

Matter of Eighth Jud. Dist. Asbestos Litig.
2016 NY Slip Op 32987(U)
January 6, 2017
Supreme Court, Erie County
Docket Number: H95716
Judge: Deborah Chimes
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At a Special Term, Part 33 of the Supreme Court
of the State of New York held in and for the
County of Erie at the Erie County Courthouse on
the 21st day of November, 2016.

PRESENT: Hon. Deborah A. Chimes, J.S.C.
Justice Presiding

SUPREME COURT OF THE STATE OF NEW YORK
EIGHTH JUDICIAL DISTRICT

EIGHTH JUDICIAL
DISTRICT ASBESTOS
LITIGATION

In Re Eighth Judicial District Asbestos Litigation

This Document Applies to All Pending Cases Listed Below
and all Actions herein after commenced in which
Honeywell International Inc., as the alleged successor-in-
interest to Wilputte Coke Oven Division of Allied Chemical
Corporation is named as a Party Defendant.

Index Nos.: H95716
801382/2014

ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

SUZETTE M. BAGINSKI, Executrix of the Estate of
HENRY J. BAGINSKI, Deceased,

Index No.: I2005/9068

Plaintiff(s),

v.

A. W. CHESTERTON COMPANY, et al.,

Defendants.

CAROLYN BANKS,

Index No.:
803640/2015

Plaintiff,

v.

84 LUMBER COMPANY, ET AL.,

Defendants.

RICHARD BUGALA and SHIRLEY BUGALA, his
spouse,

Plaintiffs,

v.

ANCHOR PACKING, et al.,

Defendants.

Index No.: I-2002-8703

LINDA CALOS, as Executrix for the Estate of
ARTHUR DARMSTEDTER,

Plaintiff,

v.

AIR & LIQUID SYSTEMS CORPORATION as
successor-by-merger to BUFFALO PUMPS, INC., et al.,

Defendants.

Index No.:
800630/2014

ALICE E. CARSON, as Executrix of the Estate of
SAMUEL D. CARSON, Deceased, and Individually as the
Surviving Spouse of SAMUEL D. CARSON,

Plaintiff,

v.

AIR & LIQUID SYSTEMS CORPORATION as successor
by merger to BUFFALO PUMPS, INC., et al,

Defendants.

Index No.:
802494/2015

EDWARD M. and ELIZABETH COLLINS,

Plaintiffs,

Index No.: I-2002-5645

v.

ACandS, INC., et al.,

Defendants.

LINDA R. FAHEY and EUGENE FAHEY,

Index No. 803024/2015

v.

84 LUMBER COMPANY

PAUL J. FUSCO,

Index No.: I-2003-1421

Plaintiff,

v.

A. W. CHESTERTON, et al.,

Defendants.

JEROME A. GRABOWSKI [sic] and PATRICIA GRABOWSKI, his spouse,

Index No.: I2002-10570

Plaintiffs,

v.

A. W CHESTERTON COMPANY, et al.,

Defendants.

CHRISTINE HENDRA, as Executrix for the Estate of TERRY HENDRA, and CHRISTINE HENDRA, Individually,

Index No.: 800180-13

Plaintiff,

v.

AIR & LIQUID SYSTEMS CORPORATION, as
successor-by-merger to BUFFALO PUMPS, INC., et al.,

Defendants.

KATHLEEN R. HUBER and KAREN M. STERMAN,
Co-Executrices of the Estate of ROBERT F. WOPPERER,
Deceased, and LORAIN WOPPERER, Individually and
as the Surviving Spouse of ROBERT F. WOPPERER,

Plaintiffs,

v.

BEAZER EAST, INC.,
f/k/a KOPPERS COMPANY, INC., et al.,

Defendants.

Index No.:
I2012002918

WARREN A. JENSEN and LINDA J. JENSEN, his
spouse,

Plaintiffs,

v.

AIR & LIQUID SYSTEMS CORPORATION as successor
by merger to BUFFALO PUMPS, INC., et al.,

Defendants.

Index No.:
801300/2016

KATHY KELLY-HAYES, as Proposed Executrix of the
Estate of MATTHEW KELLY and MARY JANE
KELLY, Individually as Living Spouse,

Plaintiffs,

v.

A. O. SMITH WATER PRODUCTS, et al.,

Defendants.

Index No.: 2009-10502

LAUREL MCCLELLAN and NOELL MCKERNAN, as
Co-Executrices for the Estate of WILLARD H. HAAS and
IRMA HAAS, Individually,

Index No.: 808645/2014

Plaintiffs,

v.

