. Many workers paid with their lives.

Nevertheless, the law has not eliminated certain burdens for plaintiffs. Just because a company manufactured asbestos does not make it liable for anyone who was around asbestos. The law allows a company the defense that it was not their product which caused the injury.

The Plaintiff cannot meet the "frequency, regularity and proximity test" set forth by the Illinois Supreme Court in *Thacker v U.N.R. Industries, Inc.* 151 Ill.2d 343, 603 N.E.2d 449 (1992). The plaintiff was a radioman on the ship. While he may have been around asbestos that insulated the pipes on the ship there has been no showing that he ever installed or worked with the product.

In *Thacker* the decedent worked for 8 years at the Union Asbestos and Rubber Company in the pipe-covering department, with his final three months in the plastics department. The plant was a large, open area with no interior walls. He opened bags of

raw asbestos which gave off dust. Tons of raw asbestos were used in this plant. Other employees testified that dust was continuously visible in the air.

The *Thacker* court specifically noted the "amount" of asbestos likely used at the plant, the "nature" of the work performed and the "extended period of time" the decedent worked in the plant. In this case there is no evidence of the "amount" of asbestos on the ship that was manufactured by the two remaining exposure defendants, the asbestos that was there was not used in the same manner as it was "used" in a manufacturing plant, Bowles' work was as a radioman, and the period of time is less than one-fourth of what was presented in *Thacker*.

As to the nature of the asbestos, the *Thacker* court emphasized, "...the friable and potent nature of the *raw* asbestos..." (emphasis original) and noted the numerous witnesses who could describe the "haze" of asbestos "throughout" the plant. This case does not involve raw asbestos nor a worker who formed, cut, installed or even handled processed asbestos products.

In summary the difference between *Thacker* and this case can be illustrated as follows:

	Thacker	Bowles
Type of Asbestos	Raw asbestos	Installed final product 13%-20% asbestos
Time of potential exposure	8+ years	1½ years
Amount of particular Defendant's product	75 tons	Unknown
Exact location of particular Defendant's product	Everywhere in open plant	Unknown or boiler room

Taking all inferences in favor of the Plaintiff, one and a half years of working, fonning and cutting a finished asbestos product from an identifiable manufacturer would be enough to survive a motion for summary judgment. However, Bowles did not do this type of work.

In *Johnson v. Owens-Corning Fiberglass Corp.*, 284 Ill.App.3d 669, 672 N.E.2d 885 (3rd Dist. 1996) the court held that the plaintiff had the burden of proving more than just minimal contact with a particular defendant's asbestos product and that in order to survive a summary judgment motion the plaintiff must "...put forth some evidence tending to show that (1) the decedent regularly worked in an area where the defendant's asbestos was frequently used and (2) the decedent worked close enough to this area to come into contact with the defendant's product."

Although *Zimmer v. Celotex Corp.* came before *Thacker*, summary judgment was affirmed using the *Thacker* principles of frequency, regularity and proximity. *Zimmer v. Celotex Corp.*, 192 Ill.App.3d 1088, 549 N.E.2d 881 (1st Dist. 1989). Zimmer was a shipfitter who worked for 12 years in naval shipyards. Originally, 13 defendants were named, but only 3 remained as defendants, one being OI.

In his affidavit, Zimmer stated that he worked in close proximity to boilermakers, pipefitters, sheet-metal workers and pipe coverers including a man named Moe Rapchick. Although Zimmer could not identify the manufacturers of asbestos products to which he was exposed, he attached deposition testimony of other workers in unrelated lawsuits involving asbestos claims.

One of the workers, Moe Rapchick, recalled working with OI asbestos but could not recall that a particular product was used in a particular month on a particular ship. He

further stated that the asbestos products were used all over the ships, were shared by different tradesmen, including shipfitters and that the workers were covered with insulation as it drifted from the tradesmen working above and next to them.

The *Zimmer* court noted the plaintiff must identify the manufacturer and establish a causal connection between the injury and the product. This may be proven by direct or circumstantial evidence but liability cannot be based upon mere speculation, guess or conjecture.

Zimmer was a shipfitter working for over 12 years next to workers installing asbestos. Bowles was a radioman, not involved in repairing or replacing insulation. Bowles was on the Parks from December 4, 1958 until May 27, 1960, except for the period from October 21, 1959 to November 4 of that same year when he was in the San Diego Naval Hospital. His tour on the Parks was about a year and a half.

Even assuming for this motion that the dust which fell when the guns were fired or when the ship moved was asbestos, no one can say which company manufactured the asbestos which Bowles might have breathed. Assuming that Bowles spent most of his time in the radio room or his bunk, no one has said that the pipes in either location contained an asbestos product manufactured by the two remaining exposure defendants in this case. Plaintiff's witnesses have little information on where Bowles spent his time.

From the court's review of the depositions any claim that Bowles inhaled asbestos from either of the two manufacturers would have to be based upon speculation, guess or conjecture. No one can state with specificity the amount of asbestos from either manufacturer used on the Parks, the exact location or locations where the asbestos from

either manufacturer was used on the Parks or the time period when it was used on the Parks.

At least in *Thacker* the plaintiff had proof that 75 tons of raw asbestos came into the open plant. The defendants in *Thacker* argued that under the best calculation for the plaintiff this amounted to just 3% of the total asbestos being brought into the plant during the relevant time period since another manufacturer was shipping 200 tons per month into the facility. The *Thacker* court said that it could not find 3% insignificant as a matter of law.

Although 3% is a fairly low bar to overcome, and taking all inferences in favor of the plaintiff that there is a genuine issue of material fact as to the existence of OI and JC products on the Parks, there is still no evidence as to amount, location or time of exposure. Mere existence is not enough under *Thacker*. Moreover, *Thacker* involved an open factory, not a compartmentalized ship.

The evidence thus far is that the original asbestos was from another company, UNARCO. The Plaintiff claims that the insulation could release asbestos when disturbed, when the guns on the ship were fired or due to the movement of the ship. Captain Lowell testified that most of the insulation was in the machinery part of the ship and, as a radioman, it was more likely than not that Bowles was not in that area on a frequent basis.

The discovery depositions all seem to indicate that asbestos products would cover piping; cloth was then applied and painted with white enamel. According to Captain Lowell, the original insulation installed on the Parks was most likely UNARCO's

Unibestos. If there was either an OI or JC product on the Parks it would have been a product used to repair or replace the original insulation.

The court will not lengthen this opinion by analyzing each defendant in the Johnson case other than to say that the Johnson court looked at where the product was used and how it was used to determine whether a particular defendant was granted summary judgment. The facts here are closer to or better than the facts for those defendants who were granted summary judgment in *Johnson*.

One defendant from Johnson illustrates this point. Summary judgment was affirmed for defendant Zolteck because there was no evidence as to where Zolteck's products were used at the facility. There is no evidence in Bowles as to the exact location where OI products were installed or how frequently Bowles was in those locations. We know that JC products were in the boiler room, but even the Plaintiff concedes that their products were significantly different than OI's, not friable under OHSA standards and, again, there is no evidence of how many times Bowles might have been in the area where they were being installed.

Since Bowles never worked directly with asbestos in his job as a radioman the Plaintiff must necessarily rely on fiber drift evidence. As noted in the Fourth District's decision in *Wehmeier*, which the Supreme Court cited from extensively in *Thacker*, each case must stand on its own facts. *Wehmeier v. UNR Industries, Inc.*, 213 Ill.App.3d 6, 572 N.E.2d 320 (4th Dist. 1991).

The *Wehmeirer* court noted that

> "...fiber-drift evidence cannot alone support an inference of causation but must be accompanied by evidence establishing how frequently the particular asbestos product was used, the area in which it was used, and the regularity of a plaintiff's employment with a zone covered by the reach of fiber drift. Necessarily, each case must stand on its own facts. Given the various diseases which are associated with asbestos exposure, the medical evidence presented, they types of asbestos involved, the manner in which the products are handled, and the tendency of those asbestos products to release asbestos fibers into the air, the amount of evidence needed to establish the regularity and frequency of exposure will differ from case to case."

Summary judgment is appropriate where the plaintiff cannot prove a necessary element of their case. *Weber v Armstrong World Industries, Inc.*, 235 Ill.App.3d 790, 601 N.E.2d 286 (4th Dist. 1992). It appears under *Wehmeirer*, the Plaintiff cannot satisfy the prongs of showing how frequently the product was used, where it was used and the regularity of his employment within that zone.

Accordingly, the court grants the Defendants' Motions for Summary Judgment on both the conspiracy and exposure claims for the reasons stated in this opinion.

Entered: 6/28/2012

Judge

C05579

5

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF MASON

WILLA WOODING, Individually and as Special Administrator of the Estate of HARRY WOODING, Deceased, TIM SONDAG, Special Administrator of the Estate of IRVIN SONDAG, Deceased, and RUTH SONDAG, Individually, *Plaintiffs,*	
-versus-	*CASE NO. 10-L-2*
PNEUMO ABEX CORPORATION, PNEUMO ABEX LLC, METROPOLITAN LIFE INSURANCE COMPANY, OWENS-ILLINOIS, INC., HONEYWELL INTERNATIONAL, INC., GEORGIA PACIFIC, BONDEX CORPORATION, TREMCO, INC., SPRINKMANN SONS CORPORATION, RAPID-AMERICAN CORPORATION, UNION CARBIDE CORPORATION and JOHN CRANE, INC., *Defendants.*	

FILED
DEC 10 2012
MICHAEL D. ROAT
CIRCUIT CLERK
MASON CO., IL

OPINION AND ORDER

BACKGROUND

This matter comes forth for hearing on Defendants' various Motions for Summary Judgment. In reviewing the matter, the Court believes that the Plaintiffs' Complaint can be summarized as follows:

- *Wooding Counts I, II and III (Conspiracy)*
- *Wooding Counts IV, V and VI (Causation)*
- *Sondag Counts VII, VIII, and IX (Conspiracy)*
- *Sondag Counts X, XI and XII (Causation)*

The Defendants' remaining in this matter according to the Court's

information are as follows:

Conspiracy: Pneumo Abex, Honeywell, and Owens-Illinois

Causation: Rapid-America, Tremco, and Union Carbide

Each of the Defendants' have filed their own Motion for Summary Judgment, and where relevant have adopted their respective co-defendants' Motion for Summary Judgment. Plaintiffs' have filed opposition to each of the Defendants' Motion for Summary Judgment, to which the Defendants' have filed an appropriate reply.

