

PLAINTIFF'S
EXHIBIT

CED-10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN RE NEW YORK CITY ASBESTOS LITIGATION,
-----X

: INDEX NO.
: NYAL-PH-8888

THIS DOCUMENT RELATES TO:

ALL POWERHOUSE CASES
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: VERIFIED
: CROSS-CLAIM
: FOR CONTRACTUAL
: INDEMNIFICATION

The third party defendant, Consolidated Edison Company of New York, Inc. ("Con Edison") by its attorney, Richard W. Badinecz, as and for a cross-claim against defendant/third-party defendant, Babcock & Wilcox, individually and as successor to B & W Refractories, Ltd., Standard Refractories, Ltd. and Holms Blount Ltd., 1010 Common Street, Box 61038, New Orleans, La. 70161, respectfully alleges upon information and belief:

FIRST: That the plaintiffs herein have alleged that they sustained personal injuries or death as a result of exposure to various asbestos containing products at electrical generating stations owned by Con Edison.

SECOND: That the plaintiffs herein further allege that those injuries were sustained during the construction, maintenance and/or repair of electrical generating facilities owned by Con Edison.

THIRD: That beginning prior to approximately 1913 and continuing at least until approximately 1962 Babcock and Wilcox manufactured and sold to Con Edison and its predecessors no

fewer than 74 boilers, and installed those boilers in electrical and steam generating stations owned by Con Edison. A schedule is annexed hereto. The schedule specifies the generating facility at which each Babcock and Wilcox boiler was installed, the date that each boiler went into service, the boiler number, the work order number, the Con Edison purchase order number, and the name of the installation contractor.

FOURTH: That in addition to the foregoing, Babcock & Wilcox manufactured and sold to Con Edison a nuclear reactor, and installed that nuclear reactor at the Indian Point Generating Station in Buchanan, New York. The location, the reactor number, the work order number, the Con Edison purchase order number, and the name of the installation contractor are included on the Schedule annexed hereto.

FIFTH: That the equipment set forth on the annexed schedule was sold and installed pursuant to contracts between Babcock and Wilcox and Con Edison.

SIXTH: That the aforesaid contracts between Babcock & Wilcox and Con Edison incorporated terms and conditions under which Babcock and Wilcox was obligated to work. Babcock and Wilcox was obligated to supply equipment and to perform work in accordance with the specifications and conditions, and in a careful and workmanlike manner.

SEVENTH: That under the terms and conditions of the aforesaid contracts between Babcock and Wilcox and Con Edison

Babcock and Wilcox was required inter alia to:

4. SAFEGUARDS IN CONSTRUCTION

In the case of a Lump Sum Contract, the Contractor expressly undertakes and agrees to provide and maintain at his own cost and expense . . . all necessary and proper equipment, apparatus and appliances useful in carrying on the work and to make the place of work and the ways and approaches thereto safe and free from avoidable danger or as may be required by public authority or local conditions, The Contractor shall be responsible for any failure or neglect on his part to perform this covenant.

18. DUST OR FUME CONTROL

Whenever demolition or other work of any kind creates harmful dust or fumes, equipment for the protection of property against dust and fumes and also the workmen against the inhalation of "harmful dust or fumes" shall be installed, maintained and effectively operated by the Contractor as required by law.

All such equipment is to be of a type approved by the State, County and/or Municipal regulatory body or in accord with the specifications adopted by such regulatory body and "harmful dust or fumes" is to be as defined by the Industrial Board of the State Labor Department or other governmental body having jurisdiction.

EIGHTH: That under the terms and conditions of the aforesaid contracts between Babcock and Wilcox and Con Edison, Babcock and Wilcox agreed to indemnify Con Edison. The contract provided as follows or in substantially similar language:

26. INDEMNIFICATION

The Contractor shall indemnify and save harmless the Company from and against any and all liability arising from injury to person or property occasioned wholly or part by any act or omission of the Contractor, his agents, servants or employees, including any and all expense, legal or otherwise, incurred by the Company : the defense of any claim or suit.

NINTH: That given the expedited trial procedure adopted by the Court in these cases, Con Edison has not yet been provided by plaintiffs and third-party plaintiffs with the exact locations and times at which plaintiffs allege exposure to asbestos containing products. Therefore, Con Edison reserves the right to supplement this cross-claim in the event that additional information becomes available.

TENTH: That by reason of the contracts between Babcock and Wilcox and its predecessors and Con Edison and its predecessors and all the matters and things set forth herein, Babcock and Wilcox is contractually obligated to indemnify and save harmless Con Edison for any and all liability and/or recover against it by any party in this litigation, and to defend and save harmless Con Edison and to reimburse it for all costs and expenses, legal or otherwise, incurred in the defense of this action.

WHEREFORE, the third party defendant, Consolidated Edison Company of New York, Inc., demands that pursuant to FRCP Rule 11 it have judgment over and against defendant/third party defendant Babcock and Wilcox for the amount of any verdict or judgment which may be recovered herein by any plaintiff, third party plaintiff or other party against Con Edison, together with the costs and disbursements of this action and all expenses, legal and

otherwise, incurred in the defense thereof.

RICHARD W. BABINECZ
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of New York, Inc.

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EXHIBIT B