

Eaton Units Must Pay \$293M In Asbestos Settlement Row

By **Bonnie Eslinger**

Law360 (August 29, 2018, 10:54 PM EDT) -- Power management company Eaton Corp. announced Wednesday that subsidiaries it acquired in 2012 have been ordered to pay \$293 million by an arbitration panel in a dispute related to claims brought by a PepsiCo Inc. unit over a 2011 asbestos settlement.

In the announcement, Eaton said it intends to challenge the arbitration award against electrical equipment supplier Cooper Industries, which it acquired in 2012 for approximately \$11.8 billion. Pepsi-Cola Metropolitan Bottling Company claims that it was harmed by a 2011 settlement agreement that resolved litigation brought against various Cooper entities by Pneumo Abex LLC, Eaton said.

“The litigation involved, among other things, a guaranty related to Pneumo Abex's friction products business,” Eaton wrote in its Monday news announcement. “Pepsi claimed that the value contributed to Pneumo Abex and a newly established trust in exchange for a release of the guaranty was substantially below reasonably equivalent value, and that an inability of Pneumo Abex to satisfy future liabilities may result in plaintiffs suing Pepsi under various theories.”

Pepsi filed suit in Texas in December 2011 against the Cooper entities and Pneumo Abex, an M&F Worldwide Corp. subsidiary, to challenge the February 2011 settlement agreement, which resulted in a trust approved by a New York court providing “hundreds of millions of dollars” for the defense and payment of asbestos claims, according to its complaint. Pepsi alleged the settlement fund was the result of a collusive agreement between the other companies that cut off contractual liability protections held by Pepsi-Cola Metropolitan Bottling Co.

In November 2015, after a Texas court ruled that Pepsi's claims should be heard in arbitration, Pepsi dropped claims against all parties except Cooper, according to Eaton's most recent U.S. Securities and Exchange Commission filing.

During the arbitration proceedings, which began in October 2017, Pepsi's experts argued that the value contributed to the trust for a release of the guaranty was too low and could leave Pneumo unable to satisfy future liabilities — which in turn could leave Pepsi on the hook for claims, according to Eaton's SEC filing. On July 11, 2018, the arbitration panel announced its findings, concluding the trust was underfunded.

The arbitrators ordered the Cooper entities to pay the money into the trust, an in-house attorney for PepsiCo, Charles S. Biener, told Law360 on Wednesday.

In the deal approved by a New York judge in 2011, Cooper agreed to pay \$307.5 million into a settlement trust to resolve Pneumo Abex's claim that a joint venture between Cooper and Danahar Corp. threatened a 1994 asbestos mutual indemnity agreement.

In addition to the cash payment, the settlement called for the cancelation of the indemnity agreement and transferred ownership of Pneumo Abex to the settlement trust.

Pepsi argued the deal effectively stripped Pneumo Abex of its ability to live up to a separate asbestos indemnity agreement it had with Pepsi and claimed in its suit that Cooper and Pneumo Abex's parent company, M&F, concocted the New York litigation in a bid to extinguish their respective liabilities under the indemnity agreement.

Pepsi asked the Texas court to modify the terms of the settlement to force Cooper and M&F to pay any shortfalls the settlement fund is unable to cover and to place a constructive trust on millions in insurance proceeds Cooper recovered that Pepsi said should be applied to its future asbestos liabilities.

In March of last year, the Texas Supreme Court held that Texas does not have specific jurisdiction over the case since the matter involved New York companies and their alleged wrongful actions took place in New York.

Pepsi was represented in the arbitration by Paul Zevnik, Nancy Patterson, Daniel Chefitz, Clayton Morton and James Nortey of of Morgan Lewis & Bockius LLP.

Counsel information for Eaton and Cooper was not available Wednesday.

--Editing by Philip Shea.