

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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TURNER & NEWALL PLC, :
Plaintiff, : Civil Action
v. : No. 82-1339
: (Judge Flannery)
AMERICAN MUTUAL LIABILITY :
INSURANCE COMPANY, :
Defendant. :
----- x

STATEMENT OF POINTS AND AUTHORITIES
IN OPPOSITION TO DEFENDANT'S MOTION
PURSUANT TO 28 U.S.C. § 1404(a) TO
TRANSFER THIS CASE TO THE DISTRICT
COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

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Introduction

In this action plaintiff Turner and Newall PLC ("T&N") seeks a declaration that American Mutual Liability Insurance Company ("American Mutual") is the insurer of T&N with respect to all claims brought against T&N for the alleged torts of T&N's former subsidiary, Keasbey & Mattison Company ("Keasbey"). Keasbey was a named insured under policies of comprehensive general liability and products liability insurance issued by American Mutual from 1928 through at least 1965.

American Mutual has moved to transfer T&N's action, pursuant to 28 U.S.C. § 1404(a), to the Eastern District of Pennsylvania, on the grounds that Pennsylvania law may apply to the action, that some unspecified evidence might be found in Pennsylvania, and that some of the underlying cases against T&N were commenced in Pennsylvania.

The motion should be denied because American Mutual has failed to adduce any facts demonstrating that trial in this District would inconvenience parties or witnesses, or would disserve the interests of justice. Transfer would also deprive plaintiff of its choice of a convenient forum and allow defendant to escape precedent in this jurisdiction that it doubtless regards as unfavorable (if not fatal) to its case.

Background of the Parties and the Litigation

T&N is an English corporation which has neither offices nor operations in the United States. From 1934 until Keasbey's dissolution in 1967 T&N beneficially owned first a majority (until 1937) and then 100% of the stock of Keasbey. Until 1951, that stock was held by T&N directly; thereafter it was owned through a Canadian company, Turner & Newall (Overseas), whose sole function was to hold T&N's North American investments. In 1962, Keasbey's assets were sold; it ceased doing business and filed a certificate of dissolution which became effective in 1967. Affidavit of Philip L. Graham, Jr. ("Graham Aff.") ¶s 3-5.

T&N is and has been a defendant or third party defendant in over two thousand lawsuits brought by asbestos workers throughout the United States. Several hundred of those cases were brought on the theory that T&N is liable to plaintiff because it was a shareholder and alleged alter ego of Keasbey, and is therefore somehow responsible for injuries caused by exposure to Keasbey's asbestos products. Many of these complaints and third party complaints expressly allege such liability; others are broad, boilerplate pleadings - enabling the plaintiff or third party plaintiff to assert a Keasbey theory against T&N after the complaint has been filed. (Graham Aff. ¶s 6-7)

American Mutual is a substantial insurance company, incorporated in Massachusetts, with business in the District of Columbia, in every state and in Puerto Rico and Canada. Although it has no office in this District, American Mutual lists itself in the Washington, D.C. telephone directory as having an office in Towson, Maryland. (Graham Aff. ¶ 8)

Turner & Newall asserts that it is covered by the Keasbey policies on two principal grounds. First, the policies specifically state that they cover, among others, a shareholder of the named insured "acting within the scope of his duties as such." This broad language comprehends the kinds of liabilities asserted against T&N in the asbestos litigation. See Zavota Ocean Accident & Guaranty Corp., 408 F.2d 940, 942-43 (1st Cir. 1969); Sherman v. Ambassador Insurance Co., 670 F.2d 251, 257 (D.C. Cir. 1981). Second, when T&N is sued and is required to defend cases on the theory that it is the "alter ego" of Keasbey, it is in essence being treated (and may ultimately be held liable) as though it were Keasbey. In these circumstances it is entitled to the benefits of Keasbey's insurance coverage. See, e.g., Williams v. McAllister Brothers, 534 F.2d 19, 22 (2d Cir. 1976); Cruz v. Ortho Pharmaceutical Corp., 619 F.2d 902 (1st Cir. 1980).