The Court has read the Motions for Summary Judgment, the Plaintiffs' opposition to said motion and the replies of the Defendants. Further, the Court has examined the exhibits which have been presented by attachment or otherwise plead in this matter by all of the parties, including the Plaintiffs, has read many depositions, various cases relied upon by the parties, and have heard the oral arguments of the parties hereto in support of their respective positions.

LAW

The legal principle of stare decisis applies with respect to the conspiracy counts filed by each of the Plaintiffs herein. Recently the Fourth District Court of Appeals of the State of Illinois (of which Mason County is part), has rendered several decisions that are relevant and material to the Court's determination in this mater. Specifically as to the conspiracy counts, this Court is bound to follow the directives of the Fourth District set forth in Mensson v. Pneumo Abex, et al, which may be found at 2012 Ill. App., Fourth District 100904, which was filed August 31, 2012, and Rodarmel v. Pneumo Abex LLC and Honeywell International, 2011 Ill. App. Fourth

District 100463.

Each of the parties hereto, including the Plaintiffs briefed these cases to the Court and each argued as to the appropriate application and meaning of these cases to the case at bar. In addition, the Defendants supplied the Court with several trial court opinions found throughout the Fourth District that although are of some benefit, certainly do not bind this Court under the rules of stare decisis, and therefore the Court did not consider these rulings for the purpose of this opinion.

Each of the parties submit numerous other cases in support of their position, which have been read by the Court and applied to the various arguments presented by the parties to support their position on issues such as:

1. The standard of proof the Court must apply in the conspiracy counts: (See Ray Dancer, Inc. v. DMC, Corp., 230 Ill. App. 3d 40, Second District (1992).

2. The proper context for the Court to rule on a Motion for Summary Judgment.

3. The test in the causation counts to be applied as to Plaintiffs' alleged exposure to asbestos containing materials. (See Thacker v. UNR Industries, Inc., 151 Ill. 2d 343 (1992).

4. The McClure rule of innocent construction in conspiracy cases. (See McClure v. Owens Fiberglass Corp., 188 Ill. 2d 102).

5. The McClure rule regarding parallel conduct.

6. The Rodarmel disagreement with Burgess (See Burgess v. Pneumo Abex Corp., et al, 311 Ill. App. 3d 900 (Fourth District, 2000.).

7. The Thacker rule of "frequency, regularity and proximity" (See also

Wehmeier v. UNR Industries, Inc., (Fourth District) 213 Ill. App. 3d 6 (1991).

THE FACTS

For this Court's analysis on the pending Motions for Summary Judgment all reasonable inferences favoring the non-moving party are made. Court has reviewed numerous depositions supplied by each party not only on the causation/exposure issues, but also on conspiracy issues. Of particular note are the following depositions: Willa Wooding, Gregory Wooding, Donald Dowell, Daniel Sondag, Timothy Sondag, Edward Sondag, Michael Kohler, Joseph Sondag, and Arthur L. Frank, M.D. .

The Court in deciding this matter and reaching its opinion does not reach the issues of timeliness and adequacy of Dr. Frank's letter opinions under Supreme Court Rule 191, nor the arguments of the various defendants regarding the statute of limitations with regards to Plaintiffs' Complaint. The question to this Court is simply: Is the evidence as to conspiracy and causation/exposure presented by the Plaintiffs' in opposition to the Motion for Summary Judgment as alleged in its Complaint taken in its most favorable light, and with all reasonable inferences made in Plaintiffs' favor, sufficient to establish that there are issues of genuine material fact sufficient for this case to proceed to trial and for a trier of fact to find in favor of the Plaintiffs, or in the alternative that in consideration of the above, are there not genuine issues of material fact, therefore requiring the Court to grant Defendants' Motion for Summary Judgment.

CONSPIRACY

The Court is of the opinion that the standard to be applied is that Plaintiff's proof must be by "clear and convincing evidence". That is the burden of proof that the Court will apply in making its analysis. It is Plaintiffs' burden of proof. (See Roy Dancer, Inc. v. DMC Corp., 230 Ill. App. 3d 40 (Second District, 1992). Further, as stated in McClure (See cite above) the "innocent construction" rule applies, and as further stated in McClure, "evidence of parallel conduct alone is insufficient to support the agreement element of a civil conspiracy claim." Therefore, in applying these rules to the facts at bar, and giving the appropriate weight to the decisions of Rodarmel and Menssen, the Court is of the opinion that no genuine issue of material fact exists to support the Plaintiffs' conspiracy claims against the Defendants Pneumo Abex, Honeywell and Owens-Illinois and therefore the Court grants the Defendants' Motion for Summary Judgment as a matter of law.

CAUSATION/EXPOSURE

Of particular note for the Court on this issue, as it reviewed the deposition of Doctor Frank on November 10, 2011, and specifically at Page 26, Lines 11 through 14, where he opined as follows:

"I do not have any detailed information as to the frequency, duration or dose that Mr. Wooding would have had at any point during his career."

Furthermore the Plaintiff fails to point out any differing opinion as it would apply to Mr. Sondag.

TREMCO

In its counts against Tremco, Plaintiffs allege that the Defendant Tremco was in the business of manufacturing and selling asbestos containing products. (See Counts IV, V and VI, Wooding and Counts X, XI and XII, Sondag.) At Attachment A of the Complaint under the heading Tremco, these products are allegedly identified by the Plaintiff as "asbestos containing caulk and joint material" and "asbestos tapes".

Joseph Sondag, the only witness deposed to attempt to identify the Defendant Tremco's products says, "that a roll, three inches wide, and white and blue in color was used on wallboard seams." He could not recall why he thought it was a Tremco product, and had no knowledge whether the product contained asbestos. (See the deposition of Joseph Sondag.)

Defendant Tremco denies it ever manufactured such a product. Plaintiff fails to point to any advertising, catalogue, sales brochure or invoices that point to Tremco's sale, advertising or manufacturing of such a tape product to be used in the plastering industry for the purpose of sealing joints.

The question then becomes: Have Plaintiffs presented evidence, taken in the light most favorable to the Plaintiff that would establish the existence of such a product (tape); that Plaintiffs used or were exposed to the product on a regular and frequent basis, that the product contained asbestos, and that the Plaintiff was in close proximity to the asbestos, and therefore placing Defendant in a position of having a duty to warn the Plaintiffs as to the dangerous nature of the product.

Such evidence is wholly lacking in this matter, even if taken in the light most

favorable to the Plaintiff, and therefore the Court is of the opinion that the Plaintiff failed to establish for the purposes of this Summary Judgment that a genuine issue of material fact exists whereby a reasonable trier of fact could find for the Plaintiff, and therefore on that basis the Defendant's Motion for Summary Judgment is granted.

The Court therefore need not go to the other issues raised by Defendant Tremco as to Plaintiff's failure to show the causation which if presented would also be found in Defendant's favor based on the extremely limited evidentiary showing by Plaintiffs as to Plaintiffs' contact with a Tremco product.

RAPID AMERICAN

The test here, once again, is the duty of the Plaintiffs to specifically identify the products this Defendant manufactured; to establish Plaintiffs exposure thereto; to establish that such exposure was with frequency, regularity and proximity and then to present proof of causation as to specific injuries of the Plaintiffs, i.e. colo-rectal cancer (Wooding); rectal cancer (Sondag.)

Plaintiffs list a number of products allegedly produced by this Defendant or its predecessors at the Attachment A to its Complaint. It is Plaintiffs' burden to link these products to the Defendant; to show frequency, regularity and proximity to the Plaintiffs; and finally to show that the products contained asbestos and that, in fact, such asbestos containing product caused the Plaintiff's injury.

In review of the depositions of Plaintiffs' witnesses (Joseph Sondag, Mark Sondag, John Sondag, Susan Hill, Ruth Sondag, Theresa Mickens, Daniel Sondag,

Timothy Sondag, Kathryn Rogers, Willa Wooding, Gregory Wooding, Edward Sondag and Steven Sondag) none of these witnesses are able to establish with any certainty, clarity or precision that either Plaintiff was exposed to Defendant's product or products, much less that such exposure was frequent, regular or proximate to them.

Furthermore, the Defendant in its motion denies ever being in the business directly or indirectly involving an asbestos containing product. This denial is uncontroverted by the Plaintiff. Once again without deciding whether Plaintiffs' evidence as presented by Doctor Frank on causation is sufficient to show proximate cause of Plaintiffs' injury, the Court can only conclude that no issue of genuine issue of material fact exists as to Defendants' products not only containing asbestos; but furthermore, that the Plaintiffs were exposed on a regular, frequent and proximate basis. Therefore the Motion for Summary of Rapid American must be granted.

UNION CARBIDE

This Defendant also relies on the Thacker rule in urging the Court to decide the Motion for Summary Judgment in its favor and against the Plaintiffs. Defendant here unequivocally asserts that is product (asbestos) was never used in plaster products. Therefore it reasons that since the Plaintiffs were engaged in the plaster business and its products were not used in that business, that Plaintiffs were not exposed to asbestos through Defendant's products. Plaintiff fails to counter this assertion.

Defendant asserts that under the law it is Plaintiffs' burden by a

preponderance of the evidence to do more than simply allege exposure. That, in fact, the Plaintiff must present the Court with facts supporting the allegation that Plaintiffs were exposed to Defendant's products, and such was the proximate cause of Plaintiffs' injuries. Defendant states that it does not need to disprove exposure. I agree.

