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United States District Court, S D New York

RUTGERSWERKE AG and Frendo S p A , Plaintiffs,
v
ABEX CORPORATION, **Pneumo Abex** Corporation and **Whitman** Corporation, Defendants

No 93 CIV. 2914 (JFK).

Oct 25, 1995

Baker & McKenzie (Robert L Berner, Jr , Richard M **Franklin**, David P Hackett, Chicago, IL, David Zaslowsky, of counsel), New York City, for Plaintiff

Katten Muchin & Zavis (Donald E Egan, Kirk T Hartley, Sara E Elder, Chicago, IL, Eugene Allen Meyer, of counsel), New York City, for defendant Whitman Corporation

AMENDED OPINION and ORDER

KEENAN, District Judge

*1 Before the Court is the motion of defendant Whitman Corporation ("IC Industries/Whitman") to dismiss plaintiffs' Complaint for lack of personal jurisdiction, pursuant to Fed R Civ P 12(b)(2) Plaintiffs oppose the motion For the reasons set forth below, the motion to dismiss the claims against defendant IC Industries/Whitman for lack of personal jurisdiction is denied

BACKGROUND

Defendant IC Industries/Whitman [FN1] is a holding corporation organized under the laws of Delaware with its principal place of business in Illinois

Defendant Pneumo Abex f/k/a PA Holdings ("PA Holdings/Pneumo Abex") [FN2] is a corporation organized under the laws of Delaware with its principal place of business in New Hampshire

Defendant Abex Corporation ("Abex") was a corporation organized and existing under the laws of Delaware with its principal place of business in New York

Plaintiff Rutgerswerke AG ("Rutgerswerke") is a German stock corporation with its principal place of business in Germany Plaintiff Frendo S p A , a wholly owned subsidiary of Rutgerswerke, is an Italian stock corporation with its principal place of business in Italy

On April 28, 1988, IC Industries/Whitman and PA Holdings/Pneumo Abex entered into a Stock Purchase Agreement ("the 1988 Stock Purchase Agreement") whereby IC Industries/Whitman would sell certain subsidiaries to PA Holdings/Pneumo Abex First Amended Complaint ¶¶ 4, 5, 25 The 1988 Stock Purchase Agreement was the result of multiple rounds of negotiations conducted by several different means of communication face-to-face negotiations conducted in New York between IC Industries/Whitman and PA Holdings/Pneumo Abex, negotiations conducted between the New York law offices retained by IC Industries/Whitman and PA Holdings/Pneumo Abex, and negotiations conducted by telephone between IC Industries/Whitman in Chicago and PA Holdings/Pneumo Abex's representative in New York, where IC Industries/Whitman initiated the calls Whitman Memorandum at 4-5 Once a final agreement was reached, the contract was flown to Chicago to obtain the signature of IC Industries/Whitman's Board of Directors *Id* at 5 Pursuant to section 2(a) of the 1988 Stock Purchase Agreement, the closing of the purchase and sale was held at the New York law office retained by IC Industries/Whitman First Amended Complaint, Ex E, ¶ 2 Additionally, the 1988 Stock Purchase Agreement is governed by New York Law *Id* ¶ 27

On August 29, 1988, IC Industries/Whitman and PA Holdings/Pneumo Abex amended the 1988 Stock Purchase Agreement ("Amendment to the 1988 Stock Purchase Agreement") *Id* ¶ 25 Pursuant to the 1988 Stock Purchase Agreement, as amended, IC Industries/Whitman agreed to sell to PA Holdings/Pneumo Abex certain subsidiaries including Abex, which in turn owned 99 99% of the issued and outstanding shares of Abex S p A , an Italian stock company *Id* At the time of the stock transfer, Abex S p A owned and operated a manufacturing site located in Orzinuovi, Italy ("the Orzinuovi site") *Id* The 1988 Stock Purchase Agreement provided, in relevant part, that IC Industries/Whitman agreed to

> *2 indemnify [PA Holdings/Pneumo Abex] and its affiliates (including the Sold Subsidiaries) against