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E-Filed 6/22/2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

TYCO THERMAL CONTROLS LLC,

Plaintiff,

v.

REDWOOD INDUSTRIALS, et al.,

Defendants.

ROWE INDUSTRIES, INC.,

Counter-Claimant,

v.

TYCO THERMAL CONTROLS, LLC,

Counter-Defendant.

Case Number C 06-07164 JF (PVT)

Related Case No. C 10-01606 JF (PVT)

**ORDER¹ GRANTING ROWE'S
REQUEST TO FILE AN
UNCONDITIONAL OPPOSITION**

Re: Docket No. 210

On April 23, 2010, Defendants Redwood Industrials, Roland Lampert and Audrey Lampert (collectively, "Redwood") moved for an order approving their settlement with Plaintiff Tyco Thermal Controls, LLC ("Plaintiff") and barring contribution claims, indemnity, and other claims. The motion was brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and

¹ This disposition is not designated for publication in the official reports.

1 Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.* (“CERCLA”), the Uniform Comparative
2 Fault Act (“UCFA”) and Cal. Code Civ. P. § 877.6. On May 21, 2010, Carlisle Companies Inc.,
3 Carlisle Corporation and Tensolite Company, sued erroneously herein as Tensolite Insulated
4 Wire Pacific Divisions, Inc. and Tensolite Insulated Wire Company, (collectively, “Carlisle”)
5 moved for an order approving their settlement with Plaintiff barring contribution and indemnity
6 claims pursuant to the UCFA, and determining that the settlement is in good faith pursuant to
7 Cal. Code Civ. P. § 877.6.

8 On June 4, 2010, Defendant Rowe Industries, Inc. (“Rowe”)² filed a statement of
9 “conditional non-opposition” to both motions. Rowe conditioned its lack of opposition on the
10 Court’s determination that the protections afforded to it as a non-settling defendant under the
11 UCFA extend to the separate but related Resource Conservation and Recovery Act, 42 U.S.C. §
12 6901 *et seq.* (“RCRA”) action that Plaintiff filed against Rowe on April 14, 2010. Rowe
13 contends that such a determination will protect it against non-apportionment of liability in the
14 RCRA action.

15 On June 10, 2010, Carlisle and Redwood filed reply papers in which they both adopted
16 Rowe’s position that the UCFA should apply to Plaintiff’s RCRA action against Rowe. The next
17 day, Plaintiff filed reply papers opposing application of the UCFA to its outstanding RCRA
18 action against Rowe. In addition to contending that there is no right to contribution under
19 RCRA, Plaintiff also asserted its position with respect to the appropriate method of apportioning
20 liability under CERCLA. Plaintiff contends that this Court should adopt a *pro tanto* approach
21 rather than the proportionate share approach proposed by Redwood and Carlisle in their motions
22 for approval of settlement.

23 Now Rowe has requested leave to file unconditional opposition to the pending motions
24 for good faith settlement. It explains that it “did not oppose the motions for good faith settlement
25 of the co-defendants *solely* because the settlement agreements mandated, and the settlement

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27 ² In an order dated April 15, 2010, the Court determined that Rowe is the successor-in-
28 interest to Coleman Cable & Wire, Pacific Transformer Company, and in turn the
successor-in-interest to Hill Magnetics, Inc., Hill Industries, Inc. Dkt. No. 180 at 2 n. 2.

1 motions requested, application of the [UCFA] and its Proportionate Share Method of
2 Allocation.” Rowe’s Request for Leave at 2. Plaintiff opposes Rowe’s request asserting that the
3 settlement agreements do not require application of the proportionate share method.

4 The Court has not yet determined whether a proportionate share or *pro tanto* method of
5 allocation applies to the instant action. However, because this issue first was raised by Plaintiff
6 in its June 11 reply brief, and Rowe has not had the opportunity to brief the issue fully, the Court
7 will grant Rowe’s request for leave to file an unconditional opposition brief. On or before June
8 28, 2010, Rowe shall file a letter brief not to exceed five pages in length addressing the
9 appropriate method of allocation in this action as well as its challenge to the pending motions
10 should the Court adopt the *pro tanto* approach. Plaintiff and the settling defendants may file a
11 reply, not to exceed five pages in length, on or before July 2, 2010. The hearing on the pending
12 motions is hereby continued to July 16, 2010.

13 IT IS SO ORDERED.

14 DATED: 6/22/2010

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17 JEREMY FOGEL
18 United States District Judge__
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