SUMMARY OF ARGUMENT

Plaintiff is ordinarily entitled to choose the forum in which it will litigate its claims. Only if a defendant can clearly demonstrate that the factors set forth in 28 U.S.C. § 1404(a) -- convenience of parties, convenience of witnesses, and the interests of justice -- weigh heavily in favor of a transfer, should such a motion be granted. As will be shown, American Mutual has utterly failed to shoulder this substantial burden.

First, the facts demonstrate that the convenience of the parties will not be served by a transfer. American Mutual, a large corporation with an office in nearby Maryland and doing substantial business in this District, will not be materially inconvenienced by litigating in this forum. On the other hand, retention of the action in this forum will enable T&N to avoid the expense of retaining local counsel and will facilitate coordination of activity with its United States counsel, which has an office in Washington, D.C. containing word processing, telex and telecopier machines for easy communication to T&N directly and through counsel's London office. Such facilities are not readily available to T&N in Philadelphia.

Second, there is no evidence that the convenience of witnesses will be served by a transfer. American Mutual has

failed to name a single relevant witness located in Pennsylvania, and has not demonstrated that Washington is inconvenient to any witnesses at all. For the most part, moreover, this action involves issues of contract and statutory interpretation which are purely legal in nature. Among the few witnesses who may testify at trial would be officials of organizations responsible for drafting the "boiler plate" policy clauses at issue. Such witnesses are presumably scattered throughout the country. Owens-Illinois Inc. v. Aetna Casualty and Surety Co., Civil Action No. 82-89 (D.D.C. March 30, 1982) (Flannery, J.). In addition, witnesses from England will surely find Washington more convenient than Philadelphia for international travel.

Third, the interests of justice would not be served by a transfer. While American Mutual argues that this case involves issues of Pennsylvania law, it makes no showing that the principles governing these issues are unique to Pennsylvania, that such issues are difficult to resolve, or that Pennsylvania courts have any particular expertise in the areas involved in this litigation. Because federal courts routinely decide questions involving the laws of other states, this argument is entitled to little weight, particularly since the issues here are ones of a general legal nature and involve insurance contract clauses used nationwide.

American Mutual's unsupported assertion that Pennsylvania would be a significant source of evidence is also unpersuasive. To T&N's knowledge, no witnesses with information regarding Keasbey's policies reside in Pennsylvania and no relevant documents are located there. American Mutual's farfetched suggestion that to decide this action a court must hear testimony from injured plaintiffs or other witnesses in hundreds of cases throughout the country, does not constitute the necessary showing that the District of Columbia is an oppressive forum in which to litigate.

Finally, T&N respectfully submits that the decision of this Court in Owens-Illinois, Inc. v. Aetna Casualty and Surety Co., Civil Action No. 82-89 (D.D.C. March 30, 1982), wherein this Court rejected a motion to transfer a declaratory judgment brought by an asbestos company against an insurer, is fully applicable to this case and is strong precedent for retention of this action in this District.

ARGUMENT

- I. DEFENDANT HAS NOT SUSTAINED ITS HEAVY BURDEN OF PROVING THAT THE CONVENIENCE OF PARTIES AND WITNESSES AND THE INTERESTS OF JUSTICE WOULD BE SERVED BY A TRANSFER OF THIS ACTION TO THE EASTERN DISTRICT OF PENNSYLVANIA

Section 1404(a) empowers a district court to transfer a civil action to another district court "for the convenience of parties and witnesses [and] in the interests of

justice." If venue is proper in the transferor district, as it is in this action, the moving party has the burden of establishing that transfer to another forum is "justified by particular circumstances that render the transferor forum inappropriate by reference to the considerations specified in that statute." Starnes v. McGuire, 512 F.2d 918, 925 (D.C. Cir. 1974). See Securities and Exchange Commission v. Savoy Industries, 587 F.2d 1149, 1154 (D.C. Cir. 1978), cert. denied sub nom., Zimmerman v. Securities and Exchange Commission, 440 U.S. 913 (1979). Securities and Exchange Commission v. Hart, [1978] Fed. Sec. L. Rep. (CCH) ¶ 96,454, at p. 93,644 (D.D.C. 1978) (Flannery, J.). Consistent with this heavy burden on the moving party, a plaintiff's choice of forum is rarely to be disturbed. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947); United States v. Firestone Tire & Rubber Co., 455 F. Supp. 1072, 1078 (D.D.C. 1978); Aiken v. Lustine Chevrolet, Inc., 392 F. Supp. 883, 887 (D.D.C. 1975).

