

Smith v A.O. Smith Water Prods. Co.
2025 NY Slip Op 35258(U)
November 14, 2025
Supreme Court, New York County
Docket Number: Index No. 190208/2023
Judge: Hasa A. Kingo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO

PART 05M

Justice

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LARRY SMITH,

INDEX NO. 190208/2023

Plaintiff,

- v -

A.O. SMITH WATER PRODUCTS CO, AERCO INTERNATIONAL, INC, AIR & LIQUID SYSTEMS CORPORATION, AS SUCCESSOR-BY-MERGER TO BUFFALO PUMPS, INC, AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC, BMCE INC., F/K/A UNITED CENTRIFUGAL PUMP, BURNHAM, LLC, INDIVIDUALLY, AND AS SUCCESSOR TO BURNHAM CORPORATION, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, CANVAS MW, LLC. FORMERLY KNOWN AS THE MARLEY-WYLAIN COMPANY, LLC, CARRIER CORPORATION, CLYDE UNION, INC, COLUMBIA BOILER COMPANY OF POTTSTOWN, COMPUDYNE CORPORATION, INDIVIDUALLY, AND AS SUCCESSOR TO YORK SHIPLEY, INC, CROWN BOILER CO., F/K/A CROWN INDUSTRIES, INC, DAVID FABRICATORS INC A/K/A DAVID ASBESTOS CORP, ECR INTERNATIONAL, CORP., F/K/A DUNKIRK BOILERS AND UTICA BOILER COMPANY, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, FORD MOTOR COMPANY, GARDNER DENVER, INC, GENERAL ELECTRIC COMPANY, GOULDS PUMPS LLC, GRINNELL LLC, HALE PRODUCTS, INC, HARSCO CORPORATION, AS SUCCESSOR TO PATTERSON-KELLEY COMPANY, INC., INDIVIDUALLY AND D/B/A PATTERSON-KELLEY, HOLBY VALVE COMPANY, INC, HONEYWELL INTERNATIONAL, INC., F/K/A ALLIED SIGNAL, INC. / BENDIX, IMO INDUSTRIES, INC, INTERNATIONAL PAPER COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO CHAMPION INTERNATIONAL CORPORATION, AS SUCCESSOR TO UNITED STATES PLYWOOD CORPORATION, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, JENKINS BROS, KAISER GYPSUM COMPANY, INC, KEELER-DORR-OLIVER BOILER COMPANY,

**DECISION & ORDER ON
DEFENDANT JENKINS BROS.'
OMNIBUS MOTION IN LIMINE**

**DECISION & ORDER ON
PLAINTIFFS' MOTION IN LIMINE TO
PRECLUDE DEFENDANT
FROM ELICITING TESTIMONY FROM
PLAINTIFFS' CAUSATION EXPERTS
REGARDING OTHER PRODUCTS,
ENTITIES, AND/OR SETTLED
PARTIES**

KOHLER CO, LENNOX INDUSTRIES, INC, LEVITON MANUFACTURING CO., INC, MORSE TEC LLC,F/K/A BORG WARNER MORSE TEC LLC AND SUCCESSOR-BY-MERGER TO BORG-WARNER CORPORATION, NIBCO INC, PARAMOUNT GLOBAL, F/K/A VIACOMCBS INC., F/K/A CBS CORPORATION, A DELAWARE CORPORATION, F/K/A VIACOM INC.,SUCCESSOR BY MERGER TO CBS CORPORATION, A PENNSYLVANIA CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, PFIZER, INC. (PFIZER), PNEUMO ABEX LLC,SUCCESSOR IN INTEREST TO ABEX CORPORATION (ABEX), QCP, INC.,INDIVIDUALLY AND AS SUCCESSOR TO BAKERS PRIDE OVEN COMPANY, INC, REDCO CORPORATION F/K/A CRANE CO, RHEEM MANUFACTURING COMPANY, SCHNEIDER ELECTRIC USA, INC. FORMERLY KNOWN AS SQUARE D COMPANY, SLANT/FIN CORPORATION, TACO, INC, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, UTICA BOILERS, INC., INDIVIDUALLY AND AS SUCCESSOR TO UTICA RADIATOR CORPORATION, VIKING PUMP, INC, WARREN PUMPS, LLC,TENNECO AUTOMOTIVE OPERATING COMPANY INC.,BURNHAM HOLDINGS, INC.,

Defendant.

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Plaintiffs Larry Smith and Phyllis Smith (“Plaintiffs”) bring this action as part of New York City Asbestos Litigation (“NYCAL”) alleging personal injuries from asbestos exposure. Defendant Jenkins Bros. (“Jenkins”) moves *in limine* by omnibus motion for multiple forms of relief in advance of trial, including orders: (1) precluding any expert testimony or argument premised on a “cumulative exposure” or “each and every exposure” theory of causation; (2) prohibiting Plaintiffs’ experts from using conclusory terminology such as “no safe level” of asbestos exposure; (3) limiting or precluding cumulative expert testimony that is needlessly duplicative; (4) precluding evidence of events or corporate conduct post-dating Jenkins Bros.’ dissolution; (5) excluding references to OSHA regulations or comparisons to cigarette warning labels; (6) barring any “Reptile” strategy, Golden Rule, or “send a message” arguments by Plaintiffs’ counsel; (7) permitting the use at trial of nonparty interrogatory responses and deposition testimony under CPLR § 3117; (8) placing the names of settled or otherwise resolved tortfeasors on the jury verdict sheet for apportionment purposes; (9) precluding any claim for punitive damages from being charged or tried; and (10) addressing the use of Jenkins Bros.’ own historical interrogatory answers from prior NYCAL proceedings (the “historic Jenkins interrogatories”).

Plaintiffs oppose the foregoing requests (except where indicated as unopposed) and separately move to preclude Jenkins from using the opinions or testimony of Plaintiffs’ own experts to support Jenkins’ defense of apportioned liability under CPLR Article 16. Both motions are consolidated for disposition herein.

BACKGROUND AND PROCEDURAL HISTORY

This action is part of NYCAL, and arises from Plaintiff Larry Smith's ("Mr. Smith") diagnosis of asbestosis and lung cancer. Mr. Smith alleges that he developed these illnesses as a result of inhaling asbestos fibers during his work as a laborer in the 1970s. He claims exposure to asbestos-containing insulation and gaskets while working with equipment (including industrial valves) manufactured by Jenkins and numerous other companies. Mr. Smith last worked with a Jenkins-branded valve around 1980. His exposure history also includes other manufacturers' products and significant personal cigarette smoking history (smoking approximately half a pack per day for many years). Co-Plaintiff Phyllis Smith is Mr. Smith's spouse, asserting derivative claims.

Jenkins was formerly a manufacturer of industrial equipment that, Plaintiffs allege, incorporated asbestos-containing components. Jenkins has since ceased ongoing operations (the company dissolved in the 1980s), and any defense is being handled by its successor or insurer. By 2025, all defendants except Jenkins had settled or been dismissed, leaving Jenkins as the lone remaining defendant for trial. The matter is now scheduled for trial.

In anticipation of jury selection, Jenkins filed a broad omnibus motion *in limine* seeking to circumscribe the evidence and arguments at trial in various respects. Plaintiffs opposed Jenkins motion and, in turn, moved to preclude certain defense tactics regarding apportionment of liability.

Notably, the issues raised echo recurring themes in asbestos litigation, many of which have been the subject of recent appellate guidance. The Court of Appeals and Appellate Division, First Department, have, in *Nemeth v. Brenntag N. Am.*, 38 NY3d 336 (2022), *Matter of New York City Asbestos Litig. (Juni)*, 32 NY3d 1116 (2018), *Matter of New York City Asbestos Litig. (Maffei)*, 236 AD3d 493 (1st Dept 2025), *Matter of New York City Asbestos Litig. (Idell)*, 164 AD3d 1128 (1st Dept 2018), and other decisions, clarified the standards for proving causation in toxic tort cases and the limitations on evidence that can be used to apportion fault to nonparties. Those precedents frame the rulings herein. The court's task is to apply these authorities to ensure that the jury hears reliable, relevant evidence – and nothing unduly prejudicial or legally insufficient – as the parties present their cases. The background of Plaintiffs' claims and the posture of a single-defendant trial provide additional context for each motion's resolution, discussed in turn below.

