

**IN THE CIRCUIT COURT, THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS**

CYNTHIA DREW,	)	
	)	
<i>Plaintiff,</i>	)	
vs.	)	
	)	Court No. 2015L 001537
A.W. CHESTERTON COMPANY, et al.,	)	
	)	IN RE: ASBESTOS LITIGATION
<i>Defendants.</i>	)	
	)	

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on **November 28, 2016**, we e-filed with the Clerk of the Circuit Court of Madison County, Illinois, Defendant **ROGERS CORPORATION'S Reply Memorandum to Plaintiff's Memorandum in Opposition to ROGERS CORPORATION'S Motion to Dismiss For Lack of Personal Jurisdiction.**

SEGAL McCAMBRIDGE SINGER & MAHONEY, LTD.

By:           /s/ Catherine Goldhaber            
One of the Attorneys for Defendant  
**ROGERS CORPORATION**

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**PROOF OF SERVICE**

I, Jennie Krueger, state that a copy of the above-mentioned pleading(s) was/were served on all counsel of record via MyDocFileServe, this **November 28, 2016**.

          /s/ Jennie Krueger            
Under penalties as provided by law pursuant to ILL  
REV STAT. CHAP. 110 § 1-109, I certify that the  
statements set forth are true and *correct*.

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**DEFENDANT ROGERS CORPORATION’S REPLY MEMORANDUM TO  
PLAINTIFF’S MEMORANDUM IN OPPOSITION TO ROGERS CORPORATION’S  
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICITON**

NOW COMES Defendant ROGERS CORPORATION (“Rogers”), by and through its attorneys, SEGAL McCAMBRIDGE SINGER & MAHONEY, LTD., and in Reply to the Plaintiff’s Memorandum in Opposition to Rogers Corporation’s Motion to Dismiss for Lack of Personal Jurisdiction submits that Plaintiff cannot establish that this Court has either specific or general jurisdiction over Rogers and thus this case must be dismissed as to Rogers:

**I. The Evidence Establishes that Ms. Drew was not exposed to Rogers molding compound shipped from Chicago, nor is Rogers’ location in Illinois so continuous and systematic as to render it “essentially at home” in Illinois**

Plaintiff presents the bases for personal jurisdiction on the inaccurate deposition of Ronald Anderson – a Square D employee who was not disclosed as a witness in this case – and two irrelevant exhibits purporting to evidence that the Rogers product to which Ms. Drew was exposed shipped to Iowa from Illinois. However, a review of this information fails to establish that Rogers’ attenuated activities in Illinois were in any way related to Ms. Drew’s alleged exposures in Iowa, nor does it establish that Rogers is or was “essentially at home” in Illinois. The presence of an unrelated manufacturing facility in Illinois during an unrelated timeframe

does not establish Illinois jurisdiction over Rogers for claims arising solely out of exposure in Iowa against a Massachusetts corporation that is headquartered in Connecticut.

Rogers became an active, yet foreign, corporation in Illinois December 3, 1996 and while it accepts service through its registered agent, it continues to be considered a foreign corporation by Illinois. *See* Plaintiff's Ex. H, Ill. Sec. of State Corp. File Report; *See* Ex. 1 CT Corporation Service of Process Transmittal. Rogers did not have a physical presence in Illinois until its acquisition of BISCO Silicones in approximately 1997. *See* Ex. 2 Rogers Ans. PJ Venue Interrogatories. This is well after 1979 when Ms. Drew's alleged exposure to Rogers' asbestos-containing materials ended. *See* Plaintiff's Complaint, ¶7. The information provided by Plaintiff does not refute these facts.