The Court is of the opinion that Plaintiffs' assertion that this Defendant supplied products to U.S. Gypsum; that U.S. Gypsum manufactured plastering materials containing Defendant's asbestos and therefore such materials were used by Plaintiffs, causing Plaintiffs' exposure resulting in the injury complained of, simply fails the Thacker test of frequency, regularity and proximity. In this Court's opinion, the bare allegations and nothing more would cause the trier of fact to have to speculate as to the Plaintiffs' use, exposure and causation of Plaintiffs' injuries, and with nothing more than in effect a stream of commerce theory, Plaintiff would be unable to sustain its cause of action under Thacker.

Union Carbide even denies its products ever were used for Plaster products and Plaintiff fails to show specifically a connecting link between Defendant's products and Plaintiffs regular and frequent use. Therefore the Motion for Summary Judgment is granted.

ORDER

By reason of the above and foregoing, Plaintiffs Complaint in twelve counts is dismissed, Motions for Summary Judgment granted.

ENTER: December 10, 2012.

ALAN D. TUCKER
Circuit Judge

cc: Mr. James Wylder
Mr. Andrew Kelly
Mr. Robert Scott
Mr. Regan Simpson
Mr. Matthew Fischer
Mr. Luke Mangan
Ms. Cecilia Carroll
Mr. John Redlingshafer

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF MORGAN

JUDITH WEAVER and EARL WEAVER, Plaintiffs,	)	
-vs-	)	No. 08-L-05
PNEUMO ABEX LLC, et al., Defendants.	)	

ORDER

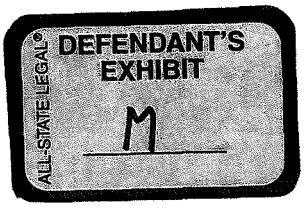
This matter is before the Court on Defendants Owens-Illinois, Inc. and Honeywell International, Inc.'s Motions for Summary Judgment.

After a review of the Motions for Summary Judgment, pleadings, memoranda, supporting documentation and the arguments of counsel, the Court finds that there was no duty owed to the Plaintiff, and therefore the Motions for Summary Judgment of Owens-Illinois, Inc. and Honeywell International, Inc. are granted as to all counts.

Entered: 9-19-12

Judge

C05590



STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

COUNTY OF MORGAN

RICHARD COOK and SHARYN COOK, Plaintiffs,	)	
-vs-	)	No. 11-L-2
PNEUMO ABEX LLC, et al., Defendants.	)	

ORDER

This matter is before the Court on Defendant Owens-Illinois, Inc.'s Motion for Summary Judgment of Plaintiff's civil conspiracy claim.

After a review of Owens-Illinois, Inc.'s Motion for Summary Judgment, pleadings, memoranda, supporting documentation, and the arguments of counsel, the Court grants the motion.

Entered: 9-19-12

Richard T. Mitchell
Judge

2013 WL 1099016
Only the Westlaw citation is currently available.
United States District Court,
E.D. Pennsylvania.

Linda ELLIS, Plaintiff,
v.
PNEUMO ABEX CORPORATION, et al., Defendants.

MDL No. 875.
|
Transferred from the Central District of Illinois Case No. 11–01128.
|
E.D. PA Civil Action No. 2:11–66774–ER.
|

Jan. 3, 2013.

ORDER

EDUARDO C. ROBRENO, District Judge.

***1 AND NOW,** this **31st** day of **December, 2012,** it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Owens–Illinois, Inc. (Doc. No. 50) is **GRANTED.** [1]

AND IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2013 WL 1099016

Footnotes

1 This case was transferred in July of 2011 from the United States District Court for the Central District of Illinois to the United States District Court for the Eastern District of Pennsylvania as part of MDL–875.
Plaintiff Linda Ellis alleges that Decedent Walter Tom ("Decedent" or "Mr. Tom") was exposed to asbestos, developed lung cancer as a result of this exposure, and died from that illness. In her complaint, Plaintiff alleged that Decedent was exposed to an asbestos-containing product(s) manufactured by Owens Corning, a predecessor to Defendant Owens–Illinois, Inc. ("Owens–Illinois"), while serving as a boilerman in the Navy from 1969 to 1973 and while working as a boilerman for NASA from 1973 to 1979.
Plaintiff brought claims against various defendants, including a claim for civil conspiracy to suppress and misrepresent information regarding the hazards of asbestos. Plaintiff alleges that Defendant (along with other defendants in this action) conspired with three other entities who have previously declared bankruptcy and are not defendants in this action: Johns–Manville ("Johns–Manville"), Unarco Industries ("Unarco"), and Raymark Industries (formerly Raybestos–Manhattan, Inc.) ("Raymark").
Defendant Owens–Illinois has moved for summary judgment arguing that there is insufficient evidence to support a finding of conspiracy on its part. Defendant Owens–Illinois also moved for summary judgment on grounds of insufficient evidence of exposure/ product identification. However, in her opposition, Plaintiff conceded that she does not have evidence that Decedent was exposed to asbestos from any product manufactured or supplied by Defendant. Therefore, Plaintiff now asserts that Defendant is liable solely for conspiracy to suppress and misrepresent information regarding the hazards of asbestos. The parties agree that Illinois law applies.
I. Legal Standard
A. *Summary Judgment Standard*
Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a). "A motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d Cir.2009) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–248 (1986)). A fact is "material" if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.
In undertaking this analysis, the court views the facts in the light most favorable to the non-moving party. "After making all reasonable inferences in the nonmoving party's favor, there is a genuine issue of material fact if a reasonable jury

could find for the nonmoving party." *Pignataro v. Port Auth. of N.Y. & N.J.,* 593 F.3d 265, 268 (3d Cir.2010) (citing *Reliance Ins. Co. v. Moessner,* 121 F.3d 895, 900 (3d Cir.1997)). While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the non-moving party who must "set forth specific facts showing that there is a genuine issue for trial." *Anderson,* 477 U.S. at 250.

B. *The Applicable Law*

1. *Procedural Matters*

In multidistrict litigation, "on matters of procedure, the transferee court must apply federal law as interpreted by the court of the district where the transferee court sits." *Various Plaintiffs v. Various Defendants ("Oil Field Cases"),* 673 F.Supp.2d 358, 362–63 (E.D.Pa.2009) (Robreno, J.). Therefore, in addressing the procedural matters herein, the Court will apply federal law as interpreted by the U.S. Court of Appeals for the Third Circuit. *Id.*

2. *Substantive Legal Issues*

The parties agree that Illinois substantive law applies. Therefore, this Court will apply Illinois law in deciding Defendant's Motion for Summary Judgment. *See Erie R.R. Co. v. Tompkins,* 304 U.S. 64 (1938); *see also Guaranty Trust Co. v. York,* 326 U.S. 99, 108 (1945).

C. *Civil Conspiracy Under Illinois Law*

Illinois courts have previously considered civil conspiracy in the context of asbestos litigation. A summary of the relevant decisions follows:

(i) *Adcock*

Adcock v. Brakegate, 164 Ill.2d 54 (Ill.1995), affirmed a judgment on a jury verdict awarding damages to the estate of a deceased asbestos worker. In that case, the Supreme Court of Illinois considered an appeal by Owens–Corning and wrote:

> While the agreement is a necessary and important element of a cause of action for civil conspiracy, it does not assume the same importance as in a criminal action.... Thus, the gist of a conspiracy claim is not the agreement itself, but the tortious acts performed in furtherance of the agreement.

164 Ill.2d at 63. The trial court had previously entered judgment against defendant Owens–Corning as a sanction for failure to produce witnesses and the trial, therefore, only pertained to damages. The intermediate appellate court had affirmed the trial court's judgment. In affirming the intermediate appellate court (and the district court), the Supreme Court of Illinois noted, "we express no opinion on the factual sufficiency of the complaint."

(ii) *McClure*

McClure v. Owens Corning Fiberglas Corp., 188 Ill.2d 102 (Ill.1999), involved allegations of an industry-wide conspiracy to conceal dangers of asbestos (involving, *inter alia,* Owens Corning). In *McClure,* the Supreme Court of Illinois reversed a trial court's entry of judgment on a jury verdict for plaintiffs. In doing so, it held that (1) parallel conduct may serve as circumstantial evidence of a civil conspiracy among manufacturers of the same or similar products, but cannot, by itself establish an agreement sufficient to support a conspiracy claim, and (2) evidence of direct contacts between defendants, and their parallel activity, was insufficient to establish the requisite agreement by clear and convincing evidence.

The evidence analyzed by the *McClure* court is extensive and detailed. A quick summary is a follows: (i) the Lanza study, which was edited by Johns–Mansville and Raybestos attorneys to exclude evidence of asbestos hazards, (ii) Asbestos Magazine (in which Johns–Manville and Raybestos prevented the publication of information concerning health hazards), (iii) Results of Saranac Labaratory Research (entities other than defendants omitted evidence of asbestos hazards), (iv) evidence that Unarco's and Johns–Manville's plants did not warn employees of asbestos hazards of which they were aware, (v) evidence of parallel conduct by defendant Owens–Illinois, (vi) evidence that Owens Corning concealed evidence of asbestos hazards, and (vii) evidence of contacts between Owens Corning and defendant Owens–Illinois (as well as evidence of contacts of defendants with other alleged conspirators, such as Johns–Manville and Raybestos), (viii) expert opinion of Dr. Barry Castleman that the alleged conspirators were conspiring to suppress information about asbestos hazards.

