

(S.D.N.Y. Mar. 21, 2002) With all of this in mind, the Court turns to an analysis of whether Plaintiffs gave proper notice of their claim within the one-year time period as required by section 7-1(a)

The October 23, 1989 letter asserts a right to indemnity on account of a possible breach of the "compliance with law" representation. In that letter, Plaintiffs express, in a general fashion, the opinion that landfills at the Orzinuovi plant might not comply with Italian law "[w]hile such waste disposal may or may not be partially covered by some official permit, it appears that at least a significant portion of the waste disposal on the Orzinuovi premises is not covered by any license or permit whatsoever." First Am. Compl., Ex. B. The letter does not indicate the basis for this impression, nor does it specify which Italian law, if any, the existence of the landfills possibly violated. The letter advises that an investigation into the legality of the landfills was still ongoing. *See id.*

\*8 For starters, the mere presence of landfills at a manufacturing plant was not *per se* unlawful under Italian law because government officials issued permits authorizing such activity (as was the case here). *See, e.g., Roberts Aff.* ¶ 17, Ex. P, *see also* Defs.' Ex. 52, pp. 5-6 ("[U]ntil 1976, no specific legislation (whether national or regional) existed in Italy dealing specifically with wastes disposal and/or water pollution.") In that sense, Plaintiffs could not properly make a claim for indemnity simply based upon the discovery of landfills. Plaintiffs' letter intimates as much given the acknowledgments that at least some of the waste disposal might be officially authorized and that the situation called for further investigation. Meanwhile, despite Plaintiffs' implication to the contrary, at this point in their investigation, they had no reason to conclude that landfills at the Orzinuovi plant created any illegality. In fact, on October 6, 1989, in response to Plaintiffs' inquiry regarding the legal status of the landfills, Frendo management advised Plaintiffs that the "dump inside the plant" was used "up to the second half of 1983" and that, "we presented on April 17, 1984 the land reclamation project of the interested area and we obtained the approval from 'Provincia' on April 30, 1984." Defs.' 56-1 ¶ 19, Ex. J. In light of this, when Plaintiffs made their indemnity demand they had information indicating *official approval* of the waste disposal at the Orzinuovi plant.

Moreover, Plaintiffs engaged in a questionable course of conduct after making their indemnity demand. This behavior included ignoring Abex's requests for more information regarding the basis for Plaintiffs' claim. For instance, after receipt of the October 23rd demand, Abex responded on October 31, 1989 by requesting

proof to support Plaintiffs' claim and asking for access to Frendo employees with knowledge of the relevant facts. *See* Defs.' 56-1 ¶ 62, Tab 2. That October 31 letter notified Plaintiffs of the lack of specificity in their notice: "the letter of October 23, 1989 does not give us enough facts to conclude one way or the other whether there was a material breach of any representations, warranties or covenants under the Stock Purchase Agreement or whether there is a duty to indemnify." *Id.* On at least two separate occasions, Abex requested more specific information concerning the basis for Plaintiffs' indemnity demand, each time giving Plaintiffs an opportunity to specify their claim within the one-year limitation period. *See, e.g.,* Defs.' 56-1 ¶¶ 63-64, Tabs 3 & 4. These numerous requests, however, went unheeded. [FN9] Plaintiffs also neglected to conduct a timely inquiry into the permit history of landfills at the plant, a seemingly obvious step in an investigation of this type. In this regard, Plaintiffs' representative who was primarily responsible for gathering facts concerning the landfills and for dealing with Italian authorities with respect to the landfill situation testified that he made no attempt to ascertain any information regarding permit authorization for the landfills, a telling admission. *See Roberts Aff.* ¶ 3, Ex. B, pp. 89-90. Additionally, the record reflects that Plaintiffs waited almost one and one-half years after the October 23rd indemnity demand to retain Italian counsel to analyze Italian environmental requirements as they relate to potential claims against Abex with respect to the Orzinuovi plant. *See* Defs.' 56-1 ¶ 81, Tab 8. This factor implies that as of October 23, 1989 Plaintiffs knew of no legal ground on which to base their claim for indemnity, which explains (but hardly absolves) the failure to specify potential liability under the law in their notice of claim. Furthermore, Plaintiffs waited nearly two years after giving notice to Defendants before informing Italian authorities, on October 2, 1991, of the presence of landfills at the Orzinuovi plant. *See* Defs.' Exs., Tab 16. Their October 2nd notification mentions nothing about a violation of law as the reason for Plaintiffs' proposed landfill removal project, even though Plaintiffs took care to draft the letter in such a way as to avoid damaging "our litigation in the United States." *See* Defs. Exs., Tab 12. Despite this goal, at no time during their discussions with Italian authorities did Plaintiffs state that the reason for their proposed removal project was due to concerns about the legality of the landfills.

[FN9] Plaintiffs sent Abex a letter on November 23, 1989, but this communication failed to illuminate the basis for Plaintiffs' claim with respect to the landfills, as Plaintiffs' own position reflects. "The December 21,