ARGUMENTS

I. Jenkins' Omnibus *Motion in Limine*

Cumulative Exposure Theory: Jenkins first seeks to bar Plaintiffs and their experts from espousing a "cumulative exposure" theory of causation – sometimes also referred to as the "each and every exposure" theory – which posits that every exposure to asbestos, no matter how small, is a substantial contributing factor to disease. Jenkins argues that under controlling New York law, specifically *Nemeth v. Brenntag N. Am.* (38 NY3d 336 [2022]) and *Matter of New York City Asbestos Litig. (Juni)* (32 NY3d 1116 [2018]), an expert must offer a scientifically grounded quantification or qualitative assessment of exposure levels attributable to a defendant's product.

Simply testifying that any exposure above background levels contributed to a plaintiff's illness is insufficient and inadmissible. Jenkins contends that Plaintiffs' experts should therefore be precluded from testifying that Mr. Smith's cumulative lifetime exposure to asbestos (as an undifferentiated whole) caused his mesothelioma, absent testimony pinpointing that Jenkins-related exposures were of a sufficient dose to be causative. Such "cumulative exposure" opinions, Jenkins argues, amount to the discredited "any exposure" theory that the Court of Appeals and Appellate Division, First Department, have rejected as lacking a scientific basis.

Use of Terms like "No Safe Level": Jenkins likewise seeks to bar experts or counsel from using catch-phrases it deems conclusory or inflammatory – for example, stating that there is "no safe level" of asbestos exposure. According to Jenkins, blanket assertions that "no amount of exposure is safe" are misleading to the jury and not probative of whether the exposures from Jenkins's own products were sufficient to cause Mr. Smith's disease. Jenkins cites *Nemeth* and other cases for the proposition that general statements about the dangers of asbestos cannot substitute for proof of causation in the specific context of a defendant's product. Phrases like "no safe level" risk suggesting to the jury that any exposure must automatically be deemed a substantial factor, contrary to the requirement of *Parker v. Mobil Oil Corp.* (7 NY3d 434 [2006]) that an expert provide a scientific expression of the exposure necessary to cause the illness. Jenkins argues that such terminology should be excluded under *Frye* and as more prejudicial than probative.

Cumulative Expert Testimony: Jenkins next requests that the court preclude Plaintiffs from offering cumulative expert testimony. Plaintiffs have identified multiple expert witnesses (including an industrial hygienist, a pathologist, and a pulmonologist) who may offer overlapping opinions on causation and asbestos safety. Jenkins does not object to Plaintiffs' right to present expert proof on different subjects, but it urges the court to limit duplicative testimony – for instance, to prevent two experts from reiterating the same "every exposure is substantial" opinion, or to restrict Plaintiffs to one expert on any given technical issue. Jenkins cites the court's inherent authority to avoid wasting time on redundant proof and maintains that allowing several experts to echo each other would unfairly bolster Plaintiffs' case through sheer repetition.

Post-Dissolution Evidence: Jenkins further moves to bar any evidence or references concerning events that occurred after the company's dissolution. This includes, in Jenkins's view, any post-dissolution corporate documents, product warnings or the absence thereof, or regulatory actions that post-date Jenkins' active operations. Jenkins argues that since it ceased business (and presumably stopped manufacturing asbestos-containing products) before such events, any evidence from after that point cannot bear on what Jenkins knew or could have done during its existence. Introduction of post-dissolution evidence, Jenkins contends, would be irrelevant and could confuse the jury or create an impression of ongoing misconduct by an entity that no longer existed. Jenkins specifically seeks to preclude Plaintiffs from pointing out that other entities (such as remaining industry manufacturers) added asbestos warnings or that OSHA tightened asbestos regulations at times when Jenkins was no longer in business. Any comparison between Jenkins's actions and later safety measures, Jenkins argues, would be inapt and prejudicial.

OSHA Regulations and Cigarette Warnings: Relatedly, Jenkins asks the court to exclude any evidence of occupational safety regulations (such as OSHA permissible exposure limits for asbestos) or analogies to the warning labels on cigarette packs. Jenkins anticipates that

Plaintiffs might argue, for example, that OSHA set certain exposure limits which Mr. Smith's work conditions exceeded, or that cigarette manufacturers have long included cancer warnings while asbestos products carried none. Jenkins contends that OSHA standards were intended as workplace safety guidelines, not dispositive measures of causation or legal duty, and that regulatory "safe" levels do not establish the threshold for liability in a tort case. Likewise, drawing a comparison to cigarette warnings, in Jenkins's view, would serve only to inflame the jury by equating Jenkins with the tobacco industry. Jenkins maintains that any probative value of such evidence is minimal, whereas the potential for juror confusion or prejudice is high. It argues that the jury must decide the case based on the evidence of Mr. Smith's actual exposure and Jenkins's knowledge during the relevant timeframe, rather than on collateral standards or analogies.

Reptile/Golden Rule/"Send a Message" Arguments: Jenkins also moves to preclude Plaintiffs' counsel from employing certain rhetorical strategies at trial – specifically, the so-called "Reptile" strategy of appealing to jurors' sense of community safety, any Golden Rule arguments asking jurors to put themselves in Plaintiffs' position, or exhortations to "send a message" to the defendant or industry. Jenkins asserts that such arguments are uniformly improper in jury trials because they encourage the jury to decide the case based on passion, prejudice, or a desire to punish beyond the facts. For example, urging jurors to "send a message" to asbestos companies by awarding large damages, or to imagine how much compensation they would want if they were in Mr. Smith's shoes, would violate well-settled limits on summation commentary. Plaintiffs have not opposed this aspect of Jenkins' motion, and indeed at oral argument Plaintiffs' counsel stated they do not intend to make any Golden Rule or community-safety pleas. Jenkins asks that the Court issue a clear directive prohibiting such arguments in the presence of the jury to ensure a fair trial.

Nonparty Interrogatory Responses and Depositions (CPLR § 3117): Jenkins' motion *in limine* further seeks an advance ruling permitting it to introduce evidence of other companies' asbestos products and knowledge through the use of interrogatory answers and deposition testimony from those entities, even though they are not parties at trial. Specifically, many defendants originally sued in this action have settled or been dismissed ("resolved parties"). In NYCAL practice, standard sets of interrogatories were answered by various asbestos manufacturers over the years concerning the asbestos content of their products and their knowledge of hazards. Jenkins wishes to read into evidence portions of nonparty corporations' prior interrogatory responses (for example, responses by companies like Johns-Manville or others identified by Mr. Smith) to help establish that those entities' products contained asbestos or lacked warnings.

Similarly, Jenkins may seek to play or read excerpts from depositions of former employees or experts of nonparty entities (including those that have settled), if those depositions meet the criteria of CPLR § 3117. Jenkins argues that such use of nonparty discovery is expressly authorized by the NYCAL CMO § XIII and by CPLR 3117, in recognition of the fact that many companies no longer exist or are unavailable to testify live. By allowing nonparty interrogatory answers to be used, the court can streamline the trial and permit Jenkins to present evidence that other exposures contributed to Plaintiff's illness, without the need to subpoena numerous outside witnesses.

Plaintiffs, in response, acknowledge the CMO provisions but emphasize that any such evidence must still be relevant and admissible for a proper purpose (for instance, to prove another

entity's product was a source of asbestos exposure to Mr. Smith, as opposed to simply smearing industry practices in general). Plaintiffs also argue that the jury should be clearly instructed on the limited purpose of this evidence (apportionment of fault) to avoid confusion.

Verdict Sheet – Settled Entities: In conjunction with the above, Jenkins requests that any settled defendants or other identified tortfeasors be placed on the verdict sheet for the jury's consideration of apportionment under CPLR Article 16. Jenkins notes that Mr. Smith's work history implicates numerous companies' products, and that several of those companies have resolved claims with Plaintiffs before trial. Under CPLR § 1601, Jenkins contends it is entitled to have the jury determine the relative culpability of all tortfeasors who contributed to the harm (except any entity over which plaintiff could not obtain jurisdiction), in order to limit Jenkins's share of noneconomic damages. Jenkins cites Appellate Division, First Department, precedent holding that a defendant may seek apportionment against settled or even bankrupt entities, provided there is sufficient evidence presented at trial of those entities' contribution to the causation of plaintiff's injury.