In its decision, which addressed much of the same evidence presented by Plaintiff in the present case, the Supreme Court of Illinois wrote:

Civil conspiracy is defined as "a combination of two or more persons for the purpose of accomplishing by concerted action either an unlawful purpose or a lawful purpose by unlawful means." *Buckner v. Atlantic Plant Maintenance, Inc.,* 182 Ill.2d 12, 23, 230 Ill.Dec. 596, 694 N.E.2d 565 (1998). In order to state a claim for civil conspiracy, a plaintiff must allege an agreement and a tortious act committed in furtherance of that agreement. *Adcock v.. Brakegate, Ltd.,* 164 Ill.2d 54, 62–64, 206 Ill.Dec. 636, 645 N.E .2d 888 (1994). The agreement is "a necessary and important" element of this cause of action. *Adcock,* 164 Ill.2d at 62, 206 Ill.Dec. 636, 645 N.E.2d 888. The civil conspiracy theory has the effect of extending liability for a tortious act beyond the active tortfeasor to individuals who have not acted but have only planned, assisted, or encouraged the act. *Adcock,* 164 Ill.2d at 62–63, 206 Ill.Dec. 636, 645 N.E.2d 888.

Civil conspiracy is an intentional tort and requires proof that a defendant "knowingly and voluntarily participates in a common scheme to commit an unlawful act or a lawful act in an unlawful manner." *Adcock,* 164 Ill.2d at 64, 206 Ill.Dec. 636, 645 N.E.2d 888. Accidental, inadvertent, or negligent participation in a common scheme does not amount to conspiracy. *Adcock,* 164 Ill.2d at 64, 206 Ill.Dec. 636, 645 N.E.2d 888. Mere knowledge of the fraudulent or illegal actions of another is also not enough to show a conspiracy. *Tribune Co. v. Thompson,* 342 Ill. 503, 530, 174 N.E. 561 (1930). Similarly, "[a] defendant who innocently performs an act which happens to fortuitously further the tortious purpose of another is not liable under the theory of civil conspiracy." *Adcock,* 164 Ill.2d at 64, 206 Ill.Dec. 636, 645 N.E.2d 888. However, "[a] defendant who understands the general objectives of the conspiratorial scheme, accepts them, and agrees, either explicitly or implicitly to do its part to further those objectives is liable as a conspirator." *Adcock,* 164 Ill.2d at 54, 206 Ill.Dec. 636, 645 N.E.2d 888.

A conspiracy is almost never susceptible to direct proof. *Walsh v. Fanslow,* 123 Ill.App.3d 417, 422, 78 Ill.Dec. 846, 462 N.E.2d 965 (1984). Usually, it must be established "from circumstantial evidence and inferences drawn from evidence, coupled with common-sense knowledge of the behavior of persons in similar circumstances." *Adcock,* 164 Ill.2d at 66, 206 Ill.Dec. 636, 645 N.E.2d 888. If a civil conspiracy is shown by circumstantial evidence, however, that evidence must be clear and convincing. *E.g .,* *Majewski v. Gallina,* 17 Ill.2d 92, 99, 160 N.E.2d 783 (1959); *Tribune Co.,* 342 Ill. at 529, 174 N.E. 561; *Bosak v. McDonough,* 192 Ill.App.3d 799, 804, 139 Ill.Dec. 917, 549 N.E.2d 643 (1989).

In this case, defendants argue that the jury verdicts finding them liable for civil conspiracy must be overturned because the evidence showed no agreement between either of them and Unarco or Johns–Manville to conceal or misrepresent information concerning the health hazards of asbestos. They challenge the appellate court's ruling that evidence of similarities between defendants' conduct and the conduct of Unarco and Johns–Manville was sufficient to establish the required agreement for civil conspiracy. According to defendants, the evidence showed that they acted unilaterally, and mere parallel conduct is never enough to establish that there was an agreement for purposes of civil conspiracy.

In addition, defendants argue that the appellate court erred in concluding that there was any evidence other than parallel conduct that demonstrated an agreement between defendants and the alleged conspirators. Defendants assert that any contacts they may have had with each other failed to show their involvement in the alleged conspiracy with Unarco or Johns–Manville. In addition, defendants argue, the few contacts Owens Corning had with others in the industry were for legitimate business reasons and not due to the alleged conspiracy. Based on the lack of evidence of an agreement, defendants contend that the jury verdicts cannot stand.

Our review of the sufficiency of the evidence in this case, therefore, involves a threshold legal question: **whether parallel conduct alone can suffice as proof of agreement for civil conspiracy .** Prior to the appellate court decision in this case, no Illinois court had addressed this question. *But see* *Smith v. Eli Lilly & Co .,* 173 Ill.App.3d 1, 28–30, 122 Ill.Dec. 835, 527 N.E.2d 333 (1988) (holding that parallel activity by drug manufacturers in producing and marketing DES does not establish civil conspiracy or concerted action), *rev'd on other grounds,* 137 Ill.2d 222, 148 Ill.Dec. 22, 560 N.E.2d 324 (1990). This case, therefore, presents us with an issue of first impression. After reviewing decisions on point from other jurisdictions, as well as related precedent in Illinois, **we hold that parallel conduct may serve as circumstantial evidence of a civil conspiracy among manufacturers of the same or similar products but is insufficient proof, by itself, of the agreement element of this tort.**

Our review of case law from other jurisdictions convinces us that the overwhelming weight of authority has refused to accept mere parallel action as proof of conspiracy.... The reason federal courts require evidence in addition to

mere parallel conduct before imposing liability for conspiracy is to avoid inadvertent condemnation of nonconspiratorial conduct. *See* *Coleman,* 849 F.Supp. at 1466.

...

Similarly, in cases involving the tort of conspiracy, courts in other jurisdictions have held that proof of mere parallel conduct is insufficient. *See, e.g.,* *In re Asbestos School Litigation,* 46 F.3d 1284, 1292 (3d Cir.1994); *Burnside v. Abbott Laboratories,* 351 Pa.Super. 264, 280, 505 A.2d 973, 982 (1985); *Collins v. Eli Lilly Co.,* 116 Wis.2d 166, 188, 342 N.W.2d 37, 47–48 (1984). For example, in *Collins v. Eli Lilly Co.,* the Wisconsin Supreme Court held that the plaintiff's proof of parallel conduct was insufficient to establish the defendants' liability under a civil conspiracy theory. The plaintiff had sued the defendants, who were manufacturers of the drug diethylstilbestrol (DES), for injuries she allegedly suffered as a result of her mother's ingestion of this drug while pregnant. According to the plaintiff, the defendant drug companies engaged in a conspiracy to obtain FDA approval in 1941 and 1947, to market DES as a treatment for pregnancy problems, and to misrepresent that it was safe to use the drug for this purpose. *Collins,* 116 Wis.2d at 187, 342 N.W.2d at 47.

The *Collins* court rejected the plaintiff's conspiracy claim. According to the court:

"[T]he drug companies apparently engaged in parallel behavior in both 1941 and 1947, but parallel behavior alone cannot prove agreement. There is no indication in the record that the defendants either explicitly or tacitly collaborated to gain FDA approval so that they could in turn collaborate to misrepresent the safety and efficacy of DES for use in preventing miscarriages." Collins, 116 Wis.2d at 188, 342 N.W.2d at 47–48.

The *Collins* court, therefore, held that the summary judgment entered in favor of the defendants was appropriate.

Proof of parallel conduct was held insufficient in another DES case involving a civil conspiracy claim. In *Burnside v. Abbott Laboratories,* the Pennsylvania Supreme Court held that the plaintiffs' proof of parallel conduct was insufficient to hold the defendant drug manufacturers liable for civil conspiracy. The plaintiffs alleged that each of the defendants marketed DES in a generic form as a miscarriage preventative; that they knew or should have known that it was potentially carcinogenic; that they failed to test the drug for carcinogenic or teratogenic effects; and that they marketed it without warnings. *Burnside,* 351 Pa.Super. at 280, 505 A.2d at 981–82.

The *Burnside* court held that these allegations of parallel conduct were insufficient to withstand the defendants' motion for summary judgment. The court explained:

"[P]laintiffs in the instant case have failed to allege the manner in which a conspiratorial scheme was devised and carried out. The complaint contains no averments of meetings, conferences, telephone calls, joint filings, cooperation, consolidation, or joint licensing. The plaintiffs have alleged no more than a contemporaneous and negligent failure to act. This was insufficient to state either a conspiratorial agreement or the requisite intent to cause injury." *Burnside,* 351 Pa.Super. at 280, 505 A.2d at 982.

For these reasons, the court found that the trial court had properly granted summary judgment in favor of the defendants on this claim.

Similarly, in *In re Asbestos School Litigation,* the United States Court of Appeals for the Third Circuit held that a former manufacturer of asbestos-containing products could not be held liable under a civil conspiracy theory based on conscious parallel activity with other asbestos manufacturers. The evidence of parallel conduct presented in that case was as follows: (1) the defendant began to sell Kilnoise, an asbestos-containing product, in 1964 without warnings; (2) in 1965, the defendant learned of the connection Dr. Selikoff had made between asbestos and cancer; (3) thereafter the defendant continued to sell Kilnoise; (4) the defendant and other asbestos-containing product manufacturers sold their products without warnings despite knowledge of the dangers of these products; and (5) the defendant and other asbestos-containing product manufacturers were aware that each was selling these products without warnings. In re Asbestos School Litigation, 46 F.3d at 1291. Although the court found that these actions indicated that the defendant and the other manufacturers engaged in parallel courses of conduct, it held that "conscious parallelism is not sufficient to establish a civil conspiracy." *In re Asbestos School Litigation,* 46 F.3d at 1292.

...

Like these other courts, we find that requiring more than proof of mere parallel conduct in civil conspiracy cases involving manufacturers of the same or similar products is necessary to make certain that there is a reasonable basis for inferring an agreement and to minimize the risk that liability will be imposed based on nonconspiratorial conduct.

