

\*1 Certain Underwriters at Lloyd's London et al., Appellants

v

Pneumo Abex Corporation et al., Defendants, and Century Indemnity Company, as Successor in Interest to California Union Insurance Company, et al., Appellants, PepsiAmericas, Inc., Defendant-Respondent.

Supreme Court, Appellate Division, First Department, New York

January 9, 2007

CITE TITLE AS: Certain Underwriters at Lloyd's London v Pneumo Abex Corp.

#### HEADNOTE

Actions  
Stay

Court properly stayed action in favor of federal litigation; while parties and issues were not completely identical, familiarity of federal court with issues, substantial identity of parties, and interdependence of issues, weighed in favor of adjudicating federal litigation in advance of state action.

Mendes & Mount, LLP, New York (Eileen T. McCabe of counsel), for London Market Insurers, appellants. Cozen & O'Connor, New York (Patrick M. Kennell of counsel), for Federal Insurance Company, appellant. Crowell & Moring, LLP, Washington, DC (Barry M. Parsons of counsel), for Northern Assurance Company of America, successor to certain insurance liabilities of Falcon Insurance Company and Century Indemnity Company, appellants. Hogan & Hartson, LLP, New York (Peter J. Dennin of counsel), for First State Insurance Company, appellant. Hardin, Kundla, McKeon & Poletto, New York (George R. Hardin of counsel), for Mt. McKinley Insurance Company, appellant. Simpson Thacher & Bartlett, LLP, New York (Jonathan K. Youngwood of counsel), for The Travelers Indemnity Company, sued herein as Travelers Casualty & Surety Company, appellant. Morgan, Lewis & Bockius LLP,

New York (David A. Luttinger, Jr. of counsel), for respondent.

Order, Supreme Court, New York County (Herman Cahn, J.), entered July 29, 2005, which granted the motion of defendant PepsiAmericas, Inc. to stay this action in favor of litigation in the United States District Court for the District of Columbia, unanimously affirmed, with costs.

In view of the 24-year pendency of the federal litigation involving the obligations of \*2 primary insurers to provide coverage and indemnity for underlying asbestos-related claims, the motion court properly exercised its discretion (*see Pierre Assoc. v Citizens Cas. Co. of N.Y.*, 32 AD2d 495, 496-497 [1969]) in staying this action in favor of that litigation, and companion litigation concerning the obligations of excess insurers.

While the parties and issues in this action and the federal litigation are not completely identical, and the federal litigation involving the obligations of excess insurers was commenced three years after the present action, the familiarity of the federal court with the issues, the substantial identity of the parties, and the interdependence of the issues involving primary and excess insurers, weigh in favor of adjudicating the federal litigation in advance of this action (*see Asher v Abbott Labs.*, 307 AD2d 211 [2003], *lv dismissed* 98 NY2d 728 [2002]). If issues and obligations raised in this action remain unresolved at the conclusion of the federal litigation, this action can be reactivated. Plaintiffs, who remained inactive for 20 years, as well as the appealing defendants, have not demonstrated that they will be prejudiced by a stay. Concur-Sullivan, J.P., Williams, Sweeny, Catterson and Malone, JJ.

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