Jenkins argues that it will present evidence at trial (through the above-mentioned interrogatories, depositions, and fact witness testimony) that Mr. Smith was exposed to asbestos from products made by companies "X, Y, and Z," which are no longer in the case. If that foundation is laid, Jenkins asserts, those companies should appear on the verdict form so that the jury can assign them a percentage of fault. Failing to include them, Jenkins warns, would unfairly force Jenkins to absorb liability that is out of proportion to its actual role in Mr. Smith's exposures, contrary to the comparative fault principles of Article 16. Plaintiffs, for their part, argue that Jenkins must actually prove a prima facie case of liability against any entity it wants on the verdict sheet. Plaintiffs cite *Bigelow v. Acands, Inc.* (196 AD2d 436 [1st Dept 1993]) for the proposition that a defendant cannot obtain apportionment to a settled party without competent evidence of that party's culpability. They express concern that Jenkins might seek to add names to the verdict form in hopes of a jury "zero percent" allocation, which could mislead the jury into thinking those entities have been found culpable elsewhere. Thus, Plaintiffs urge the court to require an offer of proof of specific exposure and causation attributable to each proposed verdict-sheet entity before including them.

Punitive Damages: Jenkins Bros. moves to preclude any claim or charge for punitive damages in this case. Jenkins notes that, historically, NYCAL's Case Management Order ("CMO") had deferred punitive damage claims, although the current version of the CMO (as of 2017) permits plaintiffs to pursue punitive damages on a case-by-case basis with court approval. Jenkins asserts that Plaintiffs here have not made a particularized showing of entitlement to punitive damages. Jenkins denies any egregious or willful misconduct on its part, pointing out that the products at issue were manufactured decades ago in an era when asbestos was an industry-standard material. Moreover, Jenkins argues that allowing punitive damages would be inconsistent with the CMO's intent to avoid punishing defendants repeatedly for the same conduct. At minimum, Jenkins requests that the court bifurcate any punitive damages determination (if the claim is not dismissed outright) until after the compensatory phase, consistent with CMO § VII(C) and § XXIV.

Historic Jenkins Interrogatories: Finally, Jenkins Bros.’ motion addresses the treatment of its own prior interrogatory answers. In earlier NYCAL litigation (and potentially in this case’s discovery phase), Jenkins Bros. at some point answered the NYCAL standard interrogatories regarding its product line and corporate knowledge. Those “historic” interrogatory responses – some dating back many years – include admissions about Jenkins products containing asbestos and what was known within the company about asbestos risks. Plaintiffs may seek to introduce portions of Jenkins’s interrogatory answers as admissions. Jenkins, however, voices concern that Plaintiffs will selectively quote from outdated responses or take statements out of context. Jenkins notes that as a currently active defendant, it would ordinarily be expected to provide testimony via a corporate representative at trial. Because Jenkins Bros. is now a defunct entity, it may not have a live witness available, so its interrogatory responses might effectively stand in as its voice at trial. Jenkins asks the court to clarify that any use of its historic interrogatory answers should be limited to relevant portions and that Jenkins be permitted to explain or contextualize those answers if needed. Jenkins’s counsel has suggested that some interrogatory answers were superseded or amended over time, and that fairness dictates that if Plaintiffs read from Jenkins’s answers, the entirety of the pertinent answer should be read so as not to mislead the jury.

Plaintiffs respond that Jenkins’ motion is overreaching and premature. On the causation issues, Plaintiffs assert that their experts – thoracic surgeon Dr. Mark Ginsburg and industrial hygienist Kenneth Garza – will not rely on mere platitudes, but will provide quantitative and qualitative analysis of Mr. Smith’s exposures to Jenkins’ products, in line with the requirements of *Parker/Nemeth*. Plaintiffs note that the First Department has repeatedly upheld the admissibility of these very experts’ opinions in recent asbestos cases post-*Nemeth*, rejecting defense arguments that their “cumulative exposure” causation theory is improper. Thus, Plaintiffs urge that no Frye hearing or expert preclusion is warranted. They further argue that phrases like “no safe level” are grounded in decades of industrial hygiene consensus (e.g., NIOSH studies) and are used not to prove causation by slogan, but to explain that even low doses carry some risk. According to Plaintiffs, New York trial courts have routinely allowed experts to testify that no safe exposure threshold has been established.

Plaintiffs dispute Jenkins’ characterization of their expert roster as “cumulative.” They assert that each expert will cover distinct subject matter – for instance, one focusing on medical diagnosis/causation and another on exposure levels – such that their testimonies complement rather than repeat each other. Any overlapping points, Plaintiffs say, can be managed at trial by the Court, but there is no basis to bar an expert outright simply because another expert touches on related issues.

On the post-exposure evidence, Plaintiffs argue that documents and corporate knowledge from after Mr. Smith’s exposure period can still be highly relevant. For example, internal memos or industry standards from the 1980s might show what Jenkins should have known or warned about during the 1970s when Mr. Smith was using its valves. Plaintiffs emphasize that New York law imposes a *continuing duty to warn* of hazards even after a product is sold (*citing Cover v. Cohen*, 61 NY2d 261 [1984]). Thus, evidence of Jenkins’ (or the industry’s) conduct in the 1980s could demonstrate a breach of duty if Jenkins failed to act on newly discovered dangers. Plaintiffs note that another NYCAL judge very recently denied the identical motion by Jenkins to exclude post-exposure evidence, recognizing that its relevance should be determined in context at trial.

Plaintiffs oppose the exclusion of OSHA regulation evidence, arguing that such regulations (and related findings by agencies like NIOSH and EPA) are directly pertinent to what was known about asbestos dangers and to whether exposures exceeded recognized safe levels. They maintain that *Parker* does not forbid referencing regulatory standards; it merely held that regulatory limits alone cannot establish causation. Plaintiffs are willing to stipulate that OSHA compliance is not a dispositive defense, but insist they must be allowed to show, for instance, that Mr. Smith's exposures to Jenkins' products far exceeded OSHA's permissible exposure limits – undercutting any claim that his doses were insignificant. Conversely, Plaintiffs argue Jenkins should not be permitted to use OSHA to mount a “blame the employer” defense or suggest that its compliance with OSHA (if any) absolves it of the duty to warn. Any attempt by Jenkins to say that OSHA regulations preempt or supersede state law duties would be legally incorrect.

With respect to apportionment, Plaintiffs contend that Jenkins' approach runs afoul of CPLR § 3117 and the CMO. Plaintiffs acknowledge that *limited* use of settled co-defendants' interrogatory answers is permitted – the CMO allows non-party interrogatory responses to show the presence of asbestos in a product or a lack of warning – and they do not object to that narrow usage. Indeed, Plaintiffs offered to stipulate that all relevant non-party products did contain asbestos and had no warnings, which would render reading lengthy interrogatory responses unnecessary. However, Plaintiffs vigorously object to Jenkins introducing deposition testimony of non-parties (such as corporate representatives of companies that have settled or gone bankrupt). They argue such deposition transcripts are classic hearsay not falling under any exception, since the deponents were not parties to *this* action (and Plaintiffs had no opportunity to cross-examine them). The NYCAL CMO explicitly preserves the CPLR's restrictions on using non-party depositions, and multiple courts have barred exactly what Jenkins proposes. Plaintiffs cite *In re NYC Asbestos Litig. (Andrews)*, a decision by Justice Moulton, denying a virtually identical bid by defendants to use settled defendants' depositions and interrogatories at trial. They also point to First Department precedent holding it was error to admit a settled co-defendant's deposition at trial and other cases precluding such evidence. In sum, Plaintiffs argue Jenkins must prove any third-party fault with competent evidence (e.g. live testimony or admissible documents), rather than hearsay statements from other litigation.

Relatedly, Plaintiffs ask the court to prevent Jenkins from turning Plaintiffs' own experts into defense witnesses on apportionment. In their cross-motion, Plaintiffs rely on *Matter of NYC Idell and Maffei*, where the Appellate Division, First Department, held that a defendant who fails to present its own specific causation evidence against other tortfeasors cannot satisfy its burden simply by cross-examining the plaintiff's expert and then arguing the plaintiff's expert “admitted” others caused the disease.