Our conclusion that parallel conduct alone is insufficient to establish civil conspiracy in such cases finds support in the clear and convincing standard of proof that applies to the elements of that tort when the evidence is circumstantial, as it is in the case before us. *See, e.g., Bosak,* 192 Ill.App.3d at 804, 139 Ill.Dec. 917, 549 N.E.2d 643 (noting the standard of proof for civil conspiracy). **Under this clear and convincing standard, "if the facts and circumstances relied upon are as consistent with innocence as with guilt it is the duty of the court to find that the conspiracy has not been proved."** *Tribune Co.,* 342 Ill. at 529, 174 N.E. 561; *see also* *Regan v. Garfield Ridge Trust & Savings Bank,* 220 Ill.App.3d 1078, 1091–92, 163 Ill.Dec. 605, 581 N.E.2d 759 (1991); *ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc.,* 90 Ill.App.3d 817, 830, 46 Ill.Dec. 186, 413 N.E.2d 1299 (1980). As defendants and the amici argue, there are many potential innocent explanations for parallel conduct by competitors. These include encountering the same business problems, the same consumer demands, and the same competitive pressures. As defendants observe, "[b]asic economic principles dictate that competitive companies will often act in a highly similar manner." *See also, e.g.,* *Sindell v. Abbott Laboratories,* 26 Cal.3d 588, 606, 607 P.2d 924, 933, 163 Cal.Rptr. 132, 141 (1980) (it is a common practice in the industry for manufacturers to use the experience and methods of others making the same or similar products). **Parallel conduct alone by manufacturers of the same or similar products is, therefore, as consistent with innocence as with guilt and cannot be considered, in itself, clear and convincing evidence of a conspiracy .**

Not only does our rejection of mere parallel conduct as proof of civil conspiracy comport with the clear and convincing standard of proof Illinois courts have applied to this tort, it is consistent with this court's previous descriptions of the scope of a manufacturer's liability.

...

Requiring proof of more than parallel action to establish civil conspiracy liability is necessary to protect manufacturers from becoming insurers of their industry. This case illustrates the potential for industrywide liability under the civil conspiracy theory. Plaintiffs were allegedly injured as a result of the actions and products of defendants' competitors. Defendants have been found liable for the injuries plaintiffs allege in their complaints even though it is undisputed that neither plaintiffs nor their husbands were employed by defendants, worked at the Unarco plant after Owens Corning purchased it, or used defendants' products. To permit conspiracy liability based on proof of parallel action alone, when competitors engage in similar conduct for many nonconspiratorial reasons, would expand the civil conspiracy theory "beyond a rational or fair limit" [citation omitted]. Requiring evidence in addition to parallel conduct ensures that a manufacturer's responsibility for the actions of a competitor is based on more than speculation and conjecture. Accordingly, **we hold that, while mere parallel conduct may serve as circumstantial evidence of an agreement under the civil conspiracy theory, it cannot, in itself, be considered clear and convincing evidence of such an agreement among manufacturers of the same or similar products.**

Having decided that parallel action alone will not support liability under the civil conspiracy theory in cases such as the one before us, **our review of the evidence becomes a two-step process.** First, we must examine whether there is evidence to support a finding by the jury that defendants and the alleged conspirators engaged in parallel conduct. Next, we must determine whether any evidence, other than evidence of parallel conduct, was presented at trial and whether this evidence, considered with any evidence of parallel conduct, was sufficient to establish the existence of an agreement between defendants and Unarco or Johns–Manville to suppress or misrepresent information regarding the health hazards of asbestos.

Plaintiffs presented no direct evidence of an agreement. Instead, they relied entirely on circumstantial evidence to prove the alleged agreement. The majority of this evidence related to plaintiffs' theory that parallel conduct by these companies demonstrated such an agreement. The evidence showed that, in the 1930s, 1940s, and 1950s, there were numerous reports in the medical and scientific literature linking asbestos exposure to asbestosis and cancer. Despite this information, defendants, Unarco, and Johns–Manville produced and sold asbestos-containing products during this time period. Before 1964, none of these companies placed warnings on their asbestos-containing products. Johns–Manville was the first to place a warning label on its products in 1964. In 1966, Owens Corning also added warning labels to its asbestos-containing products. These warnings did not, however, identify the specific diseases caused by asbestos exposure.

There was evidence that Unarco and Johns–Manville prevented information about the health hazards of asbestos from being published. At their request, Asbestos magazine refrained from publishing articles on this topic. In addition, these companies required Saranac Laboratory to omit references to cancer and tumors from the 1951 article it published

concerning the results of asbestos research sponsored by Unarco, Johns–Manville, and other asbestos product manufacturers.

While Owens–Illinois did not interfere with Saranac's publication of the results of the asbestos research Owens–Illinois sponsored, there was evidence that, like Unarco and Johns–Manville, Owens–Illinois caused inaccurate information about the health hazards of its asbestos-containing product to be published. Despite knowledge that Kaylo dust caused asbestosis, in 1952 Owens–Illinois published a brochure stating that Kaylo was "non-toxic."

Other evidence indicated that, like Unarco and Johns–Manville, Owens Corning failed to share information about the health hazards of asbestos with the public. In the 1950s, Owens Corning also published a brochure representing Kaylo as "non-toxic." Internal company memoranda showed that (1) Owens Corning chose to use information on the health hazards of asbestos as a "weapon-in-reserve" during union negotiations rather than freely disclose this information; (2) the company had a policy that required complaints about health hazards of its products to be referred to certain corporate officers or its legal department; (3) the company was concerned that the government would "blow the whistle" on asbestos; (4) despite knowledge of the health hazards of asbestos, the company maintained a position that the medical research indicated no such hazards; and (5) the company tried to limit the influence of Dr. Selikoff, who had publicized and attempted to protect workers from the hazards of asbestos exposure.

There was also evidence that defendants, Unarco, and Johns–Manville failed to warn their employees of, and adequately protect them from, the health hazards of asbestos. Former Unarco employees who worked in the Bloomington plant testified that Unarco failed to warn them of these hazards, did not have a respirator program, had almost no dust-collection equipment, permitted plant conditions that were "unbelievably bad," employed no industrial hygienist, and had no annual X-ray program for employees. Likewise, a former Johns–Manville employee testified that this company also did not tell employees of the adverse health effects of asbestos exposure and, although periodic X rays were required, Johns–Manville did not tell employees of disease that appeared on the X rays unless the disease became disabling.

Owens Corning employees testified that, like Unarco and Johns–Manville, Owens Corning failed to warn its employees of the health hazards of asbestos. Some employees testified that Owens Corning did not warn them of these hazards until the 1970s. Another employee, Jerry Helser, testified that he was never warned of the hazards.

There was conflicting testimony with respect to Owens–Illinois' efforts to warn its employees of the dangers of asbestos. Helser testified that former Owens–Illinois employees with whom he had contact did not communicate any such warnings to him. By contrast, Richard Grimmie testified that Owens–Illinois did warn its employees that asbestos exposure could cause asbestosis.

While there was evidence that the conditions and dust-control measures in Owens Coming's and Owens–Illinois' plants were better than those in Unarco's Bloomington plant, there was also evidence that, like Unarco, these companies did not adequately control the dust in their plants. Some dust samples taken in these plants exceeded the threshold limit value for asbestos. After purchasing the Bloomington plant, Owens Corning did not install dust collection equipment immediately and did not require employees to wear respirators. In addition, by 1972, many employees from the Berlin plant had been diagnosed with asbestosis.

Defendants dispute that the evidence showed that their conduct paralleled that of Unarco or Johns–Manville. For example, they assert, there was evidence that the warnings they gave their employees, the conditions in their plants, and their industrial hygiene programs were better than those of Unarco and Johns–Manville. In reviewing a motion for judgment notwithstanding the verdict, however, a court may not resolve conflicts in the evidence, and the evidence must be considered in the light most favorable to the nonmoving party. *See* *Maple,* 151 Ill.2d at 452–53, 177 Ill.Dec. 438, 603 N.E.2d 508. Accordingly, we find that the jury could have found parallel action based on the evidence that, like Unarco or Johns–Manville, defendants (1) knew that asbestos could cause disease at the time they sold asbestos-containing products; (2) sold these products without warning of these diseases; (3) failed to warn employees and consumers of these diseases; and (4) failed to adequately protect their employees from exposure to asbestos dust.

As stated previously, however, evidence of parallel conduct alone is insufficient to establish a civil conspiracy by clear and convincing evidence. Thus, we move to the second step of our review of the evidence. Under this step, we determine whether there was any evidence of agreement other than parallel conduct and whether this additional evidence, when considered along with the evidence of parallel conduct, permitted the jury to conclude that there was clear and convincing evidence of an agreement.

In addition to parallel conduct, plaintiffs rely on the following evidence as proof of an agreement between defendants and Unarco or Johns–Manville to suppress or misrepresent information concerning the health hazards of asbestos: (1) evidence of the relationship between Owens Corning and Owens–Illinois; (2) the fact that Owens Corning received

information from Johns–Manville about its plan to place warning labels on its products; (3) Owens Coming's participation in the drafting of the NIMA pamphlet; (4) the indemnity clause contained in Owens Coming's agreement to purchase the Bloomington plant from Unarco; (5) the fact that Owens Corning contacted other asbestos product manufacturers about their responses to the Califano announcement; (6) the 1979 meeting among asbestos-containing product manufacturers; (7) the 1983 meeting among asbestos-containing product manufacturers; and (8) Castleman's opinion that defendants were involved in the alleged conspiracy with Unarco and Johns–Manville.

