



Alerts

Civil Conspiracy Claims Still a Hard-Sell Under Illinois Law

November 19, 2012

Hinshaw Alert

In *Menssen v. Pneumo Abex Corp., et al.*, Civil Action Nos. 4-10-0904, 4-10-0921 (4th Dist. 2012), plaintiff former employee sued defendants Pneumo Abex, LLC and Honeywell International, Inc. to recover damages for a malignancy caused by exposure to asbestos that occurred while she was employed at the Union Asbestos and Rubber Company (UNARCO). The former employee alleged that defendants and UNARCO entered into a civil conspiracy to falsely assert that asbestos was safe and to suppress information about the harmful effects of asbestos. The trial court awarded the former employee \$3.5 million in compensatory damages, and punitive damages of \$4.37 million against Abex and \$10 million against Honeywell. The Illinois Fourth District Appellate Court reversed, holding that the former employee did not present sufficient evidence to prove that defendants had conspired with other corporations to misrepresent the health hazards of asbestos.

The former employee claimed that during her employment at UNARCO from 1967 to 1969, she was exposed to and inhaled asbestos manufactured by defendants. The former employee alleged that this exposure caused her to suffer from pleural mesothelioma. The former employee's theory was that despite knowing the dangers of asbestos exposure, defendants sold products containing asbestos without health-hazard warning labels and failed to adequately protect their employees from exposure to asbestos. She also alleged that Abex conspired with eight other corporations to unlawfully conceal information about the carcinogenic effect of asbestos.

The appellate court noted that the evidence presented at trial was indistinguishable from the evidence presented in *Rodarmel v. Pneumo Abex, LLC*, 957 N.E.2d 107 (2011), where both defendants in *Menssen* were also named. The court found that in *Rodarmel*, the action of each defendant mirrored the other in regard to asbestos operations. But it held that evidence of parallel conduct, by itself, is insufficient to establish the existence of an agreement to commit a civil conspiracy. In *Rodarmel*, plaintiff presented evidence that in 1968 Johns-Manville, the exclusive supplier of asbestos to Honeywell's predecessor, informed Honeywell that its asbestos shipments would carry a warning label about inhalation being harmful. Shortly after, Johns-Manville sent Honeywell a position paper that identified asbestosis, lung cancer and mesothelioma as resulting from asbestos exposure. There was also evidence of Abex and Honeywell sharing members of their board of directors and being members of the same trade organization. The jury found for plaintiffs,

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and defendants' motions for judgment *n.o.v* were denied. On appeal, the court held that plaintiff's evidence was not clear and convincing proof of a conspiracy.

As with the plaintiffs in *Rodarmel*, plaintiff in *Menssen* did not have direct evidence that established conspiracy. The only additional evidence against Honeywell offered was: (1) that in 1958, the New York Department of Labor released a rule that certain asbestos dust levels were a dangerous air contaminant, and (2) various other internal memos and documents from the 1970s and 1980s regarding asbestos and the exposure risks. The court held that the evidence merely showed that Honeywell had engaged in the suppression of asbestos information on its own accord and not in conspiracy with other corporations.

The former employee also presented additional evidence regarding Abex's co-sponsorship of the asbestos study and the subsequent concealment of the results of that study. In 1948, Abex and the sponsoring companies unanimously voted to delete references to cancer and tumors from the final published report because the results were not conclusive that asbestos caused the tumors found in the lab mice. The court found that the former employee failed to provide evidence that Abex had agreed with other companies to suppress the health hazards of asbestos. It concluded that the evidence offered by the former employee was insufficient to prove that defendants entered into a conspiratorial agreement and that defendants were entitled to judgment *n.o.v*.

This verdict is significant because it reaffirmed Illinois law that evidence of parallel conduct, by itself, is insufficient to establish the existence of an agreement to commit a civil conspiracy. The court did not hold defendants liable for alleging suppressing the dangers of asbestos on their own initiative or for concealing the results of an experiment which have been later proved to be true. As the court noted, "from the vantage of hindsight, we now know it is a scientific fact that asbestos causes cancer in humans" but it was not "unlawful to hide information devoid of significance." This decision certainly will take any wind out of the plaintiff's counsel sail as it pertains to civil conspiracy claims in Illinois.

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