

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
CIVIL CASE NO. 4:94cv66

RAYMOND ROGER LEDFORD,)
Administrator of the Estate of)
William Newell Ledford, Deceased,)
et al.,)

Plaintiffs,)

vs.)

ORDER

ABEX CORPORATION, et al.,)

Defendants.)

THIS MATTER is before the Court on the following motions:

- (1) Pneumo Abex, LLC’s Motion for Summary Judgment [Doc. 33];
- (2) Plaintiffs’ Motion to Strike Pneumo Abex, LLC’s Motion for Summary Judgment and Motion for Emergency Hearing Concerning Same [Doc. 34];
- (3) Honeywell International Inc.’s Motion for Summary Judgment [Doc. 36]; and
- (4) Plaintiffs’ Motion to Strike Honeywell International Inc.’s Motion for Summary Judgment and Motion for Emergency Hearing Concerning Same [Doc. 37].

On May 19, 2010, the Honorable Eduardo C. Robreno, Presiding Judge of the asbestos multidistrict litigation docket (“MDL 875”), entered a Scheduling Order that set several deadlines in this case, including a deadline for the filing of dispositive motions. See In re: Asbestos Products Liability Litig., No. 2:09-cv-91859-ER (E.D. Pa. May 19, 2010). Specifically, the MDL 875 Scheduling Order provided that all dispositive motions were to be filed by December 23, 2010. See id.

In accordance with Judge Robreno’s Scheduling Order, the Defendant Pneumo Abex, LLC filed a motion for summary judgment based on North Carolina’s statute of repose on December 23, 2010. [See MDL 875 Docket Sheet, Doc. 10-1 at 6]. In response to the Defendant’s motion for summary judgment, the Plaintiffs filed an objection and response. [See id.]. Judge Robreno denied the Defendant’s Motion for Summary Judgment on February 28, 2011. See In re: Asbestos Products Liability Litig., No. 2:09-cv-91859-ER (E.D. Pa. Feb. 28, 2011).

On April 11, 2011, the United States Panel on Multidistrict Litigation entered a Conditional Remand Order which remanded the case to this Court. [Doc. 10]. This Court held a hearing on April 26, 2012. At that time, the parties indicated to the Court that the case was generally ready to proceed to

trial. None of the parties indicated a need to file any further dispositive motions. Following the April 26, 2012 hearing, the parties submitted a proposed Consent Scheduling Order for the Court's consideration. [Doc. 23]. Notably, the parties' motion does not address the need for the filing of any further dispositive motions in this matter. The Court entered a revised Scheduling Order on May 18, 2012, setting this matter for trial during the Court's September 10, 2012 trial term. [Doc. 26]. The revised Scheduling Order makes no provision for the filing of any further dispositive motions. [Id.].

Thereafter, on July 23, 2012, the Defendant Pneumo Abex, LLC filed the present Motion for Summary Judgment based upon the Plaintiffs' alleged lack of product identification. [Doc. 33]. The Defendant Honeywell International, Inc. filed a similar motion the following day. [Doc. 36]. The Plaintiffs now move to strike both of these motions. [Docs. 34, 37].

The Defendants' motions are untimely. As noted above, the MDL 875 Scheduling Order provided that all dispositive motions were to be filed by December 23, 2010, and the revised Scheduling Order entered by this Court upon remand makes no provision for the filing of dispositive motions. The Defendants have not provided any good cause why these motions should be

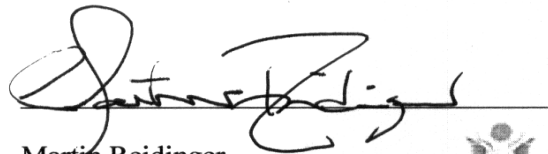
considered at this late date. Accordingly, the Court will grant the Plaintiffs' motions to strike the summary judgment motions filed by the Defendants.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Plaintiffs' Motions to Strike [Docs. 34, 37] are **GRANTED**, and the Defendants' Motions for Summary Judgment [Docs. 33, 36] are hereby **STRICKEN**.

IT IS FURTHER ORDERED that the Plaintiffs' Motions for an Emergency Hearing [Docs. 34, 37] are **DENIED AS MOOT**.

IT IS SO ORDERED.

Signed: August 2, 2012


Martin Reidinger
United States District Judge