Even reviewing this evidence in the light most favorable to plaintiffs, we find that it does not permit a reasonable inference of the alleged agreement between defendants and Unarco or Johns–Manville. At most, these facts are as consistent with innocent as with guilty conduct. Thus, they do not support a finding by the jury that there was clear and convincing evidence of an agreement. *See Tribune Co.,* 342 Ill. at 529, 174 N.E. 561; *Regan,* 220 Ill.App.3d at 1091–92, 163 Ill.Dec. 605, 581 N.E.2d 759. Much of plaintiffs" additional evidence of the alleged agreement between defendants and Unarco or Johns–Manville demonstrated only a sharing of information among these companies. Plaintiff showed that Owens–Illinois lent Owens Corning two published articles about the health effects of asbestos, that Owens Corning received information from Johns–Manville about its labeling decision, that Owens Corning sought information from other asbestos product manufacturers about their responses to the Califano announcement, and that asbestos product manufacturers held meetings in 1979 and 1983 to discuss litigation strategy, bankruptcy, insurance, and the impact of the Califano announcement. **The mere exchange of information by manufacturers of the same or similar products is a common practice, however, and does not support an inference of an agreement.** *See Payton,* 512 F.Supp. at 1038 (membership in industrywide trade organizations and participation in scientific conferences are common in most industries and do not support an inference of agreement); *Sindell,* 26 Cal.3d at 606, 607 P.2d at 933, 163 Cal.Rptr. at 141 (it is a common practice in industry for manufacturers of the same or similar products to use the experience and methods of others).

Indeed, an inference of agreement based on these exchanges of information is undermined by the circumstances surrounding this conduct. For example, plaintiffs assert that the existence of the alleged agreement is the reason Johns–Manville would have shared information about its labeling decision with Owens Corning. **The evidence that Johns–Manville was among the first to place a warning label on its product, however, suggests an innocent explanation for its communication of this decision to its competitors.** If Johns–Manville were alone in placing warning labels on its products, consumers might perceive that its products were more dangerous than its competitors' and choose to buy a competitor's product. If it persuaded its competitors, such as Owens Corning, to also place warning labels on their products, Johns–Manville could avoid this problem. Given this nonconspiratorial explanation for Johns–Manville's communication of its labeling decision, this fact fails to support a finding of conspiracy.

In addition, evidence that asbestos product manufacturers acted differently with respect to the shared information also prohibits an inference of agreement. Despite the fact that Owens Corning learned that Johns–Manville was placing warning labels on its products in 1964, Owens Corning did not add warning labels to its products until 1966, and internal memoranda indicated that the company decided to add these labels only after considering whether to do so would be in its own best interest. Likewise, the evidence that Owens Corning contacted other asbestos product manufacturers about their responses to the Califano announcement also showed that Owens Corning acted independently. The actions it decided to take differed from those of Johns–Manville and the other companies it consulted.

The circumstances of the 1979 and 1983 meetings also prohibit a reasonable inference of the alleged agreement. As a preliminary matter, we note that Owens–Illinois did not attend the 1979 meeting. In addition, both meetings occurred after the Califano announcement, which publicized the health hazards of asbestos, and after Owens Corning itself had warned a large number of its employees and former employees about these hazards. Given that these disclosures had already occurred at the time of the meetings, it is highly unlikely that the purpose of the meetings was to suppress information about the health hazards of asbestos. Suppression of such information at that point would have been futile, as well as contrary to Owens Coming's efforts to inform employees about the health risks of asbestos. Evidence that Owens Corning and Owens–Illinois met with other asbestos product manufacturers in 1979 and 1983 cannot, therefore, support a reasonable inference of the alleged agreement.

Evidence of Owens Coming's participation in the drafting of the NIMA pamphlet and the indemnity clause in its agreement to purchase the Unarco plant also does not support an inference of agreement. According to plaintiffs, the fact that an Owens Corning and a Johns–Manville employee were involved in drafting the NIMA pamphlet shows an agreement by these companies to conceal the health hazards of asbestos because, even though the pamphlet did

state that asbestos was potentially injurious and had been associated with certain health hazards, it did not specifically identify the diseases associated with asbestos. The evidence does not support this inference. In other cases involving allegations of a civil conspiracy among manufacturers, courts have been unwilling to infer an agreement based on membership in industry trade organizations. *See, e.g.,* *In re Asbestos School Litigation,* 46 F.3d at 1287–90; *Payton,* 512 F.Supp. at 1038. In this case, inference of an agreement is improper because, even though Owens Corning and Johns–Manville employees may have participated in drafting the pamphlet, there is no evidence indicating to what extent these companies controlled the content of the pamphlet. To conclude that the content of the pamphlet demonstrates an agreement between these companies, therefore, is unreasonable.

Likewise, no rational inference of agreement can be made based on the indemnity clause contained in Owens Coming's agreement with Unarco to purchase the Bloomington plant. Plaintiff asserts that the fact that this indemnity clause discussed asbestos claims by employees is proof of an agreement by Owens Corning and Unarco to suppress or misrepresent information about the harmful effects of asbestos. To the contrary, the language of the clause itself demonstrates a legitimate reason for the discussion of asbestos claims: litigation concerning asbestos exposure of the Bloomington plant employees had already begun at the time of Owens Coming's purchase of the plant. The clause does nothing more than identify each parties' responsibilities with respect to that litigation, such as their obligations to pay judgments and to share relevant documents. There is no evidence that Owens Coming's purchase of the Bloomington plant was anything other than an arm's-length transaction between competitors (*see* *Payton,* 512 F.Supp. at 1038 (such transactions do not permit an inference of conspiracy)).

As proof of the alleged agreement, plaintiffs also presented evidence pertaining to the relationship between Owens Corning and Owens–Illinois. This evidence is only tangentially related to the essential question in this case, which is whether plaintiffs proved the existence of an agreement between defendants and Unarco or Johns–Manville. Proof of a relationship between defendants themselves does not establish the required agreement with Unarco or Johns–Manville.

Castleman's opinion that defendants were involved in the alleged conspiracy with Unarco and Johns–Manville to suppress information regarding the health hazards of asbestos also did not permit the jury to conclude that an agreement existed. Castleman testified that he "assumed" that there was an agreement among these companies because none of them disclosed the health risks of asbestos. An expert's opinion is only as valid as the bases and reasons for that opinion. *State Bank v. City of Chicago,* 287 Ill.App.3d 904, 918, 223 Ill.Dec. 250, 679 N.E.2d 435 (1997). **Castleman's "assumption," therefore, cannot be considered proof of conspiracy, especially when this assumption is based on mere parallel conduct, which we have explained is insufficient to establish a conspiracy.** Even assuming the jury found Castleman credible and accepted his opinion, his testimony that defendants participated in the alleged conspiracy does not support the jury's verdict. *See, e.g.,* *Kleiss v. Cassida,* 297 Ill.App.3d 165, 174, 231 Ill.Dec. 700, 696 N.E.2d 1271 (1998) (affirming judgment notwithstanding the verdict after concluding that the plaintiff's expert's opinions were conclusory and unsupported); *Aguilera v. Mount Sinai Hospital Medical Center,* 293 Ill.App.3d 967, 975–76, 229 Ill.Dec. 65, 691 N.E.2d 1 (1997) (same).

Although the scope of our review of jury verdicts is limited, **we find that the evidence in this case so overwhelmingly favors defendants that judgment notwithstanding the verdict should have been granted. Plaintiffs' evidence of parallel conduct is insufficient to establish the agreement required by the civil conspiracy theory.** When plaintiffs' evidence of contacts between defendants and Unarco or Johns–Manville is added to this parallel conduct, the evidence still cannot support the jury's determination that plaintiffs proved agreement by clear and convincing evidence. **The contacts between defendants, Unarco, and Johns–Manville were isolated, particularly with respect to Owens–Illinois, and an inference of agreement based on these contacts is not reasonable. Even when considered in the light most favorable to plaintiffs, evidence of these contacts was as consistent with innocence as with guilt.** *See* *Tribune Co.,* 342 Ill. at 529, 174 N.E. 561; *Bosak,* 192 Ill.App.3d at 804, 139 Ill.Dec. 917, 549 N.E.2d 643. Plaintiffs showed separate acts by the alleged conspirators, but the evidence failed to show that these acts were connected by an agreement. *See* *Bergeson v. Mullinix,* 399 Ill. 470, 475, 78 N.E.2d 297 (1948) (finding that evidence of the separate acts of the alleged conspirators was insufficient to establish a conspiracy when the evidence showed no "connection or confederation" between them). To conclude, based on the evidence of record, that defendants engaged in a conspiracy requires speculation. Liability based on such speculation is contrary to tort principles in Illinois (*se* e *Smith,* 137 Ill.2d at 254, 259, 148 Ill.Dec. 22, 560 N.E.2d 324) and to the clear and

convincing standard of proof applicable in civil conspiracy cases. Given the lack of evidence supporting this agreement element of plaintiffs' conspiracy claims, the jury verdicts cannot stand, and judgment must be granted in favor of defendants.

In defense of the jury verdicts in this case, **plaintiffs rely on our recent decision in *Adcock v. Brakegate, Ltd.,*** 164 Ill.2d 54, 206 Ill.Dec. 636, 645 N.E.2d 888 (1994). While the facts involved in that case are similar to those before us, **our holding in *Adcock* does not support a conclusion that the evidence of conspiracy is sufficient in this case.** In *Adcock,* the executor of the estate of a deceased Unarco Bloomington plant employee filed suit against Owens Corning and other asbestos-containing product manufacturers. The plaintiff alleged that the decedent worked in the Bloomington plant from 1954 until the end of 1970. According to the plaintiff, the decedent was exposed to asbestos in the plant, as a result of which he developed asbestosis and mesothelioma, which resulted in his death. As in the cases before us, the *Adcock* plaintiff alleged that Owens Corning was liable for the decedent's injuries based on a civil conspiracy theory. The plaintiff claimed that Owens Corning conspired with other asbestos manufacturers to suppress information about the hazards of asbestos and to falsely assert that it was safe to work with asbestos. *Adcock,* 164 Ill.2d at 57, 206 Ill.Dec. 636, 645 N.E.2d 888.

After the circuit court denied Owens Coming's motion to dismiss the complaint for failure to state a cause of action, Owens Corning answered the complaint. **As a sanction for Owens Coming's failure to produce certain witnesses, the circuit court entered judgment against Owens Corning as to liability. There was a trial on damages only.** *Adcock,* 164 Ill.2d at 58–60, 206 Ill.Dec. 636, 645 N.E .2d 888.