AIR & LIQUID SYSTEMS CORPORATION, as
successor-by-merger to BUFFALO PUMPS, INC., et al.,

Defendants.

SHAWN MCCLOUD,

Index No.:
809287/2015

Plaintiff,

v.

A. O. SMITH WATER PRODUCTS CO., et al.,

Defendants.

PAMELA MISURACA, as Executrix for the Estate of
ARTHUR A. MISURACA, and PAMELA MISURACA,
Individually,

Index No.:
808643/2014

Plaintiff,

v.

A. O. SMITH WATER PRODUCTS CO., et al.,

Defendants.

MARIANNE NARCOWICH, as Personal Representative
for the Estate of NORMAN B. COURTNEY and
JEANETTE COURTNEY, Individually,

Index No.:
800460/2014

Plaintiffs,

v.

AIR & LIQUID SYSTEMS CORPORATION, et al.,

Defendants.

RICHARD C. NICOSIA,

Plaintiff,

Index No.:
814073/2015

v.

BEAZER EAST, INC. f/k/a KOPPERS
COMPANY, et al.

Defendants.

JERRELDINE SANFORD, as Administratrix for the
Estate of CLEVELAND PIERSON,

Plaintiff,

Index. No.: I 2006-8628

v.

AMCHEM PRODUCTS, INC.,
n/k/a RHONE POULENC AG COMPANY,
n/k/a BAYER CROPSCIENCE INC., et al.,

Defendants.

RICHARD M. SCHWEICHLER, Executor of
the Estate of RICHARD S. SCHWEICHLER, Deceased,

Plaintiff,

Index No. 808293/2016

v.

BEAZER EAST, INC. f/k/a KOPPERS COMPANY,
INC., f/k/a THIEM CORPORATION in its own right and
as successor to UNIVERSAL REFRACTORIES, INC., et
al.,

Defendants.

DONALD J. TERWILLIGER, Administrator of the Estate
of DONALD R. TERWILLIGER, Deceased,

Index No.: I2013-1195

Plaintiff,

v.

BEAZER EAST, INC., the company formerly known as
KOPPERS COMPANY, INC., et al.,

Defendants.

ARTHUR J. TILLMAN, SR.,

Index No.: 2007-6697

Plaintiff,

v.

BEAZER EAST, INC., as successor in interest to
KOPPERS COMPANY, INC., et al.,

Defendants.

BROWNIE KENCEL,

Index No.: I 1997-
002361

Plaintiff,

v.

ACANDS, INC., et al.,

Defendants.

WILLIAM DALEY,

Index No.: I1996/9962

Plaintiff,

v.

ACANDS, INC., et al.,

Defendants.

GARY J. PRITCHARD and KAREN M. PRITCHARD,
his spouse,

Index No.: I1197-2155

Plaintiffs,

v.

A. P. GREEN INDUSTRIES, INC., et al.,

Defendants.

LAVERN PRICE and MARGIE PRICE, his spouse,

Index No.: I1197-6364

Plaintiffs,

v.

A. P. GREEN INDUSTRIES, INC., et al.,

Defendants.

YVETTE WILLIAMS,

Index No. 814387/2015

Plaintiff,

v.

BEAZER EAST, INC. f/k/a KOPPER COMPANY, INC.
f/k/a THIEM CORPORATION in its own right and as
successor in interest to UNIVERSAL REFRACTORIES,
INC., et al.

Defendant.

JOHN M. RANNE and LINDA RANNE, his spouse,

Index No.:
810451/2016

Plaintiffs,

v.

AIR & LIQUID SYSTEMS CORPORATION, et al.,

Defendants

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SAINT LAWRENCE

ROBERT E. DUFRANE,

Plaintiff,

v.

ACHEM PRODUCTS, INC. n/k/a RHONE POULENC
AG COMPANY, n/k/a BAYER CROPSCIENCE, INC.,
et al.

Defendants.

Index No. CV-2015-
0145913

Defendant Honeywell International Inc., as alleged successor-in-interest to Wilputte Coke Oven Division of Allied Chemical Corporation, improperly named in the above cases as “Honeywell International, Inc. as successor in interest to Wilputte Coke Oven Division of Allied Signal, Inc.” (“Honeywell”), having made a motion for an order: (1) pursuant to CPLR 3102, CPLR 3106(b), CPLR 4517, 22 NYCRR § 202.15, and EJDAL Case Management Order No. 8 IX(A)(5), Fifth Judicial District CMO VIII(A)(4), Fourth Judicial District CMO Section IX(A)(4) and NYCAL CMO X(A)(7) and (8) directing the taking of the deposition of William Thomas Birmingham (“Mr. Birmingham”), a non-party witness and former Superintendent of the Coke Oven Department of Bethlehem Steel Corporation, upon videotape at a date and time to be agreed to by counsel of record for plaintiffs in the above captioned cases, in order to take and preserve Mr. Birmingham’s trial testimony in all pending actions in the event he is unavailable to testify at the trial of these

