

# Exhibit C

**SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY**

**PRESENT: HON. MARTIN SHULMAN PART 1**

*Justice*

Ralph P. North,

INDEX NO. 190114/13

- v -

Air & Liquid Systems Corp., et al.

The following papers, numbered 1 to 8 were read on this motion and cross-motion for contractual indemnification

PAPERS NUMBERED

Notice of Motion - Affirmation - Exhibits A-O - Mem. of Law E-Filed Doc. Nos. 227-244	1
Answering Affirmation - Exhibits 1-23 - Mem. of Law E-Filed Doc. Nos. 245-269	2
Reply Mem. of Law E-Filed Doc. No. 278	3
Notice of Cross-Motion - Affirmation - Exhibits A-C E-Filed Doc. Nos. 270-274	4
Answering Affirmation - Exhibits A-F - Mem. of Law E-Filed Doc. Nos. 279-286	5
Reply Affirmation E-Filed Doc. No. 288	6
Supp. Aff. in Opp. (per Court's request) - Exhibits - Supp. Mem. of Law E-Filed Doc. Nos. 309-318	7
Supp. Aff. in Further Support E-Filed Doc. Nos. 319-320	8

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that the portion of defendant National Grid Generation, LLC d/b/a National Grid's ("National Grid") motion seeking contractual indemnification from defendant O'Connor Constructors, Inc. f/k/a Thomas O'Connor & Co., Inc. ("O'Connor"), and O'Connor's cross-motion with respect to such claim, are decided in accordance with the attached decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: March 13, 2015



Martin Shulman, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: PART 1

-----X  
 IN RE: NEW YORK CITY  
 ASBESTOS LITIGATION

-----X  
 RALPH P. NORTH,

Plaintiff,

Index No: 190114/13

-against-

**Decision and Order**

AIR & LIQUID SYSTEMS CORPORATION, as  
 Successor by Merger to BUFFALO PUMPS,  
 INC., et al.,

Defendants.

-----X  
**Hon. Martin Shulman, JSC:**

Among various relief, National Grid Generation, LLC, d/b/a National Grid ("National Grid"), formerly known as Long Island Lighting Company ("LILCO") moved pursuant to CPLR 4404(a) for a judgment of dismissal notwithstanding the verdict, a new trial and/or remittitur of that portion of the verdict awarding plaintiff Ralph North ("North" or "Plaintiff") \$3.5 million for future pain and suffering. In its January 21, 2015 bench decision, this court denied each of these branches of National Grid's motion<sup>1</sup>, but reserved decision on that branch of its post-verdict Motion seeking contractual

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<sup>1</sup> This court concluded that the trial evidence supported the jury verdict finding: LILCO exercised supervisory control over the work of all the contractors during the construction of the Northport Power Station ("Northport") which exposed Plaintiff to asbestos dust (first theory of liability); LILCO had actual or constructive notice of, or created an unsafe premises condition which it negligently failed to remedy (second theory of liability); LILCO acted with reckless disregard for Plaintiff's safety; and LILCO was 100% liable for Plaintiff contracting pleural mesothelioma. This court further determined that the future pain and suffering award was fair and did not deviate from what would be reasonable compensation (see *Matter of New York City Asbestos Litig. [Konstantin]*, 121 AD3d 230, 255 [1<sup>st</sup> Dept 2014]).

indemnification against defendant, O'Connor Constructors, Inc., formerly known as Thomas O'Connor & Co., Inc. ("O'Connor")("Motion"). O'Connor cross-moved for an order denying National Grid's Motion for summary judgment disguised as post-verdict relief. Both the Motion and Cross-Motion are consolidated for disposition.

O'Connor's Cross-Motion initially raises a number of procedural arguments for denying National Grid's Motion, *viz.*, when Plaintiff's direct claim against O'Connor settled, National Grid's cross-claim against O'Connor for indemnification was never severed and converted into a separate third-party action, rendering the Motion procedurally improper; the Motion is premature *inter alia* because National Grid has not suffered a loss by paying Plaintiff to satisfy the judgment against LILCO; National Grid never presented the issue of "conditional" indemnification for the jury to decide; and when O'Connor initially sought pre-trial summary judgment, National Grid never cross-moved for the relief it now seeks. National Grid counters that it afforded O'Connor ample and timely notice of its intent to seek indemnification so the latter could protect its interests. National Grid further argues that severance and conversion of its cross-claim to a third-party complaint were unwarranted as the main action was never dismissed but proceeded to trial ending with a jury verdict against same legally warranting its Motion for contractual indemnification against O'Connor.

O'Connor's procedural arguments grounded on technicalities are unpersuasive as it was entirely appropriate to seek a post-verdict ruling as to its entitlement to contractual indemnification (*see Yu v Greenway Mews Realty, LLC*, 99 AD3d 619 [1<sup>st</sup> Dept 2012]). Moreover, addressing the Motion now rather than later fosters judicial economy and reduces the litigation costs for all interested parties. Accordingly, National

Grid's otherwise timely and proper Motion will be addressed on its merits.

National Grid's Motion rests on identical indemnification provisions contained in LILCO's August 9, 1965 contract<sup>2</sup> (Exhibit N to Motion) and its February 26, 1970 contract<sup>3</sup> (Exhibit O to Motion). Clause XX of these contracts states, in relevant part ("indemnity clause"):

The Contractor [i.e., O'Connor] hereby undertakes and agrees to indemnify and hold harmless the Company [i.e., LILCO], its officers, directors, employers, agents and servants, from and against all losses, damages, claims, liens and encumbrances, or any or all of them, arising out of or in any way connected with the work, and whatever made or incurred, including any and all liability imposed by law and/or contract and/or custom, upon the Company, its officers, directors, employers, agents, and servants or any or all of them, whether or not it be claimed or proven that there was negligence or breach of statutory duty or both upon the part of the Company, its officers, directors, employers, agents and servants; and in any case, the Company shall have the right to demand that the Contractor shall undertake to defend any and all suits and to investigate and defend any and all claims whether justified or not, providing only that the claim or suit shall be against the Company, its officers, directors, employers, agents and servants.

Based on the foregoing, National Grid argues that LILCO and O'Connor were sophisticated parties who conducted arm's length negotiations, among other agreed-to terms, to include the indemnity clause that shifted the former's liability for worker related injuries to the latter even if LILCO was found to be negligent. Citing to relevant case law, National Grid further argues that this broadly written, unambiguous indemnity

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<sup>2</sup> The 1965 contract required O'Connor to furnish labor, material and equipment to erect and insulate the dust collectors, forced draft fans and breeching at Northport Unit 1 in accordance with LILCO's specifications.

<sup>3</sup> The 1970 contract required O'Connor to erect the Northport Unit 3 steam generator (boiler) and related systems in accordance with LILCO's specifications. This contract further gave LILCO the right to direct O'Connor to erect a condenser and an elect[rostatic] precipitator at Unit 3 as well.

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