On appeal before this court, Owens Corning argued only that the circuit court erred in denying its motion to dismiss. Owens Corning contended that civil conspiracy is not actionable without underlying, intentional conduct. *Adcock,* 164 Ill.2d at 60, 206 Ill.Dec. 636, 645 N.E.2d 888. In rejecting this argument, we explained that Owens Coming's answer to the complaint waived any objection to the sufficiency of the allegations, provided that the complaint stated a recognized cause of action. **After finding that civil conspiracy, based on either intentional or negligent tortious conduct, is a recognized cause of action, we held that Owens Corning was precluded from challenging the factual sufficiency of the complaint. We refused to express any opinion on the factual sufficiency of the complaint.** *Adcock,* 164 Ill.2d at 65–66, 206 Ill.Dec. 636, 645 N.E.2d 888.

Our holding in Adcock, therefore, does not support plaintiffs' position that the evidence was sufficient in this case. Although the facts involved in Adcock were similar to those at issue in this case, Adcock was decided on the pleadings. There was no trial with respect to Owens Coming's liability, and this court did not address the sufficiency of the evidence supporting the plaintiff's conspiracy allegations in that case. By contrast, the sufficiency of the evidence is the determinative issue in this case.

188 Ill.2d at 133–143 (emphasis added).

(iii) *Rodarmel*

Rodarmel v. Pneumo Abex, L.L.C., 2011 Ill.App. 100463 (Ill.App. 4th Dist. Sept. 15, 2011), involved a claim for "take-home exposure" brought by the former wife of an asbestos worker. In that case, the appellate court reversed a trial court's denial of a manufacturer-defendant's motion for judgment notwithstanding the verdict (JNOV) regarding a civil conspiracy claim pertaining to alleged conduct of, *inter alia,* Bendix and Abex. The court in *Rodarmel* discussed *McClure* approvingly. The *Rodarmel* court held that an agreement by a defendant manufacturer (Abex) not to publish a certain research finding (the "Gardner study" finding that 8 or 9 of 11 mice exposed to asbestos developed tumors) was insufficient to show by "clear and convincing" evidence a conspiracy on the part of that defendant. Specifically, the court held it was insufficient to support an inference of an "agreement" between Abex and the other alleged conspirators (Johns–Manville and Unarco) although all three entities had sponsored the study and had agreed not to publish the findings.

The court noted that Abex's purported reason for not publishing the findings was that the findings were not statistically significant. It wrote:

> One can readily infer that the financing corporations, including Abex, had self-serving reasons for omitting any mention of the tumorous mice from the published report and for keeping the tumor findings confidential. As plaintiffs note, Johns–Manville's attorney remarked to another Johns–Manville executive: "This finding looks like dynamite." Castleman might be correct about the dynamic effect: if a scientific journal had published an article stating that Gardner had proved, by animal experimentation, that asbestos caused lung cancer, it might have gone a long way toward sealing the

acceptance of the causal connection between asbestos and cancer. But that proposition does not address the question of whether such an article would have deserved to be published in a scientific journal.

In other words, in suppressing the cancer references, the sponsors could have done the right thing for the wrong reason. Even if the tumors in the mice scientifically proved nothing, publicizing them could have been prejudicial to Johns–Manville's business, or Johns–Manville could have had that fear. So, yes, it is an eminently reasonable inference that Johns–Manville, Abex, and other companies were concerned more about their own skin than about scientific integrity. **The question, though, is not whether Abex's motives were pure. Instead, the question is whether Abex agreed "to commit an unlawful act or a lawful act in an unlawful manner."** *Adcock,* 164 Ill.2d at 64, 206 Ill.Dec. 636, 645 N.E .2d 888. As far as we can see, **it was not against the law, and it was not tortious, for the financing corporations to conceal the occurrence of tumors in a small group of mice if (1) the tumors were not scientific evidence of a relationship between asbestos and cancer and (2) it was unclear that any of the tumors were in fact cancerous.** Granted, from the vantage of hindsight, we now know it is a scientific fact that asbestos causes cancer in humans. But **it does not necessarily follow that asbestos caused the tumors (benign or malignant) in the eight or nine mice at Saranac Laboratory, some of which were genetically prone to develop tumors under any conditions.** Unless Abex had notice that the tumorous mice were scientific evidence that asbestos caused cancer, **Abex did not enter into a conspiratorial agreement by agreeing to conceal information about the tumorous mice—because concealing the information was not an unlawful or tortious act. It cannot be unlawful to hide information that is devoid of significance:** information that, as Murphy put it, was "not of any tremendous value." *See In re Angotti,* 812 S.W.2d 742, 749 (Mo.Ct.App.1991) ("The desire to keep [a medical advisor's] observations and evaluation confidential does not show actual knowledge of a health hazard to an individual working as an insulator."). Nevertheless, plaintiffs dispute that the eight or nine tumorous mice were devoid of scientific significance.

...

In short, absent a qualified expert opinion that the tumorous mice were scientific evidence of a relationship between asbestos and cancer-and, indeed, all the qualified experts appear to have opined to the contrary-Abex's agreement to conceal information about the tumorous mice was not an agreement to perform an unlawful act and hence was not a conspiratorial agreement. It cannot be unlawful to suppress information that apparently is devoid of significance.

The agreement to suppress the tumorous mice really does not match up with the conspiracy allegations in the complaint. According to the complaint, defendants entered into a conspiracy with UNARCO and other companies to withhold information about the harmful effects of asbestos. The record appears to contain no expert opinion, however, that Gardner's finding of tumors in the eight or nine mice really qualified as information about the harmful effects of asbestos. Besides, in agreeing to suppress the eight or nine tumorous mice, the financing corporations did not agree, generally and perpetually, to withhold any and all information about the carcinogenic effects of asbestos. Rather, as part of the collective rationale for deleting the references to cancer and tumors, Brown cited Gardner's belief that "this aspect should be made the subject of a separate study, which would take from two to three years." The record appears to contain no evidence that Abex agreed to the suppression of the results of this proposed future study.

2011 Ill.App. 100463 (emphasis added). The court rejected the holding and rationale of its earlier decision, *Dukes v. Pneumo Abex Corp.,* 386 Ill.App.3d 425 (Ill.App. 4th Dist.2008).

(iv) *Menssen*

Menssen v. Pneumo Abex Corp., 2012 Ill.App. 100904 (Ill.App. 4th Dist. Aug. 31, 2012), involved asbestos claims brought against defendants Pneumo Abex Corporation and Honeywell International, Inc. In that case, much like *Rodarmel,* the appellate court reversed a trial court's denial of the manufacturer-defendants' JNOV motions regarding a civil conspiracy claim pertaining to alleged conduct of, *inter alia,* Bendix and Abex. The court in *Menssen* discussed *Rodarmel* approvingly, including its explicit rejection of the holding and rationale of *Dukes.* Specifically, the court found the evidence presented was insufficient to prove that the defendant (Abex) entered into a conspiratorial agreement with other defendants to suppress or misrepresent the dangers of asbestos.

III. Defendant Owens–Illinois's Motion for Summary Judgment

A. Defendant's Arguments

Defendant Owens–Illinois argues that it is entitled to summary judgment because Illinois case law makes clear that the evidence Plaintiff has presented is not sufficient to support a finding of conspiracy on its part (or the part of any defendant now before the Court). Defendant cites to *McClure* and *Rodarmel* and contends generally that the evidence relied upon by Plaintiff in this case is insufficient to support an inference of "agreement" as required for a finding of conspiracy. Defendant contends that Plaintiff's evidence in this case involves only (a) the same evidence already rejected by the Illinois Supreme

Court in *McClure,* and (b) some additional evidence that is the same in nature as that considered and deemed insufficient in *McClure,* and therefore warranting the same result (i.e., summary judgment in favor of Defendants).

Defendant Owens–Illinois cites to *McClure* and *Rodarmel* in contending that, under Illinois law, (1) the "clear and convincing" standard applies, (2) the "innocent construction" rule applies, (3) mere "parallel conduct" is insufficient to show conspiracy, (4) the mere exchange of information does not support an inference of "agreement" as required to support a claim of conspiracy, (5) Owens–Illinois's ordinary business contacts are not evidence of conspiracy, (6) common directors between Owens–Illinois and other companies is not sufficient evidence of conspiracy, and (7) evidence of differing conduct (across companies) with respect to provision of warnings prohibits an inference of "agreement" between them. In short, Defendant Owens–Illinois argues any finding of conspiracy would be impermissibly speculative.

Defendant Owens–Illinois also contends that (8) Plaintiff has failed to present the requisite evidence that an "act in furtherance" of the alleged conspiracy caused harm to Decedent, and (9) Owens–Illinois cannot be liable in the conspiracy because it owed no duty to Decedent (given that there is no evidence that Decedent worked with or around an Owens–Illinois product).

According to Owens–Illinois, Plaintiff is required to produce evidence that Decedent was exposed to the asbestos-containing product of one of the alleged conspirators, and must provide evidence sufficient to satisfy the Illinois standard for product identification/causation/exposure (i.e., "frequency, regularity, and proximity"). Defendant contends that merely identifying an alleged conspirator's asbestos-containing product aboard the same ship on which Decedent worked is insufficient.

In connection with its reply brief, Defendant Owens–Illinois objects that the affidavit of Mr. Sheppard submitted by Plaintiff was (1) untimely and (2) from an improperly disclosed witness.

B. Plaintiff's Arguments

Plaintiff contends that (1) *Rodarmel* is not the only Illinois precedent on point and the Court should consider other Illinois decisions, (2) *Rodarmel* "contains numerous errors, both in its recitation and analysis of the evidence," (3) the evidentiary record in this case is different from the records previously evaluated by the courts in *McClure* and *Rodarmel,* and (4) the "clear and convincing" standard and the "innocent construction" rule need not be addressed at the summary judgment stage because, under Illinois law, the opponent of a summary judgment motion need not respond with evidence (i.e., has no burden at the summary judgment stage).

