Exhibit B

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

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IN RE: NEW YORK ASBESTOS LITIGATION,

JOHN MATTESON, Index No. 105240/01
JOHN LUSTENRING, Index No. 105155/01

DECISION/ORDER

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In these asbestos cases, defendant The Okonite Company ("Okonite") moves for judgment notwithstanding the verdict in the Matteson case, and defendant John Crane, Inc. ("John Crane") moves for the same relief in the Matteson and Lustenring cases. Defendants argue that the evidence is insufficient to support the verdicts in plaintiffs' favor; that the verdicts should be set aside based on errors in evidentiary rulings and juror misconduct; that the verdicts are internally inconsistent; and, in the alternative, that the damage awards are excessive.

Defendant Okonite contends that the evidence was insufficient to support the jury's findings that plaintiff Matteson was exposed to its product, and that its product contained asbestos. It is well settled that a court may not conclude as a matter of law that the verdict is not supported by sufficient evidence unless "there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [persons] to the conclusion reached by the jury on the basis of the evidence presented at trial." (Cohen v Hallmark Cards, Inc., 45 NY2d 493, 499 [1978].) In contrast, a determination that a verdict is against the weight of the evidence requires a finding that "the jury could not have reached its verdict on any fair interpretation of the evidence." (Delgado v Board of Educ., 65 AD2d 547 [2d Dept 1978], affd no opn 48 NY2d 643

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[1979].)

Under either standard, Mr. Matteson's testimony as to his use of Okonite's products, together with circumstantial evidence, including testimony of plaintiff's expert, Richard Horan, as to the composition of the products, was sufficient to raise a jury issue as to whether Mr. Matteson was exposed to asbestos-containing cable manufactured by Okonite.

Both Okonite and John Crane further argue that the court erred in admitting the testimony of plaintiffs' expert, Dr. Jacqueline Moline, that visible dust from asbestos-containing products contains fibers in a sufficient quantity to be hazardous. This argument in effect seeks to reargue the court's trial ruling on defendants' request for a Frye hearing. The court adheres to that ruling, the reasons for which were fully set forth on the record. The court also finds that a foundation was laid for the testimony. (See Caruolo v John Crane, Inc., 226 F3d 46 [2d Cir 2000].)

Defendants also challenge several other significant evidentiary and trial rulings. Defendants do not raise new legal arguments, and the court adheres to its trial rulings, the reasons for which were generally set forth at length on the trial record.

Defendants' further claim of juror misconduct is without support in the record. Although there were personal disagreements among the jurors, which are documented in the record, there is no evidence that the jurors took sides on any of the issues in the cases prior to the deliberations, or that any personality conflicts affected the jurors' ability to deliberate fully and fairly to both sides.

Okonite does persuasively argue, however, that the evidence is insufficient to support the jury's finding that Okonite acted recklessly. Under settled authority, the level of conduct necessary to establish recklessness must satisfy "a gross negligence standard, requiring that the

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actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome." (Matter of New York City Asbestos Litigation [Maltese v Westinghouse Elec. Corp.], 89 NY2d 955, 956 [1997][internal citations and quotation marks omitted].)

While there was evidence from which the jury could rationally have concluded that Okonite had or should have had knowledge of the dangers to health from exposure to dust from asbestos-containing products, Okonite's conduct was not reckless because there was no evidence that Okonite had knowledge that "workers such [as Mr. Matteson] were at risk at any time it could have warned them." (Id. at 957.) Moreover, contrary to plaintiff's contention, Okonite's membership in the Association of American Railroads is not a sufficient basis for a finding of recklessness, because it bears on Okonite's general knowledge of the dangers of asbestos, and not on its knowledge of dangers to specific workers in plaintiff's position. The jury's finding as to Okonite's recklessness will accordingly be set aside.

Okonite and John Crane next argue that a new trial should be ordered because the answers to interrogatories based on which each case was decided were inconsistent with each other. In each case, the jury answered an interrogatory finding that the plaintiff was exposed to asbestos-containing products of companies other than moving defendants. Specifically, in Matteson, the jury answered interrogatory 7 finding that Matteson was exposed to the asbestos-containing products of 23 other companies, while in Lustenring, the jury answered interrogatory 6 finding that he was exposed to the asbestos-containing products of 12 other companies. In each case the jury then found these other companies were not negligent in manufacturing or selling

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asbestos-containing products without adequate warning (interrogatory 8 in Matteson, and interrogatory 7 in Lustenring). The jury thus did not apportion fault to any of these other companies, and apportioned fault only to defendants which had been found negligent - John Crane (45%) and Okonite (55%), the sole defendants found liable in Matteson (see interrogatory 10); and John Crane (100%), the sole defendant found liable in Lustenring (see interrogatory 9).

Defendants argue that the finding that plaintiffs were exposed to other companies' products is inconsistent with the finding that these other companies were not negligent. Perhaps recognizing that the findings are not inconsistent on their face (exposure obviously does not mandate a finding of negligence), defendants also argue that the jury's finding that the other companies were not negligent was against the weight of the evidence. In support of this claim, they cite the state of the art evidence admitted at the trial, which showed that some, if not all, of these other companies had or should have had knowledge of the dangers of asbestos.

As plaintiffs correctly point out, however, in order to establish the other companies' negligence, defendants had the burden of proving not only that the other companies knew or should have known of the dangers from their asbestos-containing products, but also they failed to warn of such dangers. (See Caruolo v A C & S, Inc., 1999 WL 147740 [SD NY 1999], affd in part, vacated & remanded in part on other grounds 226 F3d 46 [2d Cir 2000]; George v Celotex Corp., 914 F2d 26, 28 [2d Cir 1990].)

While the state of the art evidence is relevant to defendants' knowledge of the dangers, based on the evidence at trial, the jury could rationally have found that defendants did not meet their burden of establishing that the other companies failed to warn. Defendants rely on plaintiffs' testimony that they never saw warnings on any asbestos-containing products to which

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