Each of the factors enumerated in Section 1404(a) will be discussed below.

A. Convenience of the Parties

1. American Mutual's Convenience

Defendant American Mutual is a huge corporation licensed to do business in the District of Columbia and deriving substantial revenue from that business. It received more than one billion dollars in "direct premiums" nationwide

during the period 1976 through 1981, more than \$3,000,000 of which is directly attributable to the District of Columbia. (Leslie Aff. ¶ 4) While American Mutual argues that it has not had an office actually in the District of Columbia since 1973 (id. ¶ 3), it fails to disclose that it does have an office in nearby Towson, Maryland, an hour or less from the courthouse. Indeed, that office advertises in the District of Columbia telephone book and has a "Washington Area" telephone number. (Graham Aff. ¶ 9) Should it be necessary for an employee or officer of American Mutual to testify at trial (a matter as to which there is substantial doubt given the documentary nature of the issues in this case), that person could as easily continue to carry out his duties from American Mutual's Maryland office as he could from American Mutual's Bryn Mawr office (located about 20 miles outside Philadelphia).

Far more important to consider than the relative distance to the courthouse from either Towson or Bryn Mawr, however, is the weakness of this entire line of argument. The mere fact that one or two witnesses may be required to be away from their offices for a day is hardly the kind of hardship that the statute and case law contemplate. This is not a case requiring extensive testimony from high level employees who cannot be separated even briefly from their duties. It will involve, at most, brief testimony about general company practices twenty and more years ago. Indeed,

in the absence of contrary evidence from American Mutual, there is no basis for believing that any potential witness is still an employee of American Mutual -- much less that he is one of such vital importance to the company that he cannot travel to Washington, D.C. for a day's testimony.

2. T&N's Convenience

T&N is a large English corporation which does not do business either in Pennsylvania or in Washington, D.C. It is, however, forced to defend asbestos lawsuits brought in both jurisdictions.* T&N's United States counsel in the asbestos litigation, and in this lawsuit, is Sullivan & Cromwell, which has an office in Washington, D.C. but no office in Pennsylvania. T&N thus avoids the expense of retaining local counsel by litigating this action here. Moreover, Sullivan & Cromwell's Washington office contains word processing, telex and telecopier machines compatible with those in the offices of T&N and Sullivan & Cromwell in England, and the staff in the office here is familiar with T&N through involvement in the asbestos litigation over a number of years. This will give T&N relatively prompt and convenient access to information and will allow

* American Mutual mistakenly asserts (Def. Mem. at 5) that no claim against T&N is pending in the District of Columbia. But see Catrett v. Johns-Manville Sales Corp., et al., Civil Action No. 80-2232 (D.D.C.).

easier transmission of documents, affidavits and other material than would be the case in Pennsylvania. (Graham Aff. ¶s 11-12)

Defendant's argument that because T&N is a foreign plaintiff, its choice of forum is to be treated less seriously than otherwise (Def. Mem. at 17), ignores the convenience to T&N of this forum and obscures the defendant's burden of showing clear hardship to itself or to its own witnesses. See, e.g., Securities and Exchange Commission v. Savoy Industries, 587 F.2d at 1155; Securities and Exchange Commission v. Hart, [1978] Fed. Sec. L. Rep. (CCH) at p. 93,645.

B. Convenience of the Witnesses

As shown in the Graham Affidavit, T&N is not aware of a single individual from the Philadelphia area likely to be called as a trial witness. The principal officers of Keasbey are long since gone and the relevant files are either in England with T&N or in Massachusetts with American Mutual. (Graham Aff. ¶s 13-14) There is no one whose convenience is served by litigation in Philadelphia.