Here, Plaintiffs anticipate Jenkins will try to ask Dr. Ginsburg or Mr. Garza whether Mr. Smith's lung cancer might have been caused by his smoking or by other asbestos products. Because Jenkins has not proffered its own causation expert to pin fault on any particular third party, Plaintiffs contend such questioning should be disallowed as both improper and confusing to the jury. Jenkins, for its part, responds that it has a right to explore the bases of Plaintiffs' experts' opinions (which do mention that smoking contributed to Mr. Smith's cancer). Jenkins accuses

Plaintiffs of trying to shield their experts from effective cross-examination, thus impeding Jenkins' ability to argue non-party fault or alternate causes.

Finally, on the trial conduct issues, Plaintiffs assert that they are well aware of the boundaries of proper advocacy. They aver that they have *no intention* of making Golden Rule appeals or asking the jury to act as the "conscience of the community" in disregard of the evidence. However, Plaintiffs maintain that Jenkins' blanket motion on this is too vague – it fails to identify any specific anticipated remarks – and thus amounts to an advisory opinion. Plaintiffs note that similar motions to preclude "Reptile" arguments have been deemed premature and denied in prior NYCAL trials. As for punitive damages, Plaintiffs point out that Jenkins is no longer an operating entity, and they state that they will not pursue punitive damages in this case. They argue Jenkins' motion on punitives is therefore moot (and, in any event, raising it *in limine* is procedurally improper as it seeks dispositive relief after the summary judgment deadline).

II. Plaintiffs' Motion – Use of Plaintiffs' Experts for Article 16

By separate motion, Plaintiffs seek to preclude Jenkins from "using Plaintiffs' experts to support Article 16 apportionment." This motion arises from Jenkins' anticipated trial strategy regarding apportionment of fault to nonparties. Plaintiffs are concerned that Jenkins will attempt to elicit testimony from Plaintiffs' own expert witnesses (on cross-examination) to lay the groundwork for blaming other companies or exposures. For example, Plaintiffs intend to call a medical causation expert (a thoracic oncologist) who will testify that Mr. Smith's cumulative asbestos exposure caused his illness. In doing so, the expert may acknowledge Mr. Smith had multiple sources of exposure over his career. Plaintiffs fear that Jenkins will seize on such testimony to argue "even Plaintiffs' expert agrees that other companies' products contributed to cause Mr. Smith's disease," and thereby satisfy its burden of proof for apportionment without calling any defense experts on the point. In essence, Plaintiffs argue that Jenkins should not be allowed to bootstrap Plaintiffs' expert opinions – which are offered to prove Jenkins's own causation – into evidence against absent tortfeasors.

Plaintiffs rely on the principle articulated in *Matter of New York City Asbestos Litig. (Idell)* (164 AD3d 1128 [1st Dept 2018]) and related cases that a defendant seeking apportionment must adduce *affirmative* proof of another tortfeasor's liability and causation, rather than merely pointing to Plaintiffs' evidence. They contend that any attempt by Jenkins to use isolated statements from Plaintiffs' experts (such as general agreement that "each exposure contributes") would be legally insufficient to establish specific causation against another entity. Moreover, Plaintiffs argue that allowing Jenkins to do so would prejudice them: their experts are not being called to opine on the negligence of nonparties, and any commentary about other exposures is incidental to the experts' opinions about Jenkins. If Jenkins wishes to assert that another company is at fault, Plaintiffs maintain, it must introduce its own competent evidence (for example, expert testimony or fact testimony specifically addressing that other company's product and its role in causing Plaintiff's illness). Plaintiffs thus ask for an order barring Jenkins from using Plaintiffs' expert testimony as a surrogate for Jenkins's own proof of other parties' fault.

Jenkins opposes Plaintiffs' motion, arguing that it improperly seeks to "muzzle" relevant cross-examination. Jenkins asserts that it is entitled to explore the basis of Plaintiffs' experts'

opinions, including any concessions that Mr. Smith had substantial exposure to asbestos from other manufacturers' products. If, for instance, Plaintiffs' medical expert admits on cross that Mr. Smith's exposure to insulation from Company X's boilers was sufficient to cause mesothelioma (in addition to Jenkins's valves), Jenkins contends this would be highly relevant to the jury's apportionment of fault. Jenkins denies that it plans to distort the experts' testimony, but insists that it can legitimately highlight any portions of Plaintiffs' own evidence that indicate multiple causative exposures. According to Jenkins, the *Idell* line of cases does not preclude using evidence elicited from a plaintiff's witnesses; rather, it simply requires that the jury have a factual basis to find another tortfeasor liable. Jenkins argues that if Plaintiffs' expert concedes a causal role for another product, that can constitute such a basis (especially when coupled with the fact that the other product contained asbestos and was used by Mr. Smith). In short, Jenkins' position is that it may utilize all evidence in the record – no matter who introduces it – to meet its Article 16 burden, and that Plaintiffs' motion seeks an extraordinary (and unsupported) restriction on the normal adversarial process of cross-examination.

With these contentions in mind, the court addresses each disputed issue.

DISCUSSION

The court has considered the parties' submissions, and the applicable law. The court's rulings on each aspect of Jenkins Bros.' motion *in limine* and on Plaintiffs' separate motion are set forth below. In deciding these motions, the court is guided by the need to adhere closely to controlling appellate precedents (particularly the recent clarifications of causation proof in asbestos cases), to maintain a fair balance between the parties at trial, and to ensure the jury hears only relevant, non-cumulative evidence. Each ruling is therefore made in the exercise of the court's discretion, informed by the cited authorities and the NYCAL CMO where applicable.

A. Preclusion of “Cumulative Exposure Causation Theory – *Denied, with guidance*”

Under New York law, plaintiffs must prove both general and specific causation by admissible proof. As the Court of Appeals has emphasized, a plaintiff may not simply rely on the theory that every exposure to asbestos ever encountered is a substantial contributing cause (“each and every exposure”) without more. Indeed, *Nemeth v. Brenntag N. Am.*, 38 NY3d 336, 345 (2022), reaffirmed that “cumulative exposure theory” is not a proper basis to establish legal causation, and that conclusory expert assertions of “excessive” exposure or “any exposure” have been repeatedly rejected. Likewise, the Appellate Division, First Department, in *Dyer v. Amchem Prods., Inc.*, 207 AD3d 408 (1st Dept 2022) and *Pomponi v. A.O. Smith Water Prods. Co.*, 207 AD3d 417 (1st Dept 2022) granted summary judgment where the causation opinion was based on an each-and-every-exposure approach.

Jenkins's motion is correct that Plaintiffs' experts may not rely on an unparticularized “all exposures count” theory; but at this juncture the court will not strike expert testimony outright. Plaintiffs represent that their experts will analyze Mr. Smith's work history in detail, apply accepted fiber-level criteria, and express causation in quantitative terms (i.e., showing that his asbestos exposures exceeded levels known to cause disease). Those methodologies comport with *Parker v. Mobil Oil Corp.*, 7 NY3d 434 (2006) and *Nemeth*, which allow an expert to use

qualitative and quantitative studies so long as general scientific acceptance is shown. Absent a trial record demonstrating that Plaintiffs' experts cannot satisfy the *Nemeth–Parker* standard, the motion is premature.

Ruling: Jenkins' motion to exclude all "cumulative exposure" testimony is denied. Plaintiffs' experts may testify about the exposures they attribute to Jenkins's products, provided they adhere to accepted methodologies (*see Parker*, 7 NY3d at 448–49; *Nemeth*, 38 NY3d at 343) and do not assert an impermissible "each and every exposure" causation. Any doubt as to sufficiency of expert proof is for the jury under *D'Antignac v. City of New York*, 212 AD3d 458 (1st Dept 2023).

