

1 STATE OF NEW YORK : COUNTY OF ERIE
2 SUPREME COURT EIGHTH JUDICIAL DISTRICT

3 In Re: EIGHTH JUDICIAL DISTRICT
4 ASBESTOS LITIGATION

5 JAMES STOCK, JR. and LYNN M. STOCK,

6 PLAINTIFFS, INDEX #807846/2017

7 -VS-

8 DECISION

9 AIR & LIQUID SYSTEMS CORPORATION, as
10 Successor by Merger to Buffalo Pumps, Inc., et al.,

11 DEFENDANTS,

12 50 Delaware Avenue
13 Buffalo, New York 14202
14 September 5, 2018.

15 HELD BEFORE: HONORABLE DEBORAH A. CHIMES,
16 SUPREME COURT JUSTICE.

17 APPEARANCES:

18 WILLIAM N. PAPAIN, ESQ.,
19 Appearing for the Plaintiffs.

20 JEFFREY FEGAN, ESQ.,
21 Appearing for Defendant Jenkins Bros.

22 DAVID OXAMENDI, ESQ.,
23 Appearing for Crane Co.

24 DAVID J. GOODEARL, ESQ.,
25 Appearing for Warren Pumps and
IMO Industries, Inc.,

JODIE L. RYAN, ESQ.,
Appearing for Flowserve, Inc.,

LISA G. PAZDERSKI,
Supreme Court Reporter.

1 THE COURT: All right after hearing oral
2 argument and after review of the submitted papers,
3 the Court finds that Crane, Flowserve and Warren
4 remain parties to this action.

5 As Jenkins points out, at the time the
6 subpoenas were served, no orders of -- no orders
7 or stipulations of discontinuance have been filed
8 by these companies. Such orders or stipulations
9 are required by CPLR Rule 3217(b) which states,
10 quote:

11 Except as provided with Subdivision A, an
12 action shall not be discontinued by a party
13 asserting a claim except upon order of the Court,
14 end of quote. See also Carlos Cifuentes,
15 C-I-F-U-E-N-T-E-S, versus Burnham, LLC, Supreme
16 Court, Nassau County, March 14, 2018.

17 As these companies remain parties to the
18 action, service on counsel is proper as provided
19 by CPLR 2103(b).

20 Further, as noted in the commentary to CPLR
21 2303-A, quote: There is no frame on the service
22 of a trial subpoena either in 2303 -- it should be
23 timeframe. Let me re-read that.

24 Quote: There is no timeframe on the service
25 of a trial subpoena either in 2303 or 2303-A, end

1 of quote. Patrick M. Connors, Practice
2 Commentaries, McKinney's Consolidated Laws of New
3 York, Book 7B, CPLR 2303-A.1. The trial subpoenas
4 were therefore served in timely manner.

5 Finally, the information sought from the
6 witnesses is relevant in establishing
7 apportionment of liability under CPLR 1601, and
8 the information sought is not overly broad.

9 This Court rejects the argument that
10 enforcement of these trial subpoenas would have a,
11 quote, chilling effect, end of quote, on
12 settlement. The information sought by these
13 subpoenas allows the non-settling defendant to
14 establish its equitable share of the total
15 liability as allowed under CPLR section 1603, and
16 the settling parties' interests are protected
17 under GOL, that's General Obligations Law, Section
18 15-108.

19 With respect to IMO Industries, an
20 examination of the record reflects that it was not
21 sued in this action and that it is not a New York
22 corporation. Therefore, the usual rule applies
23 here, which is as follows, quote:

24 A New York subpoena may not reach beyond New
25 York borders whatever the bases or justifications

1 may be in a particular situation. A party in need
2 of an outsider's testimony must, therefore, turn
3 to the pretrial disclosure devices or the Uniform
4 Interstate Depositions and Discovery Act, end of
5 quote. New York Practice 6th Edition, Siegel and
6 Connors, Section 338 at Page 746.

7 Therefore, IMO's motion is granted, and the
8 subpoenas issued by Jenkins relative to IMO is
9 quashed.

10 With respect to the use of party depositions,
11 as provided in CPLR 3117(2), the deposition
12 testimony of a party or any person who was a party
13 when the testimony was given may be used for any
14 purpose by any party who is adversely interested
15 when the deposition testimony was given. Jenkins
16 is therefore permitted to use the deposition
17 testimony of its adverse parties.

18 Motion to quash filed by Crane Co. under
19 NYSEF Number 10, Flowserve under NYSEF Number 13,
20 and Warren under NYSEF Number 9 are denied.

21 Jenkins' cross-motions filed under NYSEF 11,
22 12, 14 and 15 are granted with respect to Crane,
23 Flowserve and Warren, and denied as to IMO. IMO'S
24 motion to quash filed under NYSEF Number 8 is
25 granted. All right.

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Whether you use testimony or, counsel, you
bring in your witnesses, your choice.

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Certified to be a true and accurate transcript
of the minutes and/or testimony taken herein
transcribed into English text through Computer
Assisted Transcription.

Lisa G. Pazderski

Lisa G. Pazderski, Supreme Court Reporter