Plaintiff also relies upon the testimony of Ronald Anderson as a basis for jurisdiction, although he is not a witness in this case. *See* Ex. 3 Plaintiff's Fact and Expert Witness List filed June 17, 2016. Mr. Anderson, a former employee of Square D Company ("Square D"), worked for Square D in Lincoln, Nebraska; Columbia, Missouri and Palatine, Illinois, and was last known to live in South Dakota. *See* Ex. 4, 03/11/2014 Depo of R. Anderson (full transcript), p.14, lines 15-19. During the mid-1970s, Anderson was a buyer for Square D's Nebraska operation, primarily purchasing hardware, such as screws. *Id.*, 24-25. He did not purchase phenolic molding compounds, as are at issue in this case. *Id.*, 30:19-25. In 1978, he worked out of the Colombia, Missouri Square D facility in its first year of operation. *Id.*, 35, 83:3-6. In this time period, phenolic compounds obtained from the Iowa facility included Plenco, Durez and Richhold – there was no mention of Rogers. *Id.*, 35:13-19. The first mention of Rogers was that it was a brand of phenolic molding compound used at the Colombia, Missouri facility "in later years." *Id.*, 71:11-23. He cannot call when Rogers' materials were first used in Iowa. *Id.*, 161:19-

22. His testimony that Square D purchased “a small amount” clearly referred to material sent to Missouri – not Iowa where Plaintiff worked. *Id.*, 93.

Plaintiff submitted portions of this deposition because Anderson erroneously claimed to have visited a Rogers site located in a suburb of Chicago. *Id.*, 92:1-8. Anderson was mistaken that it was a Rogers site he visited. It is possible he may have visited a Square D operation that utilized Rogers phenolic molding compounds or an entirely different company. Anderson spent 1985 through 2001 working for Square D’s main office in Illinois. *Id.*, 101. Anderson erroneously recalled that he first traveled to an Illinois Rogers’ location in 1983, after the exposure period at issue in this case, meeting with the president “Frank.” *Id.*, 159-160. Anderson’s recollection is necessarily inaccurate, as Rogers did not have an Illinois location until 1997. *See* Ex. 2, pgs. 5-6. Moreover, he associated Rogers primarily with a fiberglass material – not the product at issue in this case. *See* Ex. 4, 03/11/2014 Depo of R. Anderson, pg. 92. Rogers has no knowledge of nor record of any such facility in Illinois during the time frame of Anderson’s testimony. *See* Ex. 2. Of note, codefendant Plastics Engineering Co. (“Plenco”) started in Chicago, Illinois as American Molded Product Company, run by Frank Brotz and his sons, which more appropriately and accurately aligns with Anderson’s testimony. *See* <https://plenco.com/plenco-company-history.htm>. Given the totality of the evidence in this case, Anderson’s Chicago area meeting in the 1980s may have been with Plenco representatives. Regardless, it did not take place at a Rogers’ distribution facility as Rogers had no Illinois location prior to 1997. Accordingly, the testimony should be discarded by the Court in determining personal jurisdiction.

In continuing the closer look at the evidence presented by Plaintiff, the two documents submitted as Plaintiff's Group Exhibit H evidence that Rogers's business dealings with Square D concerned business outside of the state of Illinois. Taking the documents in chronological order, the document indicates that material was received in 1976 by Rogers Corporation – *which would be in Connecticut* – and inspected. It was then returned to stock – *which would be in Connecticut* – and flagged as permissible for use by Square D in Cedar Rapids, Iowa. *See* Plaintiff's Ex. G MSDS. The Ex. H document states that "Chicago Molded Products" (CMP) was the customer that returned the product; however, as Plaintiff's counsel is aware, CMP had locations outside of Illinois. Accordingly, Plaintiff's exhibits are devoid of any evidence that the product was returned to Rogers from an Illinois facility. On its face, the document is simply a document of a Chicago based company, unrelated to this case, indicating that Rogers' product was rejected. There is no evidence that the product passed through Chicago, was shipped to Square D in Iowa from Chicago, and was handled by or around Plaintiff.

The second document of 1977 evidences that Rogers' product remained undesirable for use by CMP. In meeting with CMP, Rogers' personnel also met with Square D as its facility was across the street from CMP. The implication of the memorandum is that the meeting occurred during a Rogers' visit – further evidencing that Rogers did not have an Illinois location but was simply calling on Illinois customers. Included among the discussion topics was that shipping was of such a length that there were issues with shrinkage, providing even more evidence that Rogers did not have a location in Illinois. As such, the documents disclosed by Plaintiff are misleading and irrelevant to establish personal jurisdiction.

