

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEWCASTLE COUNTY

IN RE ASBESTOS LITIGATION )  
)  
DAVID EDWIN TIMMONS, )  
)  
Plaintiff, ) C.A. No. 06C-10-108 ASB  
)  
v. )  
)  
BONDEX INTERNATIONAL, INC., et al., )  
)  
Defendants. )  
)

**ORDER**

Upon Defendant Conwed's Motion for Summary Judgment  
**GRANTED**

Submitted: May 14, 2008  
Decided: May 15, 2008

At the time of oral argument on Conwed's motion, the issues became focused on one genuine issue of material fact: whether Conwed ceiling tiles identified by plaintiff must have contained asbestos. The parties submitted supplemental record support for their positions.

Plaintiff does not know whether the Conwed tiles contained asbestos. However, Plaintiff described the Conwed ceiling tiles as having a reddish tint on

the backing. Former Conwed research and development employee, Frederick Bergstrom, testified that Conwed ceiling tiles generally had red backs, including tiles that did not contain asbestos. Former Conwed chemist, Vernon Guyer, testified that he could not determine whether a tile contained asbestos by looking at it. Conwed counsel have certified that former Conwed industrial hygiene expert, Frederick Boelter, testified that the presence of a reddish back on a ceiling tile was not conclusive proof that the tile contained asbestos.

In *Stigliano v. Westinghouse*<sup>1</sup> this Court ruled:

When the record reveals that a defendant manufactured both asbestos-containing and non asbestos-containing versions of a product during the time period of alleged exposure, in the absence of evidence directly or circumstantially linking the plaintiff to the asbestos-containing product, the Court cannot draw the inference of exposure and summary judgment on product nexus must be granted.<sup>2</sup>

The Court finds that the undisputed evidence demonstrates that Conwed manufactured both asbestos and non-asbestos containing ceiling tiles beginning in the 1960s. The presence of a reddish tint on the tile backing is not conclusive as to whether the tile contains asbestos. Plaintiff has produced no evidence directly or circumstantially linking exposure to an asbestos-containing Conwed product.

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<sup>1</sup>Del. Super., C.A. No. 05C-06-263 ASB, Slights, J. (Oct. 18, 2006)(Order).

<sup>2</sup>See *Lipsomb v. Champlain Cable Corp.*, 1988 WL 102966 (Del. Super.).

Thus, plaintiff may, or may not have been, exposed to asbestos tile manufactured by Conwed.

**THEREFORE**, Defendant Conwed's Motion for Summary Judgment is hereby **GRANTED**.

**IT IS SO ORDERED.**

*/s/ Mary M Johnston*  
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The Honorable Mary M. Johnston