As to witnesses unconnected to the parties, it should be noted that T&N's action involves, for the most part, issues of interpretation of standard insurance policy language. Such issues are essentially legal in nature; those factual inquiries that exist can largely be resolved through documentary evidence. The witnesses most likely

to be called to testify at trial on such issues would be "experts or officials of organizations responsible for drafting 'boilerplate' insurance language, who are presumably dispersed throughout the country." Owens-Illinois, Inc. v. Aetna Casualty and Surety Co., Civil Action No. 82-89 (D.D.C. March 30, 1982), Slip Op. at 1. The convenience of non-party witnesses in this setting is therefore of little significance to a transfer motion. Id.

American Mutual's only effort to demonstrate the supposed convenience of Philadelphia is its unsupported assertion that "it is fair to assume that potential witnesses ... will likely be found" in the Philadelphia area. (Def. Mem. at 18-19, emphasis added). Defendant apparently makes this assumption on the basis that Keasbey offices were located in Pennsylvania twenty years ago and the policies in question were apparently procured there. Plaintiff, however, is not aware of a single relevant Keasbey employee currently located in Pennsylvania (Graham Aff. ¶s 13-14, 16) and defendant has not identified either Keasbey or American Mutual witnesses located there, much less indicated what the testimony of any such witnesses might be.*

* American Mutual puts forward the name Patricia Light (Leslie Aff. ¶ 7), as though she had some knowledge of the matters here at issue. As set forth in the Graham Affidavit, however, representatives of American Mutual informed counsel for T&N that counsel should not have wasted its time writing to Ms. Light or the Bryn Mawr office of American Mutual because the matter was one that should have been raised with headquarters in Wakefield, Massachusetts. (Graham Aff. ¶ 14)

Even aside from the speculative nature of defendant's assumptions, the bald assertion that witnesses exist does not satisfy defendant's burden:

"If a party has merely made a general allegation that witnesses will be necessary, without identifying them and indicating what their testimony will be, the application for transfer will be denied."

15 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3851, at 271 (1976). Accord, Austin v. Johns-Manville Corp., 524 F. Supp. 1166, 1169 (E.D. Pa. 1981) (denial of motion to transfer because, inter alia, the movants "have not stated with specificity the witnesses who will be inconvenienced by a denial of their motions or other problems in the way of access to proof"); SEC v. Hart, [1978] Fed. Sec. L. Rep. (CCH) ¶ 96,454, at p. 93,645 (D.D.C. 1978) (motion to transfer denied because, inter alia, "defendant's description of his witnesses and their testimony is inadequate to sustain his burden concerning convenience to the parties and the witnesses").*

C. The Interests of Justice

Defendant contends that the interests of justice require transfer of this case to the Eastern District of_

* Defendant's suggestion (Def. Mem. at 19) that testimony is needed on the underlying facts of the asbestos cases against T&N, some of which are pending in Pennsylvania, is discussed at pages 19-20 infra under the heading "The Interests of Justice." Put simply, the possibility that live testimony will be necessary or useful on such issues is speculative, remote and, in any event, not specially linked to Philadelphia.

Pennsylvania because Pennsylvania law allegedly will control issues in this action and because Pennsylvania is purportedly a substantial source of proof of facts relevant to the litigation.

Defendant poses (Def. Mem. at 12) three issues allegedly dependent upon Pennsylvania law, and apparently suggests that this Court will have such difficulty dealing with them that a transfer to a federal court in Pennsylvania is required. (Def. Mem. at 11-13) However, "difficulties in construing foreign law are of themselves insufficient to warrant a transfer," Monsanto Co. v. United Gas Pipe Line Co., 360 F. Supp. 1054, 1056 (D.D.C. 1973), aff'd, 489 F.2d 1272 (D.C. Cir. 1974), and "[t]he necessity to apply foreign law is given little weight in reviewing the merits of a motion to transfer," Daily Express, Inc. v. Northern Neck Transfer Corp., 483 F. Supp. 916, 918 (M.D. Pa. 1979). Federal courts sitting in diversity cases routinely decide questions of foreign state law, and the courts in this Circuit have considered issues of Pennsylvania law, including insurance law, on numerous occasions. Among these cases is a leading asbestos insurance case.*

