

Not Reported in F Supp 2d
(Cite as: 2002 WL 1203836 (S.D.N.Y.))



Only the Westlaw citation is currently available

United States District Court, S D New York

RUTGERSWERKE AG and FRENDOS p A ,
Plaintiffs,

v

ABEX CORPORATION, Pneumo Abex
Corporation and Whitman Corporation, Defendants

No. 93 CIV 2914 JFK.

June 4, 2002

Baker & McKenzie, Chicago, IL, Of Counsel Richard
Franklin, Esq , for the Plaintiffs

Fognani Guibord Homsy & Roberts, LLP, Chicago, IL,
Of Counsel John Roberts, Esq , for Defendants Abex
Corporation and Pneumo Abex Corporation

Butler Rubin Saltarelli & Boyd, Chicago, IL, Of
Counsel Kirk T Hartley, Esq , for Defendant Whitman
Corporation

OPINION and ORDER

KEENAN, District J

*1 Before the Court are the following motions (1) motion for summary judgment by defendants Abex Corporation ("Abex"), Pneumo Abex Corporation ("Pneumo Abex"), and Whitman Corporation ("Whitman") (collectively "Defendants"), (2) Defendants' motion for partial summary judgment on the issue of whether the "dumps" were permanently closed in 1983, (3) Defendants' motion to strike, and (4) motion for summary judgment by plaintiffs, Rutgers AG (formerly known as Rutgerswerke AG and herein referred to as "Rutgers") and Frendo S p A ("Frendo") (collectively "Plaintiffs"). The motions are opposed. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. [FN1] The Court heard oral argument on these motions on May 16, 2002 and thoroughly considered all submissions made in connection with them. For the reasons stated herein, the Court grants Defendants' motion for summary judgment, denies Plaintiffs' motion for summary judgment and denies as moot all other pending motions

[FN1] Jurisdiction before this Court is predicated upon diversity of citizenship between the parties, *see 28 U.S.C. § 1332(a)(1)*, as plaintiff Rutgers is a German stock corporation with its principal place of business in Germany, plaintiff Frendo is an Italian stock corporation with its principal place of business in Italy, defendant Abex was a corporation organized and existing under the laws of Delaware with its principal place of business in New York, defendant Pneumo Abex is a corporation organized under the laws of Delaware with its principal place of business in New Hampshire, and defendant Whitman is a holding corporation organized under the laws of Delaware with its principal place of business in Illinois and the amount in controversy exceeds the applicable jurisdictional minimum. *See Rutgerswerke AG v. Abex Corp.*, No. 93 Civ. 2914, 1995 WL 625701, *1 (S.D.N.Y. Oct. 25, 1995).

Background

This lawsuit involves a dispute over who should bear financial responsibility for a landfill removal project at a brake manufacturing plant in Orzinuovi, Italy, a town located in the northern part of the country in an area known as the Lombardy Region. On January 23, 1970, the Mayor of Orzinuovi, upon consultation with the Hygienic Building Commission, granted authorization to construct the Orzinuovi plant. *See* Defs.' 56-1 Statement ¶ 6, Roberts Aff., ¶ 18, Ex. Q. From April of 1978 till the end of 1983, plaintiff Rutgers and defendant Abex, through wholly-owned subsidiaries, participated in a joint venture that owned and operated the Orzinuovi plant. *See id.* ¶ 7, Roberts Aff., ¶ 5, Ex. D. During this time period, Hans Bethke, the Rutgers official responsible for reducing the waste stream at the plant, visited and toured the facility about twice a year. *See id.* ¶¶ 8-9, Roberts Aff. ¶ 5, Ex. D, pp. 21, 34, 43 & 46. This tour included the backyard area of the plant where the underground landfills were located. *See id.* ¶¶ 8-9, Roberts Aff. ¶ 5, Ex. D, pp. 34, 43. At his deposition, Mr. Bethke testified that on these occasions he saw above-ground waste piles, but no underground landfills. *See* Roberts Aff. ¶ 5, Ex. D, pp. 43-45.

On or about September 22, 1980, the Region of Lombardy received a request for authorization to operate a waste disposal facility from Frendo, [FN2]