B. Exclusion of "No Safe Level" and Similar Terminology – Denied, with guidance

New York law holds that statements like "there is no safe level of asbestos exposure" cannot by themselves prove causation, because they reflect a precautionary (regulatory) standard, not a legal one. *Cornell v. 360 W. 51st St. Realty, LLC*, 22 NY3d 762, 782 (2014) makes clear that terms of art used by public health agencies (e.g. "no safe level," "risk," "association") are not reliable bases for establishing individual causation. Jenkins correctly notes that *Parker* and *Nemeth* treat "no safe level" as insufficient alone to show that a particular plaintiff's specific exposures caused illness. However, those cases do not render all such testimony inadmissible. Both *Parker* and NYCAL practice permit experts to explain dose-response concepts and the extreme toxicity of asbestos (assuming such opinions are based on generally-accepted science) as background for a jury.

Here, Plaintiffs agree they will not rely solely on "no safe level" to prove causation, but instead use it to frame how disease risk increases with any exposure. Because "no safe level" language may have limited probative value but is often used to explain asbestos disease, its admission is appropriate with caution.

Ruling: Jenkins' blanket motion to bar "no safe level" testimony is denied. If requested, the court may instruct the jury (as in *Cornell*, 22 NY3d at 782–83) that while there may be no known harmless level of asbestos, this fact alone does not establish legal causation. If Plaintiffs' experts invoke "no safe level," they must do so as part of an accepted scientific explanation, not as a substitute for proving specific exposure levels.

C. Preclusion of Cumulative Expert Testimony - Denied, with guidance

The court declines to impose a blanket preclusion on cumulative expert testimony at this juncture. Plaintiffs are entitled to present different experts to address distinct facets of the case. For example, a pulmonologist or oncologist may testify regarding medical causation and diagnosis, while an industrial hygienist may testify about the levels of asbestos dust released by Jenkins' products and compare those to occupational standards or epidemiological data. These are complementary perspectives, not unnecessarily cumulative.

New York trial courts have broad authority to manage the presentation of evidence, and ensuring an efficient trial is part of the court's responsibility. The Appellate Division, First

Department, has upheld trial judges who limited cumulative evidence in protracted trials where numerous witnesses were called on the same issue (*see, e.g., Rivera v. New York City Tr. Auth.*, 54 AD3d 545, 546 [1st Dept 2008] [noting trial court's discretion to control the use of deposition testimony of multiple witnesses]). By the same token, this court will strike a balance between allowing Plaintiffs a fair opportunity to prove their case and protecting Jenkins from a "piling on" of repetitive testimony. At this point, there is no specific duplication identified that warrants pre-trial exclusion, so Jenkins' motion on this point is denied. The parties are advised that objections to cumulative testimony may be raised at trial if appropriate, and the court will rule at that time based on the context.

Notably, the parties have not identified any New York authority requiring exclusion of duplicative testimony. Provided each expert is knowledgeable on her topic, having more than one causation expert (Ginsburg and Garza) is not *per se* cumulative error. Both may offer their opinions, subject to balancing. However, the court is mindful of the need to avoid needless repetition. Plaintiffs will not be permitted to parade multiple experts to reiterate the same point purely to bolster its weight before the jury. The court will exercise its discretion under Article 45 of the CPLR to ensure that testimony is not duplicative. For instance, if two medical experts would offer essentially identical causation opinions based on the same data, one may be deemed sufficient. Plaintiffs have indicated they intend to call perhaps three experts (in different disciplines). That number is not *per se* unreasonable for a complex toxic tort case. The court will therefore deny Jenkins' request to preclude cumulative expert testimony *in limine*, but subject to the following guidance: Should any expert's testimony at trial begin to become redundant of another's, the court may curtail the examination or limit the scope to prevent undue accumulation. Plaintiffs' counsel is instructed to coordinate their expert presentations to minimize overlap.

Ruling: Jenkins' motion to preclude "cumulative expert testimony" is denied. If necessary, the court will manage testimony lengths or duplication at trial, but the motion as stated is premature and overbroad.

D. Preclusion of Post-Dissolution Evidence – *Denied, with guidance*

Jenkins contends that evidence of its activity after 2004 should be excluded. To the contrary, a plaintiff may show a manufacturer's knowledge or intent based on events occurring after the product left its hands. Notably, former Justice Heitler held that Jenkins remained amenable to suit despite its 2004 dissolution (consistent with *Germain v. A.O. Smich Water Prods. Co.*, 41 Misc.3d 1228(A) [Sup. Ct. N.Y. Cty. 2013]). A dissolved corporation may be sued, and its conduct (or omissions) after dissolution can reflect the continuous duty to warn of latent dangers (*Cover v. Cohen*, 61 NY2d 261, 275 [1984]). For example, a manufacturer who learns of additional hazards post-sale may have a duty to warn (*Cover*, 61 NY2d at 275).

Ruling: Evidence of Jenkins's post-dissolution conduct (including its insurance dealings, discovery timeline, and admissions in other cases) will not be excluded categorically. Such evidence may be relevant on issues of knowledge or absence of remedial effort. Jenkins' dissolution does not insulate it from liability or from evidence of its corporate history. As such, Jenkins' motion to preclude any evidence that post-dissolution, is denied without prejudice to asserting specific objections at trial.

This ruling is consistent with the policy reflected in *Cover*, which acknowledged that while a manufacturer's duty to warn is measured by the knowledge available at the time of manufacture and sale, it may potentially extend on a continuing basis so long as the manufacturer remains aware of its product's use.

That said, Plaintiffs must strike a careful balance. If, for instance, OSHA regulations or industry standards became more stringent in the 1990s (after Jenkins dissolved), or if other companies began placing warnings on products in later years, those facts may not prove that Jenkins acted negligently or that its products caused injury at the time of Mr. Smith's exposure in the 1970s. Nor could Jenkins be charged with failing to warn or recall products at a time when it no longer operated. Accordingly, Plaintiffs should proceed cautiously if they intend to reference, for example, that "years later" the government mandated certain warnings, or that the dangers of low-level asbestos exposure became widely recognized *after* Jenkins stopped selling products. If a particular piece of evidence straddles the careful balance that the court is trying to impose, counsel shall alert the court and specific guidance will be provided at the time of trial.

E. Exclusion of OSHA Regulations and Cigarette Warning Evidence – *Denied and granted in part, with guidance*

Jenkins urges that any OSHA regulations, safety manuals, MSDS sheets, or related public health pronouncements should be excluded. As a threshold matter, compliance with OSHA is not at issue in product liability (OSHA governs the employer-employee relationship) – *see Campanelli v. Long Island Light Co.*, 164 AD3d 1416, 1418 (2d Dept 2018); *Jemmott v. Honeywell Int'l*, 216 AD2d 444, 445 (2d Dept 1995). Accordingly, OSHA standards do not create duties for manufacturers and cannot establish Jenkins's negligence. *Parker* and *Cornell* similarly reject using OSHA/NIOSH limits or the "no safe level" consensus as proof of legal causation. However, such materials may be admissible as notice evidence or scientific background. Plaintiffs may cite OSHA or other public health findings (e.g. EPA, IARC reports) to show that Jenkins knew or should have known of asbestos dangers. Indeed, a plaintiff's duty-to-warn case permits admission of publicly available warnings and studies to demonstrate a manufacturer's knowledge under the non-delegable duty of care (*see Liriano v. Hobart Corp.*, 92 NY2d 232, 237 [1998]; *Hoover v. New Holland N. Am., Inc.*, 23 NY3d 41, 54 [2014]). In NYCAL, multiple judges have refused to bar OSHA/regulatory evidence entirely.

Ruling: Jenkins' motion to exclude OSHA regulations, MSDSs, or regulatory agency findings is denied. Such evidence may be used (for example) to show industry knowledge of asbestos hazards, but it cannot be used to prove Jenkins violated any standard or to displace Plaintiffs' burden of proof. The jury may be instructed that OSHA standards do not establish Jenkins's liability (*see Khan v. Bangla Motor & Body Shop, Inc.*, 27 AD3d 526, 528–29 [2d Dept 2006]) and that regulatory guidelines are not synonymous with legal causation. Any references to a "no safe level" or MSDS warnings will likewise be for contextual understanding only. Jenkins will not be precluded from showing compliance with any relevant regulations, and Plaintiffs may not use OSHA to pursue an impermissible "blame the employer" defense.