cases, and to preserve his trial testimony in the event he is unavailable for the trial of any cases hereinafter commenced that involve similar claims and name Honeywell as a defendant; and (2) for such other and further relief as to the Court seems just and proper, including the costs of this motion in Index Nos.: 801382/2014, I2005/9068, 803640/2015, I-2002-8703, 800630/2014, 802494/2015, I-2002-5645, I-2003-1421, I2002-10570, 800180-13, I2012002918, 801300/2016, 2009-10502, 808645/2014, 809287/2015, 808643/2014, 800460/2014, I 2006-8628, I2013-1195, 2007-6697, I 1997-002361, I1996/9962, I1197-2155, I1197-6364, and 810451/2016; and

Defendant Beazer East, Inc., f/k/a Beazer East Materials & Services, Inc. f/k/a Koppers Co., Inc. ("Koppers") having made a motion for an order: (1) pursuant to CPLR 3102(c), CPLR 3106(b), CPLR 4517, 22 NYCRR § 202.15, and Eighth Judicial District AL Case Management Order No. 8 IX(A)(5), (C)(2); Fifth Judicial District CMO VIII(A)(4), Fourth Judicial District CMO Section IX(A)(4) and NYCAL CMO X(A)(7), (8) directing the taking of the deposition of William Thomas Birmingham, a non-party witness and former Superintendent of the Coke Oven Department of Bethlehem Steel Corporation, upon videotape at a date and time to be agreed to by counsel of record for plaintiffs in the above captioned cases, in order to take and preserve Mr. Birmingham's trial testimony in all pending actions in the event he is unavailable to testify at the trial of these cases, and to preserve Mr. Birmingham's testimony in the event he is unavailable for the trial of any cases hereinafter commenced that involve similar claims and name Koppers as a defendant; and (2) for such other and further relief as to the Court seems just and proper in Index Nos.: 801382/2014, 800630-14, 802494/2015, 803024/2014, 800180/2013, I2012002918,


801300/2016, 808645/2014, 809287/2015, 808643/2014, 800460/14, 814073/2015, I2006/8628, 808293/2016, 2007-6697, 814387/2015, and CV-2015-0145913;

Plaintiff in the *Ranne* case, Index No. 810451/2016, only having made a cross motion to compel defendant Wilputte to produce a corporate representative for deposition; and the motions having come on to be heard at a Special Term of this Court held at the Erie County Courthouse, 50 Delaware Avenue on the 21st of November, 2016;

NOW, upon reading and filing Honeywell's notice of motion, dated October 26, 2016; the supporting affidavit of James W. Whitcomb, sworn to October 26, 2016 and exhibits thereto, Beazer notice of motion, dated November 8, 2016; the supporting the affidavit of Meghan M. DiPasquale, sworn to November 8, 2016 and the exhibits thereto; the notice of cross motion, dated November 14, 2016, the affidavit of Dennis P. Harlow, sworn to November 14, 2016 and exhibits thereto, in support of the cross motion and in opposition to Honeywell's and Beazer's motions; the reply affidavit of James W. Whitcomb, sworn to on November 16, 2016 in further support of Honeywell's motion and in opposition to the cross motion; and after hearing Phillips Lytle LLP (James W. Whitcomb, of counsel) in support of Honeywell's motion and in opposition to the cross motion, Ward Greenberg Heller & Reidy (Meghan M. DiPasquale, of counsel) in support of Beazer's motion, and Lipsitz & Ponterio LLC (Dennis P. Harlow and John P. Comerford, of counsel), in opposition to Honeywell's motion and Beazer's motion and in support of the cross motion; upon the transcript of the decision of the Court rendered on November 21, 2016 annexed hereto; and after due deliberation having been held thereon, it is hereby

ORDERED that Honeywell's and Beazer's motions to preserve the testimony William Thomas Birmingham in all pending actions and for potential use in future actions is granted;

ORDERED that plaintiffs' cross motion to compel the defendant Wilputte to produce a corporate representative for deposition in the *Ranne* case is in all respects denied.


J.S.C.


HON. DEBORAH A. CHIMES, J.S.C.

ENTER:

Doc #01-2998389.3

GRANTED

JAN 6 2017

BY 
COLLEEN FREIHEIT
COURT CLERK