## **II. Plaintiff's Complaint Fails to Sufficiently Plead Jurisdiction**

Plaintiff alleges that she worked in Iowa for Square D from 1972 to 2013 with exposure to Rogers Corporation's asbestos containing materials from 1972 to 1979. *See* Complaint, Count I, incorporating General allegations ¶ 4, ¶7, Count IV, ¶2, attached as Ex. 5. The Complaint is devoid of allegations connecting Rogers Corporation to Illinois. In fact, the only connection of this case to Illinois per the pleadings is through the defendant John Crane. *See Id.*, ¶2.

Where a plaintiff fails to allege that injuries occurred in the jurisdiction at issue and fails to allege that the injuries arose from conduct in that jurisdiction, she/he is not able to assert a claim of specific jurisdiction. *See In re:Asbestos Products Liability Litigation (No. VI) Cowart v. Various Defendants*, at Section 1, 2014 WL 5394310 (E.D. Pa. Oct. 23, 2014). On its face, this Complaint establishes no basis for this Court to have either specific or general jurisdiction over Rogers Corporation in regard to Plaintiff's alleged exposure to Rogers Corporation asbestos containing products during her employment at Square D in Iowa.

As the Illinois Supreme Court noted in *Simpkins v. CSX Transportation*, 965 N.E.2d 1092, 1098-9 (2012) defendants can only be held accountable for knowledge of risk during or prior to the plaintiff's years of potential exposure. In looking at personal jurisdiction, this Court should consider the relationship of Rogers to Illinois during the Plaintiff's years of alleged exposure. As outlined above, there is no such relationship. There is no showing of jurisdiction over Rogers Corporation in this case.

- a. **Plaintiff cannot establish a *prima facie* basis for specific jurisdiction over Rogers as Rogers did not purposefully direct activities to Illinois related to the injuries of Ms. Drew, a resident of Iowa who alleges exposure in Iowa.**

It is Plaintiff's burden to establish a *prima facie* basis for jurisdiction. *Bolger v. Nautica International, Inc.*, 369 Ill.App.3d 947, 949, 308 Ill.Dec. 335, 861 N.E.2d 666 (2007). Here, Plaintiff fails to meet, and cannot meet, this burden. For this Court to have specific jurisdiction over Rogers, Plaintiff must show that:

(1) the corporate, nonresident defendant must have minimum contacts with Illinois in that (a) it purposefully directed its activities at that state and (b) plaintiffs' claims arose from or related to those contacts with Illinois (see *Burger King Corp.*, 471 U.S. at 472 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984))); and (2) it must be reasonable for Illinois to exercise jurisdiction over the defendant. See *World-Wide Volkswagen Corp.*, 444 U.S. at 292 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)).

*Meyers v. Glaxosmithkline LLC*, 2016 Ill. App. (1<sup>st</sup>) 151909, ¶44. Thus, the contacts with Illinois must have occurred during the time period of the alleged exposure or they would have no nexus to this case. Plaintiff cannot meet the first component, leaving the second element moot and a finding of specific jurisdiction unreasonable.

Given the totality of the information in this case, it is evident that Plaintiff's claims do not arise from nor are they related to any Rogers contact with Illinois – even assuming *arguendo* that it had such contact. As set forth in Section I above, Plaintiff claims exposure from her work with Rogers asbestos-containing phenolic compounds between 1972-1979 in Iowa. There is no evidence that such compounds passed through or were otherwise associated with the state of Illinois. Any Rogers product used by Square D in Iowa was shipped from Rogers' Connecticut location. Moreover, during the years of exposure, Rogers had no location in Illinois, nor had it registered to do business in Illinois.

