

**IN THE CIRCUIT COURT
THIRD JUDICIAL DISTRICT
MADISON COUNTY, ILLINOIS**

IN RE ALL ASBESTOS LITIGATION	)	
FILED BY THE SIMMONS FIRM, LLC	)	
Including:	)	
	)	
DIANNA LYNN KIBLER, and	)	No. 02-L-566
	)	
All Plaintiffs in Living Cases on the	)	
November 18, 2002 Simmons Firm	)	
Trial Docket	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
PNEUMO ABEX CORPORATION, et al.	)	
	)	
Defendants.	)	

**PLAINTIFFS' MOTION FOR LEAVE TO SEEK PUNITIVE DAMAGES
AGAINST DEFENDANT ABEX CORPORATION**

Plaintiffs hereby move for leave to seek punitive damages against Pneumo Abex Corporation ("Abex"), said leave to apply to future cases pursuant to Section IV of the Madison County Standing Order, and in support thereof state:

1. Defendant Pneumo Abex Corporation ("Abex") is the successor to Abex Corporation, which was incorporated as the American Brake Shoe and Foundry Company in 1902. Abex is also the successor to the American Brakeblok Corp.
2. Abex has admitted in answers to interrogatories that "knowledge of asbestos hazards...was basic to the Abex Occupational Health Program since 1941." *See Exhibit A hereto.*
3. In 1936, American Brake Shoe helped fund a study by Dr. LeRoy Gardner of Saranac Lake concerning health hazards of asbestos. *See 1936 Memorandum Agreement, Exhibit B*

hereto. The results obtained were to be the property of the sponsors. *See Exhibit C. See also Exhibit D* (2/1/37 letter from Blume of Abex to Sumner Simpson of Raybestos-Manhattan).

4. Abex and the others thereafter obtained the right to review and edit the Gardner study (which was actually completed by Dr. Vorwald). *See Exhibit E* (7/22/47 memorandum stating that the sponsors of the study would review same to determine if results "will be helpful to us in our problems"); *Exhibit F* (3/3/49 letter from V. Brown forwarding draft copy of Gardener study to sponsors).

5. Abex and the others used this 'editorial discretion' to delete unwanted references to cancer being related to exposure to asbestos. *See Exhibit G* (11/12/48 letter from V. Brown to W.T Kelly, Abex Executive Vice-President, advising that all references to "cancer" and "tumors" in Dr. Gardner's report would be deleted); *Exhibit H* (11/16/48 letter from Kelly acknowledging receipt).

6. The final version of the Gardner study contained no references to cancer and was regarded by the sponsors as "generally favorable." *See Ex. F; Exhibit F-1* (3/8/49 letter from Kelly of Abex).

7. Dr. Charles Blackwell, Jr., who was hired by Abex in 1961 and became medical director in 1976, has testified that he, and therefore Abex, were aware of the health hazards of asbestos, including mesothelioma, since he came to Abex. *See excerpt's from Nov. 1984 Blackwell deposition, Exhibit J hereto*, pp. 12-13. Specifically:

(a) Blackwell knew from medical school that asbestos was hazardous hazards and that it was associated with mesothelioma, rare tumor. *See Ex. J*, pp. 24-28.

(b) Blackwell attended a Selikoff seminar between 1965 and 1968 at which asbestos-related diseases among shipyard workers was discussed. *Id.* at pp.

30-31.

(c) At the time of this conference, Blackwell understood the association between asbestos exposure and mesothelioma. *Id.* at p. 118.

(d) No later than May 10, 1972, Blackwell specifically cautioned D.K. Rennie, Vice President of Abex and E.H. Feierabend that "one cannot ignore the statistics which he [Selikoff] and his associates have compiled dealing with asbestos." See *Exhibit K hereto*. Blackwell also stated that mesothelioma was a rare tumor of the lung, which was "much more prevalent" for "those exposed to asbestos." *Id.*

8. Abex was a member of the FMSI from 1949 to the present. *Answer to Interrogatory*

No. 94.

(a) FMSI had an Asbestos Study Committee, beginning in 1971 (later renamed the Health and Environmental Affairs Committee. See *Exhibit L, August 1982 deposition of Drislane, Secretary of FMSI beginning 1970*, pp. 5, 11-16.

(b) As secretary, Drislane collected medical articles on asbestos and brake linings and distributed copies to the members. He also distributed letters and minutes relating to asbestos hazards and friction materials. *Ex. L*, pp. 21-33.

(c) In 1972, the FMSI circulated the results of a study on fiber emissions in friction products by the Illinois Institute of Technology Research, which concluded that "considerable" amounts of asbestos fibers were released from work on friction materials." The author of the report, Dr. Colin Harwood, advised banning asbestos friction materials in Illinois. See *Exhibits M, N*.

(d) FMSI and its members opposed references to "cancer" and "danger" in OSHA required warnings on friction materials in June 1972.

(e) Other information from the Asbestos Study Committee evidence awareness of hazards associated with friction materials. This included distributing an article by J.C. Gilson, which concluded that there was no dose-response relation for mesothelioma and that there were consequently no TLVs for mesothelioma. See *Exhibit O*. See also *Exhibits P & Q*.

9. According to Blackwell, Abex never conducted any studies to determine whether or not end use of its products presented any health hazard. See *Ex. J*, p. 104. See also *Answer to*

Interrogatory No. 54.

10. Abex participated in efforts by the FMSI to lobby against a proposed ban on friction materials in Illinois during January 1972. *See Exhibit R.*

12. Abex did not issue warnings until the mid-1970's (if even then). *See Answer to Interrogatory No. 63. See also Ex. P* (February 1973 FMSI minutes, discussing labeling); *Exhibit S* (September 1976 letter from Drislane; idea of warning inserts has laid dormant too long).

13. Abex joined the Asbestos Information Association in 1975, the purpose of which was disseminate misinformation about asbestos hazards and thereby protect the business interests of asbestos companies such as Abex.

14. Abex knew of the hazards of asbestos by the late 1930's or early 1940'. It knew that asbestos could cause cancer by the late 1940's. It had information specifically regarding mesothelioma and that fact that even low dose exposures were harmful no later than the 1960's.

15. Abex continued to manufacture and sell asbestos products without adequate warning. By the late 1940's, it was an active participant in efforts to falsify medical information concerning the hazards for the purpose of misleading the public and protecting its business interests. Abex continued, through its membership in FMSI and the AIA to oppose health and safety measures, disseminate misinformation and protect its business interests.

16. This misconduct satisfies the standard for leave to seek punitive damages, under 735 ILCS 5/2-604. Plaintiffs are only required to make out a prima facie case, and are not required to prove that they can recover punitive damages.

WHEREFORE, Plaintiffs pray for leave to seek punitive damages against Pneumo Abex Corporation.

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