However, Jenkins' motion to exclude evidence or argument concerning comparisons to cigarette warnings, is granted. Plaintiffs are precluded from invoking comparisons to cigarette package warnings or tobacco industry conduct. Such analogies would serve no legitimate purpose in this trial. The fact that, for example, cigarette packs have borne Surgeon General's warnings about cancer for decades does not make it more likely that Jenkins was negligent in failing to warn about asbestos on its valves. Cigarettes and industrial valves are entirely different products; jurors could be inflamed by the emotive association of tobacco's history (which carries its own notorious connotations) without any rational link to the case at bar. Arguing "even cigarette companies warned about cancer, but Jenkins did not" would be a classic appeal to passion over reason, calculated to prejudice the jury against Jenkins for not providing a cancer warning.

F. Preclusion of Reptile, Golden Rule, and "Send a Message" Arguments – Denied, without prejudice

Jenkins moves to forbid "reptile theory" or other emotional appeals by Plaintiffs' counsel. Such motions are generally disfavored without specific examples. Here, Plaintiffs represent they will not ask the jury to put themselves in the victim's place or appeal to pure sympathy, and Jenkins's submissions cite no concrete instances. In any event, New York practice is to handle any improper argument by admonishment at trial, not pretrial prohibition (*see People v. Gugkaiss*, 206 AD2d 628, 631 [3d Dept 1994][improper appeals are addressed by prompt instructions]).

Ruling: Jenkins' motion to bar "Golden Rule" or "Reptile" arguments is denied without prejudice. To the extent trial counsel employs any inflammatory tactics, they shall be curbed by the court's in-trial admonitions and jury instructions (Jenkins' cited contemporary transcript reflects precisely this approach.)

Likewise, Plaintiffs' counsel has acknowledged these boundaries and indicated they will adhere to them. The court hereby memorializes that commitment in its order. During *voir dire*, opening statements, witness examinations, and summation, Plaintiffs' counsel shall not: (a) ask jurors to place themselves in Plaintiffs' position (or make any similar Golden Rule appeal); (b) suggest that the jurors should use their verdict to protect the community or deter misconduct generally (the essence of the Reptile strategy); or (c) urge the jury to "send a message" to Jenkins or other asbestos companies. Any argument should be confined to the evidence and the law as charged by the court, focusing on compensating the Plaintiffs for their actual losses if liability is found.

This ruling applies equally to defense counsel (who similarly should not appeal to the jury's self-interest or potential community impact of the case). Ultimately, the jurors must be guided by the facts and law, not extraneous emotional considerations. The court will, if necessary, issue curative instructions or take other measures should any party stray into prohibited argumentation. It is expected, however, that experienced trial counsel on both sides will scrupulously avoid these pitfalls.

G. Admission of Nonparty Interrogatory Responses and Depositions (CPLR § 3117 and CMO § XIII) – Granted in principle, with conditions

Jenkins' motion for leave to utilize nonparty interrogatory answers and depositions at trial is granted to the extent permitted by CPLR § 3117 and Section XIII of the NYCAL Case Management Order. The CMO explicitly allows the use of settled or nonparty companies' answers to the standard NYCAL interrogatories, and of depositions of nonparties, under certain conditions. This rule was designed to alleviate the burden of proof on issues of apportionment in asbestos cases, given the reality that many entities are no longer available to testify live. It promotes judicial economy by letting the jury hear evidence of other companies' products and knowledge without lengthy detours or the need to subpoena numerous former employees.

Accordingly, Jenkins Bros. may introduce at trial relevant portions of interrogatory responses given by resolved defendants (or other pertinent nonparties) from the NYCAL standard asbestos interrogatories. Under CMO § XIII(A), such answers may be used to prove, for example, that a nonparty's product contained asbestos or was used in a manner that could cause asbestos exposure, and that the nonparty failed to provide warnings.

These are precisely the facts Jenkins likely seeks to establish to argue that those entities share in the fault. Similarly, Jenkins may seek to read or play excerpts of depositions of nonparty witnesses pursuant to CMO § XIII(B) and CPLR § 3117. CPLR § 3117(a)(3) permits a party to use the deposition of a witness (even if not a party) who is deceased, out of state, or otherwise unavailable, or in the interests of justice. Additionally, CPLR § 3117(a)(2) allows the deposition of a party (or a party's agent) to be used by an adverse party for any purpose – and the CMO extends that to depositions of parties taken when they were in the case, even if they later settled. In asbestos litigation, this means if Company X was deposed in this or another NYCAL case and then left the case, its deposition may still be usable against it (as a nonparty now) by the remaining defendant.

However, the court's permission is not *carte blanche*. Any such evidence must be presented in compliance with the rules of evidence, and its relevance must be properly established. The court will expect Jenkins to lay a foundation connecting any nonparty interrogatory or deposition evidence to Mr. Smith's exposure history. For instance, before reading a nonparty's answer stating "Our product Y contained asbestos," there should be evidence (from Mr. Smith's testimony or otherwise) that Mr. Smith worked with or around product Y in a manner that could cause exposure. The CMO allows these materials to be used to "prove culpability" of others, but it is still incumbent on Jenkins to tie that culpability to Plaintiffs' injury. In short, the nonparty evidence cannot be too abstract or remote; it should pertain to entities reasonably identified as contributing to Mr. Smith's asbestos dose.

Plaintiffs retain the right to object to specific excerpts if they contain hearsay within hearsay, lack relevance, or violate any other evidentiary rule not overridden by the CMO's provisions. The court notes, for example, that some interrogatory answers might incorporate scientific reports or statements by third parties. Only the admissions of the answering corporation itself (e.g., that it used asbestos, that it had no warnings, etc.) are covered by the CMO's hearsay exception. The court will entertain objections at trial if Jenkins attempts to go beyond the permitted scope.

Furthermore, if Plaintiffs believe a particular interrogatory answer or deposition excerpt is misleading or incomplete without additional context, Plaintiffs may request to introduce additional portions under the rule of completeness (*see* CPLR § 3117[b]). The goal is for the jury to get an accurate and fair picture of the evidence of other exposures.

In summary, Jenkins is authorized to introduce evidence of nonparty interrogatory answers and depositions consistent with CMO § XIII. For example, if Mr. Smith testified that he worked around “Brand A” pumps and Jenkins has Brand A’s interrogatory answers admitting those pumps contained asbestos packing and had no warnings, Jenkins may read those portions to the jury.

The jury can then consider that as evidence that Brand A’s product contributed to the hazard. The court will likely instruct the jury on the limited purpose of such evidence – namely, to assess the fault of entities other than the defendants on trial – so that jurors do not confuse it with evidence of Jenkins’s own liability. This approach is consistent with Appellate Division, First Department, authority recognizing the propriety of using settled defendants’ admissions to determine equitable shares of liability (*see Rivera v. New York City Tr. Auth.*, 54 AD3d 545 [1st Dept 2008][approving reading prior testimony of settling defendants to establish their role in plaintiff’s exposure]).

Ruling: Jenkins’ motion on this point is granted, subject to the evidentiary guardrails described. Both sides should be prepared with the specific transcripts or answers they intend to use, highlighted for reference, and be ready to address any objections outside the presence of the jury if necessary.

H. Placement of Settled/Resolved Entities on the Verdict Sheet – *Denied, pending proof at trial*

The issue of which entities will appear on the verdict sheet for Article 16 apportionment will be determined at the charge conference after the close of evidence. The court denies any blanket preclusion of settled entities from the verdict sheet, but also declines to rule preemptively that all names proposed by Jenkins will automatically be included. Instead, the court will follow the guidance of *Bigelow v. Acands, Inc.*, 196 AD2d 436 (1st Dept 1993), and its progeny: a remaining defendant is entitled to an apportionment charge as to a settled or nonparty tortfeasor *only if* there is a legally sufficient evidentiary basis for the jury to find that the conduct of that nonparty was a substantial factor in causing plaintiff’s injuries.

Put simply, Jenkins must “earn” a spot on the verdict sheet for each entity it contends shares fault. This typically requires showing: (1) the identity of the entity and its product to which Mr. Smith was exposed; (2) that the product was a source of asbestos exposure to Mr. Smith; (3) that the exposure was of such nature and extent that a jury could find it contributed to his illness; and (4) that the entity would have been liable under applicable legal theories (e.g., the product was defective or the entity was negligent in failing to warn). Much of this may be established through the evidence discussed above (interrogatory answers, etc.), along with Mr. Smith’s own testimony about working with or around various products. If Jenkins satisfies this foundation, the court will place the appropriate entity’s name on the verdict form with a question as to its percentage of fault. If Jenkins fails to adduce sufficient evidence for a rational jury to find that entity liable, it will not

go on the form. The burden in this regard lies with Jenkins as the proponent of apportionment (*see* CPLR § 1603).

