

Mulvaney v A.O. Smith Water Prods.
2020 NY Slip Op 33431(U)
October 19, 2020
Supreme Court, New York County
Docket Number: 190161/2020
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA

PART

IAS MOTION 13

Justice

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INDEX NO. 190161/2020

JOHN MULVANEY, DARLENE MULVANEY,

MOTION DATE 09/14/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

A.O. SMITH WATER PRODUCTS, AGL WELDING SUPPLY CO., INC., AIR & LIQUID SYSTEMS CORPORATION, ALCOA, INC., ALLIED BUILDING PRODUCTS CORP., AMDURA LLC, AMERICAN CRANE & EQUIPMENT CORPORATION, AMERICAN OPTICAL CORPORATION, ANHEUSER-BUSCH COMPANIES, LLC, ARMSTRONG INTERNATIONAL, INC., ATWOOD & MORRILL CO., INC., AURORA PUMP COMPANY, BASF CATALYSTS LLC, BASF CORPORATION, BLACKMER PUMP, BUCYRUS INTERNATIONAL, INC., BURNHAM CORPORATION, BW/IP INTERNATIONAL CO., CARLISLE INDUSTRIAL BRAKE & FRICTION, CARLISLE MOTION CONTROL INDUSTRIES, INC., CARRIER CORPORATION, CASE CORPORATION, CATERPILLAR GLOBAL MINING AMERICA, INC., CATERPILLAR GLOBAL MINING EQUIPMENT, LLC, CATERPILLAR GLOBAL MINING LLC, CATERPILLAR INC., CATERPILLAR INDUSTRIAL, INC., CBS CORPORATION, CELANESE CORPORATION, CLARK CONSTRUCTION GROUP, LLC, CLARK COOPER CORPORATION, CLARK EQUIPMENT COMPANY, CLEAVER-BROOKS COMPANY, CNH INDUSTRIAL AMERICA LLC, COLGATE-PALMOLIVE COMPANY, COLUMBIA BOILER COMPANY OF POTTSTOWN, COMPU DYNE CORPORATION, CONOCOPHILLIPS, COURTER & COMPANY, INC., CRANE CO., CUMMINS ENGINE COMPANY, INC., CUMMINS INC., DANA COMPANIES, LLC, DEAN PUMP DIVISION, DEERE & COMPANY, DUPONT NORTH AMERICA, INC., E.I. DUPONT DE NEMOURS & COMPANY, ECR INTERNATIONAL, INC., ELECTROLUX HOME PRODUCTS, INC., ELLIOTT TURBOMACHINERY CO., INC., EUCLID-HITACHI HEAVY EQUIPMENT, INC., EXXON MOBIL CORPORATION, EXXONMOBIL CHEMICAL COMPANY, EXXONMOBIL OIL CORPORATION, FIRSTENERGY CORP., FENNER-AMERICA, FLOWSERVE US, INC., FMC CORPORATION, FORD MOTOR COMPANY, FOSTER WHEELER, LLC, GARDNER DENVER INC., GARDNER DENVER NASH LLC, GENERAL ELECTRIC COMPANY, GENETECH, INC., GENUINE PARTS COMPANY, GIAMBOI AND SONS, INC., GIAMBOI BROS., INC., GIAMBOI PLASTERING CORP., GIVAUDAN FLAVORS