While “some single or occasional acts of the corporate agent in a state” may subject Rogers to suit in Illinois with respect to suits relating to that in-state activity, (*See International Shoe Co. v. Washington*, 326 US 310, 318 (1945)) the lawsuit in this case relates to out of state activity – that of the exposure of Ms. Drew to Rogers’ asbestos-containing materials that were shipped from Connecticut to Iowa and used at her place of employment in Iowa.

A flow of a product through a jurisdiction may support specific jurisdiction, but to do so there must be a connection of the injury to the merchandise. *See Goodyear Donlop Tires Operations v. Brown*, 131 S. Ct. 2846, 2852-53 (2011) (marketing arrangements are not adequate, *Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distributors Pty., Ltd.*, 647 F.2d 200, 203 n. 5 (C.A.D.C. 1981), *other citations omitted*). If this court is inclined to believe Plaintiff’s argument that Anderson visited a Rogers’ location in Illinois in the 1980s, such a visit is after the years of exposure and thus such a location is not related to the injury of Ms. Drew. Here there is no evidence that in the 1970s, Rogers’ products passed through Illinois before reaching Square D in Iowa. It is not reasonable for this Court to determine that there is specific jurisdiction over Rogers in this case.

**b. Plaintiff cannot establish a *prima facie* basis for general jurisdiction over Rogers as Rogers did not have and does not have continuous and systematic contact with the State of Illinois so as to render it at home.**

For the exceptional situation where a court would have general jurisdiction over an out of state company, a plaintiff must show that the company’s operations are “so substantial and of such a nature as to render the corporation at home in that State.” *Daimler AG v. Bauman*, 134 S.Ct. 746, 761 n.19 (2014), *McAlvey v. Atlast Copco Compressors, L.L.C.*, Case No. 14-cv-064 SMY-PMF (S.D. Ill. Jul. 1, 2015). Registration to conduct business within a state is not consent to personal jurisdiction. *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2<sup>nd</sup> Cir. 2016), *McAlvey*



*v. Atlast Copco Compressors, L.L.C.*, Case No. 14-cv-064 SMY-PMF (S.D. Ill. Jul. 1, 2015).

In *McAlvey*, Honeywell had registered to do business in Illinois, had a plant located in Illinois, but was not incorporated nor did it maintain its principal place of business in Illinois. The plaintiff alleged exposure to asbestos from Honeywell products. The court found that conducting business in Illinois and having a facility in Illinois did not establish an affiliation so as to render Honeywell at home in Illinois.

Here, although Rogers registered to do business in Illinois, it did not do so until 1996 and remains a foreign corporation. *See* Plaintiff's Ex. H. While it has one facility in Illinois, opened in 1997, that location is unrelated to the exposure and injury at issue. While it litigates asbestos personal injury cases before this court, the choice of where to file the matters rests upon the plaintiffs. As for where it has major business and manufacturing operations outside of Rogers, Connecticut (the town is named Rogers), Arizona is such a significant location that it plans to relocate to that state in the upcoming year. <https://www.rogerscorp.com/ir/news/7467/Rogers-Corporation-to-Relocate-Global-Headquarters-to-Arizona.aspx>

In this case, the conduct that allegedly caused Ms. Drew to develop mesothelioma occurred in the state of Iowa. In analyzing whether Rogers had such continuous and systematic contacts so as to render it at home in Illinois, one must conclude that it did not. As such, the Due Process Clause of the Fourteenth Amendment precludes the Illinois court from exercising jurisdiction over Rogers as such would be inconsistent with notions of fair play and substantial justice.

### **Conclusion**

Defendant requests that this Court find that Plaintiff has failed to establish Personal Jurisdiction over Rogers Corporation. In the alternative, Defendant seeks to file a permissive interlocutory appeal, pursuant to Illinois Supreme Court Rule 306(a)(3), and for any other relief this Court deems fit.

Respectfully Submitted,

SEGAL McCAMBRIDGE SINGER & MAHONEY, LTD.

By:           /s/ Catherine Goldhaber            
One of the Attorneys for Defendant  
**ROGERS CORPORATION**

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