For clarity, the court anticipates that likely candidates for the verdict sheet might include manufacturers of asbestos-containing insulation, gaskets, pumps, or boilers that Mr. Smith encountered and which are no longer defendants due to settlement or otherwise. The Appellate Division, First Department, has held that it is reversible error to refuse to charge the jury on an absent tortfeasor's liability when there is evidence to support it (*see Zalinka v. Owens-Corning Fiberglass Corp.*, 221 AD2d 830 [3d Dept 1995][cited with approval in *Bigelow*]; *Matter of NYC Asbestos Litig. (Ronsini)*, 256 AD2d 248 [1st Dept 1998]). Conversely, including a name with no evidentiary support would confuse the jury and violate Plaintiffs' rights.

Therefore, Jenkins's motion is denied pending proof at trial to the extent that the court acknowledges *in principle* the right to apportion liability to settled or nonparties under CPLR § 1601. The CMO itself contemplates such apportionment and indeed the entire mechanism of using interrogatories is aimed at facilitating it. The court will not, however, issue a definitive list now. At trial's end, the parties shall submit proposed verdict sheet entities. The court will then rule entity-by-entity, applying the above standard. For example, if evidence shows Mr. Smith frequently worked with "ABC Co." asbestos cement and experts testified that product could cause disease, ABC Co. will be included. If another name is only fleetingly mentioned with no proof of exposure, it will be excluded.

This measured approach ensures both sides a fair trial. Jenkins will have its opportunity to limit liability to its equitable share *if* it can prove others share causal responsibility. Plaintiffs are protected from the jury speculating about entities for which no real proof was offered. The court notes, finally, that any entity listed on the verdict sheet will be accompanied by appropriate instructions that the jury is not to consider that entity's presence as evidence of liability, but must decide based solely on the evidence presented. This addresses any potential prejudice to Plaintiffs by the mere inclusion of names.

In sum, the structure of the verdict sheet is best addressed during charge conference with the benefit of the trial record. *Bigelow* and related cases support giving the jury the full picture of all tortfeasors' culpability when justified. The court will implement that principle at the proper juncture.

Ruling: Jenkins' motion on verdict sheet structure is denied. The court will frame the verdict form after the close of evidence, taking into account any CPLR § 1602 exceptions or GOL § 15-108 credits proven at trial.

Relatedly, Jenkins' motion to compel disclosure of the terms of Plaintiffs' settlement agreements with other parties is denied. "Other than the amount of the settlement, which...must be disclosed in the event of a verdict in [plaintiffs'] favor, such materials have no conceivable relevance to a possible post-verdict apportionment under [GOL] § 15-108" (*In re New York County Data Entry Worker Prod. Liab. Litig.*, 222 AD2d 381, 382 [1st Dept 1995]).

I. Punitive Damages – Denied as moot.

Jenkins moves to strike Plaintiffs' punitive damages claim entirely on the theory that, as a defunct dissolved corporation, there is no entity left to deter. Plaintiffs have expressly waived pursuit of punitive damages against Jenkins, acknowledging its defunct status. Because Plaintiffs will not seek punitive recovery here, Jenkins's request is moot. Even if punitive were at issue, under *Parker v. Mobil Oil*, 7 NY3d 434, 451–52 (2006), the propriety of a punitive award is evaluated by the court post-trial., not by the jury (*see* NYCAL Case Management Order § VII[C]).

Ruling: Jenkins's motion to dismiss punitive damages is denied as moot. Plaintiffs' punitive claim against Jenkins is withdrawn.

J. Use of Jenkins Bros.' Historic Interrogatory Answers – Denied (with limitations as to fairness).

Plaintiffs are permitted to use Jenkins' prior interrogatory responses as evidence, subject to standard evidentiary rules, and Jenkins' motion to preclude or limit such use is denied. As a party in this action, Jenkins' statements in answers to interrogatories (whether served in this case or in the NYCAL standard format from prior cases) constitute admissions of a party opponent. Pursuant to CPLR § 3131, interrogatory answers may be used at trial “to the same extent as the depositions of a party,” meaning an adverse party (here, Plaintiffs) can introduce them as evidence for any relevant purpose. The NYCAL CMO confirms that defendants are generally required to answer standard interrogatories only once, and those answers carry over to all cases.

Thus, the so-called “historic” Jenkins interrogatory answers are binding on Jenkins in the sense that they are its official responses under oath regarding its products and knowledge. For example, if Jenkins's answer to Standard Interrogatory No. 1 stated that “Jenkins Bros. manufactured valves that contained asbestos gaskets from 1940–1980,” Plaintiffs may read that answer to the jury to establish that fact. Similarly, if Jenkins answered that it had no warnings on its products, or that it first became aware of asbestos health hazards in a particular year, those are admissions that Plaintiffs can use affirmatively. Jenkins cannot object that its own answer is hearsay, since it is an admission. Nor can Jenkins exclude the answer simply because it is old or was given in a prior proceeding – the CMO intended for those answers to be relied on in subsequent trials to avoid reinventing the wheel each time (*see* CMO § XIII(A): a defendant's answers “are then used in all NYCAL cases”).

The court also notes that preventing Plaintiffs from using these answers would unfairly handicap them, as they are a crucial source of proof about a defunct company's practices. However, the court is sensitive to Jenkins' concern that the answers be viewed in context. Therefore, if Plaintiffs introduce a portion of an interrogatory answer, Jenkins Bros. is entitled to have any other portion of that same answer (or related answer) read as well, if needed to clarify or explain. This is akin to the completeness doctrine: one cannot present a snippet in a misleading way. For instance, if an answer stated “Jenkins Bros. first learned of mesothelioma risk in 1967 at an Asbestos Institute meeting, but did not verify this information until 1973,” Plaintiffs should not read only the first clause without the second. Likewise, should Jenkins contend that an answer was later amended or superseded by a subsequent answer, it may offer the later answer for the jury's consideration. Plaintiffs have indicated that they will use the most up-to-date set of Jenkins'

standard interrogatory answers on file. The court will hold them to that representation – they should not cherry-pick an older answer if a current one exists on the same question, unless there is a valid impeachment or inconsistency purpose. Essentially, the jury should hear what Jenkins has finally answered on each point.

Moreover, if there is any ambiguity or technical jargon in the interrogatory answers that might confuse the jury, Jenkins may (through an appropriate witness or on cross-examination of Plaintiffs' witnesses) provide explanation. For example, if an answer references a specific product model number or uses shorthand, the parties can ensure the jury understands it in plain terms. The interrogatory answers will speak for themselves as evidence, but counsel may comment on them in summation as with any admission.

In denying Jenkins' motion, the court emphasizes that these answers are highly probative. They often contain admissions directly relevant to defect (e.g., product composition) and failure to warn (e.g., acknowledgment of knowledge or lack of warnings). They have been treated as reliable in NYCAL because a corporation would not falsely admit harmful facts about its products.

Indeed, Justice Moulton's decision accompanying the 2017 CMO noted that it is against a company's interest to concede it used asbestos or failed to warn, lending credibility to such answers. The use of interrogatories in lieu of live corporate testimony is one accepted practice in this specialized litigation, streamlining trials while preserving evidence.

Therefore, Jenkins Bros.' historic interrogatory responses are admissible, and Plaintiffs may read relevant excerpts during their case-in-chief. Jenkins's request to preclude them is denied. The court will entertain specific objections if, for instance, Plaintiffs attempt to introduce an interrogatory answer that contains inadmissible matter (beyond the party admission itself). Barring that, the jury will be allowed to consider Jenkins's own answers as evidence of the facts therein.

To illustrate, if an interrogatory answer says "All gaskets supplied by Jenkins Bros. for its valves were made of compressed asbestos fiber," that fact is established by Jenkins's admission and can be weighed by the jury. Jenkins may then argue (if it has a basis) that, say, the particular valves Mr. Smith encountered did not use those gaskets at the time, but it cannot retract the admission that its gaskets generally contained asbestos. The jury will resolve any such factual disputes.