Plaintiff cites numerous cases, relying primarily on: (i) *Adcock,* (ii) *Dukes v. Pneumo Abex Corp.,* 386 Ill.App.3d 425 (Ill.App. 4th Dist.2008), *overruled* by *Rodarmel,* (iii) *Burgess v. Abex Corp.,* 305 Ill.App.3d 859 (Ill.App. 4th Dist. June 17, 1999), *judgment vacated by* 186 Ill.2d 566 (Ill.Dec. 1, 1999) ("BURGESS I"), and (iv) *Burgess v. Abex Corp.,* 311 Ill.App.3d 900 (Ill.App. 4th Dist. Mar. 1, 2000) ("BURGESS II").

Plaintiff has identified the following additional evidence (i.e., new/additional evidence beyond that considered by the *McClure* and *Rodarmel* courts), which she contends is sufficient to survive summary judgment with respect to the conspiracy claim against Defendant Owens–Illinois:

- *Post–McClure Documents re: Owens–Illinois* Plaintiff contends she has documents the *McClure* court never saw. She contends these include evidence that Owens–Illinois increased the amount of Kaylo it produced each year despite the fact that it had received information regarding asbestos hazards.

(Pl. Exs. 1, 2, 3, 4, 6 at Doc. No. 59.)

- *Evidence of the Relationship between Owens–Illinois and Owens Corning* Plaintiff cites evidence about the corporate history between Owens–Illinois and Owens Corning.

(Pl. Exs. 7–19 at Doc. No. 59.)

- *Evidence of Contacts with Co–Conspirators* Plaintiff cites evidence of alleged contact between Owens–Illinois and the other non-defendant alleged co-conspirators.

(Pl. Exs. 25–33 at Doc. No. 59.)

- *Evidence re: Warnings* Plaintiff cites evidence regarding warnings provided (or not provided) by Owens–Illinois and the other alleged co-conspirators.

(Pl. Exs. 34 and 43 at Doc. No. 59.)

C. Analysis

First, Plaintiff contends that the Court should reject the reasoning of *Rodarmel* because it is flawed. However, the role of the MDL court is not to reject or alter controlling state law. Rather, the MDL court is to apply controlling state law as it exists. Therefore, this argument fails and the Court will apply the law as set forth in the recent decision of the Illinois Court of Appeals (4th District) *Rodarmel* (and its even more recent decision in *Menssen*).

Second, Plaintiff asks this Court to apply *Dukes* and *Burgess I and II.* However, the *Dukes* court has more recently issued the decision in *Rodarmel,* such that this Court deems *Rodarmel* (and *Menssen*) to set forth current Illinois law. The judgment in *Burgess I* was vacated in 1999, and the holding and analysis of *Burgess II* was explicitly identified by *Rodarmel* as "incorrect." As such, the Court deems *Rodarmel* (and *Menssen*) to be controlling Illinois law.

Next, Plaintiff contends that the evidence she presents herein contains not only the same evidence presented in *McClure* and *Rodarmel,* but also new/additional evidence that supports an inference of conspiracy on the part of Defendant. The Court has considered the additional evidence pertinent to Owens–Illinois and concludes that it is not different in nature from the evidence rejected as insufficient in *McClure, Rodarmel,* and *Menssen.* Rather, the evidence is, at best, evidence of parallel conduct by Owens–Illinois's predecessor. Accordingly, summary judgment in favor of Defendant is warranted. *See* *Anderson,* 477 U.S. at 248–50; *McClure,* 188 Ill.2d 102; *Rodarmel,* 2011 Ill.App. 100463; *Menssen,* 2012 Ill.App. 100904.

Finally, Plaintiff argues that, under Illinois law, an opponent of a motion for summary judgment need not produce any evidence in order to oppose the motion. However, matters of procedure in this case are governed by the Federal Rules of Civil Procedure (not Illinois rules). *See Oil Field Cases,* 673 F.Supp. at 362–63. Therefore, this argument fails. Under the Federal Rules of Civil Procedure, Defendant is entitled to summary judgment because Plaintiff has failed to identify any evidence demonstrating that there is a genuine dispute of material fact for trial. *See* *Anderson,* 477 U.S. at 250. Accordingly, summary judgment in favor of Defendant Owens–Illinois is warranted.

Finally, Plaintiff argues that, under Illinois law, an opponent of a motion for summary judgment need not produce any evidence in order to oppose the motion. However, matters of procedure in this case are governed by the Federal Rules of Civil Procedure (not Illinois rules). *See Oil Field Cases,* 673 F.Supp. at 362–63. Therefore, this argument fails. Under the Federal Rules of Civil Procedure, Defendant is entitled to summary judgment because Plaintiff has failed to identify any evidence demonstrating that there is a genuine dispute of material fact for trial. *See* *Anderson,* 477 U.S. at 250. Accordingly, summary judgment in favor of Defendant Owens–Illinois is warranted.

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Grigg Plaintiff/Petitioner(s) VS. Allied Packing And Supply, Inc Defendant/Respondent(s) (Abbreviated Title)	No. RG12629580 Order Motion for Summary Judgment Granted

The Motion for Summary Judgment filed for Owens -Illinois, Inc was set for hearing on 03/08/2013 at 09:32 AM in Department 30 before the Honorable Jo-Lynne Q. Lee. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The motion by Defendant Owens-Illinois, Inc. ("O-I"), for summary adjudication against the Complaint by Plaintiffs Rose-Marie Grigg and Martin Grigg ("Plaintiffs") is ruled upon as follows:

The motion for summary adjudication of the Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action is GRANTED. There is no opposition. It is undisputed that there is no evidence that the O-I products at issue were fungible.

The motion for summary adjudication of the Fifth Cause of Action for Conspiracy to Defraud/Failure to Warn is GRANTED. O-I has established that Plaintiffs do not have evidence to support their claim that O-I entered into an agreement with the other defendants to this action to fraudulently conceal from the public the danger of asbestos from its products.

Plaintiffs' First Amended Complaint alleges that the "product defendants" (including O-I) each knew of the hazards of asbestos in their respective products, belonged to, participated in and financially supported trade and/or business organizations, including the Asbestos Information Association and the Asbestos Textile Institute, that studied and discussed such hazards, failed and fraudulently concealed their individual and collective knowledge from the public, and these acts were done with the intent that plaintiff's former husband would be induced to unknowingly work in a dangerous environment. It is further alleged that the acts and forbearances were caused by "false, fraudulent, and malicious motives of the defendants and each of them, and plaintiff is entitled to exemplary and punitive damages." O-I propounded Special Interrogatory No. 10 asking Plaintiffs "describe in detail all facts YOU believe support YOUR contention that OWENS-ILLINOIS, INC. acted with malice, oppression, fraud, and/or in conscious disregard for the safety of others, as alleged in YOUR complaint." Plaintiffs argue that O-I has not met its burden with regard to the element of conspiratorial agreement, citing Scheiding v. Dinwiddie Construction Co. (1999) 69 Cal.App.4th 64, 80 because, as they interpreted this interrogatory, it addresses plaintiffs' punitive damages claim, not specifically its conspiracy claim. However, the interrogatory fairly seeks "all facts" supporting the claim of "fraudulent concealment" and

it is clear from Plaintiffs' responses that they understood that to the extent their claim for punitive damages was based on a conspiracy to defraud, as framed in their Complaint, they were required to provide all facts supporting the existence of that conspiratorial agreement. Thus, in response to Special Interrogatory No. 10 Plaintiffs describe how the Kaylo thermal pipe and block insulation, manufactured by O-I under an O-I label, is being sold by Owens Corning Fiberglas (OCF) from 1953 and that OCF was the primary marketer for Kaylo, they discuss O-I's alleged "actual and implicit" knowledge regarding the hazards of asbestos and state "Owens-Illinois was in an agreement with OCF, both literally and impliedly." In the response Plaintiffs outline the relationship between O-I and OCF noting that OCF was formed in 1938 by O-I and Corning Glass Works and that each received 49.77% of the common stock of OCF and that O-I retained a large ownership interest in OCF as late as 1978 thus their relationship was "familial." Other facts are set forth regarding the relationship between the two companies, including that O-I employees served as directors and officers of OCF and had shared knowledge of the hazards of asbestos and Kaylo. It is alleged by Plaintiffs that the "fact that both Owens-Illinois and OCF knew that asbestos was hazardous, yet both refused to tell those at risk what Owens-Illinois and OCF knew, gives rise to the inference that Owens-Illinois and OCF agreed not to tell." Plaintiffs further state in response that when OCF needed information about asbestos, it relied upon O-I to provide the resources to obtain that information and that both companies made misrepresentations to the public that Kaylo was "non-toxic." Finally, Plaintiffs set forth details regarding correspondence between the two companies (and others) in which they exchange information coming out in the 1960s publicizing the hazards of asbestos and share their approaches to handling this problem.

The facts set forth in response to Special Interrogatory No. 10 parrot the arguments and facts set forth in Plaintiffs' opposition to the instant motion. The court concludes that these facts do not establish the existence of an "agreement" between Owens-Illinois and Owens Corning Fiberglass required to establish civil conspiracy. Moreover, after 1958, when O-I stopped manufacturing Kaylo, it could not be liable for conspiracy to defraud because it was not capable of being individually liable for the underlying wrong as a matter of substantive tort law. Chavers v. Gatke Corp. (2003) 107 Cal.App.4th 606, 612.

Dated: 03/13/2013

Digital

Judge Jo-Lynne Q. Lee

Order

NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that the statements set forth in this instrument are true and correct. On February 1, 2019 Defendant-Appellant Owens-Illinois, Inc.'s Separate Appendix was served upon the Clerk of the Illinois Supreme Court and was served by email on counsel of record below. Per the Clerk's Office's directive, on February 4, 2019, Defendant-Appellant Owens-Illinois, Inc.'s revised Separate Appendix was served upon the Clerk of the Illinois Supreme Court and was served by email on counsel of record below:

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