* E.g., Keene Corp. v. PMA, 1981 F&C Rptr. 712 (D.D.C. 1981), remanded, No. 81-1248 (D.C. Cir. Oct. 1, 1981), aff'd on remand, (D.D.C. Jan. 8, 1982), appeal docketed, No. 82-1131 (D.C. Cir.) (evaluating under Pennsylvania law burden on insured asbestos manufacturing company to

(Footnote continued on next page)

The first issue identified by American Mutual -- whether Pennsylvania law (Pa. Bus. Corp. L. § 2111) protects an insurance company from suit after the insured is dissolved -- has already been decided against the insurance company by the Pennsylvania Supreme Court. Westinghouse Electric Corp. v. C.J. Goodwin Corp., 432 Pa. 347, 247 A.2d 462, 464 (1968). Furthermore, the issue of survival of insurance coverage depends on a Pennsylvania statute that is based upon Section 105 of the Model Business Corporation Act, which has been adopted with only minor variations by many jurisdictions. See Model Business Corp. Act Annotated § 105, ¶¶ 2-3.03 (West 1971). What is more, the federal courts in the District of Columbia have already dealt with issues arising under Pennsylvania dissolution statutes. Sedgwick v. Beasley, 173 F.2d 918 (D.C. Cir. 1949).

The second alleged Pennsylvania law issue identified by American Mutual is the issue of proof of terms and
(Footnote continued)

prove terms of lost insurance policies); Sedgwick v. Beasley, 173 F.2d 918, 919 (D.C. Cir. 1949) (interpreting Pennsylvania statute concerning dissolution of insurance companies); Tobin v. Pennsylvania R. Co., 100 F.2d 435, 437 (D.C. Cir. 1938), cert. denied, 306 U.S. 640 (1939) (applying Pennsylvania law); Potomac Electric Power Co. v. Westinghouse Electric Corp., 385 F. Supp. 572, 575 (D.D.C. 1974), rev'd without opinion, 527 F.2d 853 (D.C. Cir. 1975) (discussing Pennsylvania law). See also Ocean Science and Engineering, Inc. v. International Geomarine Corp., 312 F. Supp. 825, 830 (D. Del. 1970) (holding that contract clause mandating application of California law did not warrant transfer of action to California).

conditions of lost or destroyed insurance policies. Such an issue is not one which necessitates inquiry by a Pennsylvania court; indeed, this Court has already had occasion to study this very issue under Pennsylvania law. Keene Corp. v. Pennsylvania Manufacturers Association, 1981 F&C Rptr. 712 (D.D.C. 1981), remanded, No. 81-1248 (D.C. Cir. Oct. 1, 1981), aff'd on remand, (D.D.C. Jan. 8, 1982), appeal docketed, No. 82-1131 (D.C. Cir.).*

The third assertion by American Mutual of a Pennsylvania law question misstates the true issue. American Mutual suggests that there is a question as to whether T&N may claim against American Mutual when "it is no longer possible to obtain a judgment against Keasbey. . . ." (Def. Mem. at 12). Whatever the purported significance of such an issue in a direct action by a Keasbey tort victim against the insurance company,** the question is irrelevant in this action because T&N here asserts that it is an insured entity, not a

* See also Insurance Company of North American v. Forty-Eight Insulations Inc., 451 F. Supp. 1230 (E.D. Mich. 1978), aff'd, 633 F.2d 1212 (6th Cir. 1980), mod. and aff'd, 657 F.2d 814 (1981), cert. denied, 50 U.S.L.W. 3461 (Dec. 8, 1981), in which the district court decided comparable issues of foreign state law. See 451 F. Supp. at 1237-38.