**DECISION + ORDER ON
MOTION**

CORPORATION, GIVAUDAN FRAGRANCES CORPORATION, GIVAUDAN-ROURE CORPORATION, GOODRICH CORPORATION, GOULDS PUMPS, INC., GRINNELL CORPORATION, GUARD-LINE, INC., HOFFMANN-LA ROCHE, INC., HONEYWELL INTERNATIONAL, INC., HYSTER-YALE MATERIALS HANDLING, INC., I.T.T. INDUSTRIES, INC., INGERSOLL RAND, INC., INTERNATIONAL HARVESTER COMPANY, INTERNATIONAL PAPER COMPANY, J.G. SCHMIDT STEEL, JENKINS BROS., JERSEY CENTRAL POWER & LIGHT, JOHNSTON BOILER COMPANY, JOY GLOBAL, INC., JOY GLOBAL SURFACE MINING, KELSEY-HAYES COMPANY, KINNEY VACUUM PUMP COMPANY, KOHLER CO., KONECRANES, INC., LINK-BELT CONSTRUCTION EQUIPMENT COMPANY, LUCAS VARIETY AUTOMOTIVE HOLDINGS COMPANY, LUCAS VARIETY PLC LIGHT VEHICLE BRAKING SYSTEMS DIVISION (LVBS), MACK-CALI REALTY CORPORATION, MACK TRUCKS, INC., MAGID-GLOVE, MANITOWOC COMPANY (THE), MARCAL MANUFACTURING LLC, MARCAL PAPER MILLS, INC., MARCAL PAPER PRODUCTS, INC., MARIO & DIBONO PLASTERING CO. INC., MERCK & CO., METROPOLITAN LIFE INSURANCE COMPANY, MORRIS MATERIAL HANDLING INC., MORSE TEC LLC, NASH ENGINEERING COMPANY (THE), NAVISTAR, INC., NEW YORKER BOILER COMPANY, INC., NOVARTIS CORPORATION, P & H MINING EQUIPMENT, PABST BREWING COMPANY, PARKER HANNIFIN CORPORATION, PB NUTCLIF MED, LLC, PEERLESS INDUSTRIES, INC., PENNSYLVANIA SN, INC., PHILLIPS 66 COMPANY, PNEUMO ABEX CORPORATION, PNEUMO-ABEX LLC, REDDAWAY MANUFACTURING CO., INC., RILEY POWER, INC., ROCHE MOLECULAR SYSTEMS, INC., ROCHE NUTLEY, INDIVIDUALLY AND AS SUCCESSOR TO HOFFMAN-LA ROCHE, ROCKWELL AUTOMATION, INC., SCAN-PAC MFG., INC., SOUNDVIEW PAPER COMPANY, LLC, SPARTA STEEL CORPORATION, SPIRAX SARCO, INC., STANDCO INDUSTRIES, INC., SUPERIOR BOILER WORKS, SUPERIOR LIDGERWOOD MUNDY CORP., TACO, INC., TEREX AMERICAN CRANE CORP., TEREX CORPORATION, TEREX CRANES WILMINGTON, INC., TEREX USA LLC, TISHMAN REALTY & CONSTRUCTION CO., INC., TURNER CONSTRUCTION COMPANY, TUTHILL CORPORATION, TWIN DISC, INC., UNION CARBIDE CORPORATION, VELAN VALVE CORP., VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA, INC., VOLVO CONSTRUCTION EQUIPMENT, VOLVO TRUCKS NORTH AMERICA, INC., WARREN PUMPS, LLC, WEIL MCLAIN, WEIR WELDING COMPANY, INC., WHEELING BRAKE BLOCK MFG. CO., WHITING CORPORATION, WHITING EQUIPMENT CANADA, INC., WHITING SERVICES, INC., WHITING TURNER,

WILLIAM POWELL COMPANY (THE)

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 46, 47, 48, 49, 50 were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ordered that defendant Hoffmann-La Roche, Inc.'s motion to dismiss is granted. In this asbestos action, moving defendant seeks to dismiss the complaint, pursuant to CPLR §3211(a)(8), against it arguing that it is a New Jersey company with no connection to New York. No opposition was filed.

Here, based upon the papers, moving defendant has established that it is a New Jersey corporation that conducts business solely in New Jersey, does not conduct business in New York and does not employ personnel in New York. Moving defendant has further established that it is located solely in New Jersey, has no offices in New York, does not produce, market, manufacture, deliver, distribute, supply, purchase, or sell products in New York, such that the Court lacks personal jurisdiction over it pursuant to CPLR §§302(a) and 3211(a)(8). Thus, moving defendant's motion to dismiss for lack of personal jurisdiction is granted without opposition.

Accordingly, it is

ORDERED that defendant Hoffmann-La Roche, Inc.'s motion to dismiss the complaint is granted without opposition and the complaint is dismissed as against such defendant only, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that any and all cross-claims against said defendant is dismissed, and the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that within 30 days of entry, defendant Hoffmann-La Roche, Inc. shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



<u>10/19/2020</u>			
DATE		ADAM SILVERA, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE