

1989 letter responds to plaintiffs' November 23, 1989 letter, which deals exclusively with matters other than the Orzinuovi Dumps. These letters are completely irrelevant to matters in controversy in this litigation." Pls' Resp to Defs' Suppl 56 1 ¶ 63

*9 Moreover, Plaintiffs' improper conduct included a covert campaign to generate grounds for their indemnity demands against Defendants. Despite Defendants' request that the parties work together in dealing with government officials, Plaintiffs pursued a campaign of secrecy and concealment regarding their dealings with Italian authorities. *See* Defs' Supplemental 56 1 ¶ 91, Tab 12. For example, during one of Plaintiffs' private meetings with the Mayor of Orzinuovi about the landfills, Plaintiffs' representative asked the Mayor whether "it is possible to have from him a mandatory request to proceed" with Plaintiffs' already proposed remediation project. *See id* ¶ 100, Tab 26. Plaintiffs' campaign also involved coaxing the Mayor to issue the January 23, 1993 order requiring plaintiff Frendo to undertake a landfill cleanup project, an order that Plaintiffs' counsel secretly drafted and requested. *See id* ¶ 109, Tabs 56, 57. In addition to this, after informing Plaintiffs that the order was invalid and without legal effect, Plaintiffs' lawyer then stated, "I assume these developments should not be disclosed to Abex." Roberts Aff ¶ 20, Ex. S. In pressing their indemnity rights here, Plaintiffs make much of this order, classifying it as a "claim" asserted against them by Italian authorities. But given the dubious pedigree of the order, this so-called "claim" is little more than a claim of Plaintiffs' own creation.

The Court concludes that Plaintiffs' October 23rd indemnity demand fails to specifically particularize the basis for their claim as required by section 7 1(a). Because of Plaintiffs' lack of compliance with the notice of claim requirements set forth in section 7 1(a), namely, the failure to identify specific liability under the law on account of the landfills, they cannot pursue a claim for indemnification under the 1989 Purchase Agreement. Therefore, the Court grants defendants Abex and Pneumo Abex summary judgment as to count I of Plaintiffs' amended complaint.

B. Contractual Indemnification Under 1988 Purchase Agreement

In count II of their amended complaint, plaintiff Frendo ("Plaintiff") asserts a claim against defendant Whitman ("Defendant") for indemnification under the 1988 Purchase Agreement for losses associated with the landfill removal project at the Orzinuovi plant. *See* First

Am Compl ¶¶ 30-41. Whitman represented and warranted under section 5(i) of the 1988 Purchase Agreement that the Orzinuovi plant was not being conducted in violation of any applicable law, other than violations that did not have a material and adverse effect on the business or finances of Frendo. *See id* § 5(i). Section 12(b)(i) obligated Defendant to indemnify the buyer in connection with any loss resulting from a breach of any representation provided by Defendant in section 5. *See id* § 12(b)(i). Section 12(b)(i)'s broad indemnification provision expressly excludes environmental matters, for which indemnification provisions are set forth separately in section 12(b)(vi). *See id*. Section 12(b)(vi) of the 1988 Purchase Agreement, as amended by section 2 of the Second Amendment, obligates Defendant to indemnify the buyer from any liability incurred by the buyer on account of (a) any noncompliance with any Applicable Environmental Law, (b) statutory liability arising out of any dumping of a substance classified as hazardous or toxic under any Applicable Environmental Law, or (d) any investigation, proceeding, claim or allegation relating to any matter indemnifiable under (a) or (b). *See id*, Ex. H, § 2. Based on this contractual provision, to obtain indemnity, Plaintiff must prove not only the Orzinuovi plant operator's non-compliance with applicable law or statutory liability because of the landfills, but must also establish that Plaintiff suffered losses because of the non-compliance or because of a claim or allegation of non-compliance. The Court rejects the notion that the Mayor's January 23rd order meets this requirement. Plaintiffs, however, also argue that under Italian law, the Orzinuovi plant operator had an affirmative duty to remove the landfills regardless of a governmental directive to do so. Because of this, the Court will analyze the Italian regulations that Plaintiffs claim Frendo, as plant operator, was out of compliance with as of the closing dates of the 1988 Purchase Agreement and the 1989 Purchase Agreement.

1. Time Frame of Landfill Usage

*10 Before analyzing whether the landfills violated any of the Italian regulations cited by Plaintiffs, the Court will consider an issue raised by Defendants in their motion for partial summary judgment, namely, the time frame in which Frendo utilized landfills at the Orzinuovi plant, insofar as this issue impacts the violation of law analysis.

In their amended complaint, Plaintiffs allege that landfill usage at the plant occurred from approximately 1971 to approximately 1986. *See* First Am Compl ¶ 13. Defendants argue that the evidence in this case fails to support this allegation for a variety of reasons. First, Defendants argue that because plaintiff Frendo's