In sum, Jenkins's motion on this point is denied, with the proviso that the court expects fair use of the evidence by both sides.

Ruling: Jenkins' motion to exclude or limit use of its interrogatory responses (including the December 2017 responses verified by Boisvert) is denied. Those responses may be introduced (subject to normal rules) as non-hearsay admissions of Jenkins or for impeachment under CPLR § 4514.

K. Plaintiffs' Motion – Preclusion of Using Plaintiffs' Expert Testimony for Apportionment – *Granted to the extent of requiring a foundation of specific causation for any apportionment to nonparties; otherwise reserved.*

Plaintiffs' motion is essentially a request for the court to enforce the rule set forth in *Matter of New York City Asbestos Litig. (Idell)*, 164 AD3d 1128 (1st Dept 2018), and reaffirmed in *Matter of New York City Asbestos Litig. (Maffei)*, 236 AD3d 493 (1st Dept 2025), that a defendant cannot obtain apportionment of liability against another entity without competent evidence of specific causation attributable to that other entity.

The court agrees with that principle and will apply it here. Accordingly, Jenkins may not use stray comments from Plaintiffs' experts as a substitute for the required proof of a nonparty's causative fault. In practical terms, this means: if Jenkins wishes the jury to apportion blame to, say, Company X, Jenkins must introduce evidence demonstrating that Company X's product contributed to Mr. Smith's injury (and was defective or unreasonably dangerous). Merely eliciting from Plaintiffs' expert that Mr. Smith had exposure to Company X's product is not sufficient by itself.

The Appellate Division, First Department, in *Idell* upheld a trial court's limitation on cross-examination of a plaintiff's expert about other exposures because the defendant had not laid a proper foundation that those other exposures were causative. In the recent *Maffei* decision, the court found no abuse of discretion in the trial judge precluding the defendant from cross-examining plaintiff's expert thoracic surgeon about other asbestos exposures, given the defendant's failure to demonstrate specific causation by those others. These authorities underscore that while defendants can certainly point to evidence of other exposures, they cannot ask the jury to assign fault to nonparties in a vacuum. There must be evidence (often expert testimony) that the quantity and nature of asbestos from the nonparty's product was enough to cause or contribute to the disease.

Applying this to the instant case: Plaintiffs' experts will likely acknowledge that Mr. Smith was exposed to asbestos from multiple sources over time. Jenkins can cross-examine on those exposures to provide context. But unless Jenkins presents affirmative evidence (its own expert or otherwise) that a particular nonparty exposure was a substantial factor in causing Mr. Smith's illness, the court will not allow Jenkins to argue in summation that Plaintiffs' own evidence established another's fault. Nor will the court submit a nonparty on the verdict sheet based solely on a Plaintiff expert's broad statement that "all exposures contribute." That would contravene the requirement of specific causation proof.

However, the court stops short of an absolute bar on using Plaintiffs' expert testimony in any fashion. If, hypothetically, Plaintiffs' medical expert were to testify on direct that "Exposures from Companies A, B, and C all caused Mr. Smith's illness," such testimony is in the record, and Jenkins is entitled to reference it (and indeed to argue those companies share blame). The key distinction is that in *Idell* and similar cases, the plaintiff's experts did not pinpoint any specific other producer as a cause – they simply adhered to a cumulative theory which, as discussed, is not enough on its own.

In practice, Plaintiffs' experts here are unlikely to single out other manufacturers affirmatively; they will probably focus on Jenkins and speak in general terms otherwise. Thus, Jenkins cannot simply extrapolate that because an expert said "cumulative exposure," the jury should assign, say, 30% fault to a nonparty. There must be evidence particularized to that nonparty.

Therefore, Plaintiffs' motion is granted to the extent that Jenkins Bros. shall not be permitted to argue or imply that Plaintiffs' expert admissions alone have "proven" another entity's liability. Any cross-examination of Plaintiffs' experts regarding other exposures must be tethered to a genuine effort to establish facts, not to insinuate causation by innuendo. If during trial Plaintiffs believe Jenkins is overstepping (for instance, by asking questions that assume causation from others which the witness has not agreed to), Plaintiffs may object and the court will rule. At this pre-trial stage, the court adopts the sensible approach articulated in *Camargo v. Amchem Products, Inc. (NYCAL)* (Sup. Ct. N.Y. County Apr. 21, 2025, J. Kim), where a similar motion was made: the trial court there denied preclusion, but stated that whether such questioning is permissible depends on the laying of a foundation of specific causation against the nonparty tortfeasors. This court will do likewise.

In other words, Jenkins is not outright forbidden from mentioning other exposures in cross-examining Plaintiffs' experts. But if Jenkins has not presented independent evidence (by the time of summation or verdict sheet deliberations) to establish specific causation by a nonparty, the court will not allow Jenkins to argue fault of that nonparty to the jury. The mere fact that Plaintiffs' expert acknowledged Mr. Smith had asbestos exposure from another company will not suffice. The jury will be instructed (if it comes up) that apportionment requires proof that the other company's product was a substantial factor in causing the illness, not just that asbestos was present.

By adhering to this rule, the court ensures that any apportionment is grounded in evidence, as required by CPLR Article 16 and cases like *Bigelow*. It also protects Plaintiffs from a scenario where their own witnesses' words are used to dilute their recovery without proper proof. This ruling is consistent with fundamental fairness and the cited appellate decisions.

Therefore, Plaintiffs' motion is conditionally granted. Jenkins may cross-examine within the limits described, but may not argue for apportionment based solely on Plaintiffs' expert testimony unless that testimony, viewed in context of all evidence, genuinely satisfies Jenkins' burden of proving another's fault. If at the close of evidence Jenkins believes it has met that burden as to any entity (through whatever evidence), it can request that entity on the verdict sheet – and the court will apply the standard outlined above. If Jenkins fails to meet the burden, the jury will not consider that entity, regardless of what was mentioned by Plaintiffs' experts.

Ruling: the court grants Plaintiffs' protective motion to the extent of requiring Jenkins to lay a proper foundation for any nonparty apportionment and prohibiting Jenkins from misusing Plaintiffs' experts' general statements as a shortcut to such foundation. This ruling dovetails with the court's earlier rulings on cumulative exposure theory and verdict sheet placement, ensuring a cohesive, legally sound approach to the apportionment issue.

CONCLUSION

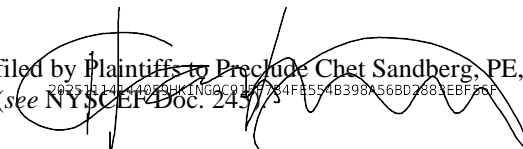
In sum, Jenkins's omnibus in *limine* motion is granted only as to the narrow points reflected above (deferring others as untimely or premature) and denied in all other respects. Plaintiffs' motion is granted to the extent that Jenkins may not use stray comments from Plaintiffs' experts as a substitute for the required proof of a nonparty's causative fault. All evidentiary rulings shall

be implemented through appropriate jury instructions and proffers as needed. The balance between efficient trial management and Plaintiffs' right to present their case is preserved consistent with the standards of *In re New York City Asbestos Litig.* and controlling precedent.

All parties are directed to tailor their opening statements and witness examinations in conformity with these rulings. If counsel require further clarification on any specific evidentiary point, they may seek guidance from the court outside the presence of the jury.

The court further directs the principals for Plaintiffs and Jenkins to appear in person before the court at 80 Centre Street, Room 320, on Wednesday, November 19, 2025, at 2:30 PM, for a mandatory settlement conference. Each appearing party must possess full settlement authority and be fully familiar with the facts and posture of the case. No adjournments will be granted absent good cause shown. Noncompliance may result in sanctions.

The foregoing constitutes the decision and order of the court.¹

¹ The court further notes that a preceding *in limine* application filed by Plaintiffs to Preclude Chet Sandberg, PE, MS, filed November 10, 2025, (Doc. No. 220-222) was withdrawn (see NYSCEF Doc. 245) 

DATE: 11/14/2025

HASA A. KINGO, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify

RULING ON MOTIONS *IN LIMINE*)