** But see Hodgins v. American Mutual Liability Insurance Company, 261 F. Supp. 129 (E.D. Pa. 1966) (permitting direct action under Pennsylvania law where insured is insolvent).

claimant against Keasbey. Accordingly, the issue, properly stated, is whether T&N is entitled to coverage under the Keasbey policies when it is sued by virtue of its status as a shareholder or alleged alter ego of Keasbey. This too involves an issue of interpretation of a standard policy clause used by American Mutual and other companies nationwide (the "shareholder-acting-as-such" clause). This clause has been addressed (with results favorable to T&N) by the Court of Appeals for this Circuit and for the First Circuit. Sherman v. Ambassador Insurance Co., 670 F.2d 251, 257-59 (D.C. Cir. 1981); Zavota v. Ocean Accident & Guarantee Corp., 408 F.2d 940, 942-43 (1st Cir. 1969). By contrast, no Pennsylvania court has, to T&N's knowledge, directly interpreted this standard language, a fact arguing against transfer to that district. See Owens-Illinois, Inc. v. Aetna Casualty and Surety Co., Slip. Op. at 2.

In sum, the heart of this action involves interpretation of standard insurance policy clauses in use across the country. The issue, moreover, is the applicability of that language to underlying cases pending nationwide. Such issues do not turn on principles specific to Pennsylvania, but upon "basic principles governing the interpretation of insurance policies." Keene Corp. v. Insurance Co. of North America, 667 F.2d 1034, 1041 at n.10 (D.C. Cir. 1981), cert. denied, 50 U.S.L.W. 3716 (Mar. 8, 1982); Owens-Illinois, Inc.

v. Aetna Casualty and Surety Co., Civil Action 82-89, Slip Op. at 2 (D.D.C. Mar. 30, 1982). The District of Columbia courts are quite familiar with these principles -- more so, in fact, than the Pennsylvania state and federal courts -- and it is therefore in the interests of justice that this action be decided here. See Austin v. Johns-Manville Corp., 524 F. Supp. at 1168.

In addition, it would disserve the interests of justice to transfer this action to a district court with a more congested docket than that of this Court. Relative docket congestion and potential speed of resolution are appropriate public interest factors to be considered on a motion to transfer. See, e.g., Securities and Exchange Commission v. Savoy Industries, 587 F.2d at 1156; Owens-Illinois, Inc. v. Aetna, Slip Op. at 2; Securities and Exchange Commission v. Hart, [1978] Fed. Sec. L. Rep. at p. 93,645. The median time for disposition of a civil case by trial in the Eastern District of Pennsylvania in the most recent period reported (twelve months ended June 30, 1981) was nine months, as compared to six months in the District of Columbia. Administrative Office of the United States Courts, 1981 Annual Report of the Director 386, Table C5.

Defendant's second argument in support of its claim that the interests of justice warrant a transfer of this case is "the likelihood that Pennsylvania will be a significant

source of proof" regarding issues in this litigation. (Def. Mem. at 14.) This claim is wholly unsupported and is without substance. The fact that Keasbey was located in Pennsylvania twenty years ago and that the subject insurance policies were apparently issued and delivered there is irrelevant to the question of whether Pennsylvania would today afford convenient access to proof regarding the terms and conditions of the insurance policies. The only relevant extant Keasbey documents of which we are aware are now located at T&N's offices in England. (See Graham Aff. ¶s 10c, 13) American Mutual has informed T&N that its only documents relating to the insurance coverage of Keasbey were moved some time ago to American Mutual's offices in Massachusetts. (Graham Aff. ¶ 14) To T&N's knowledge, no witnesses with information regarding Keasbey's policies reside in Pennsylvania (Graham Aff. ¶s 13-16), and American Mutual has identified none. Even assuming arguendo that some as yet unidentified witness or document is in Pennsylvania, that jurisdiction is only a few hours by train or car from the District of Columbia.*

* Defendant suggests (Def. Mem. at 14n*) that the court files of a twenty year old government antitrust case in Philadelphia may contain some relevant papers. If so, no subpoena power or pending proceeding is required to inspect those files. In fact, our own review of those documents (for defense of the asbestos cases) was commenced with a Freedom of Information Act inquiry in Washington. (Graham Aff. ¶ 15).

Defendant asserts that Pennsylvania is a significant source of proof because 136 of the 507 Keasbey-related asbestos complaints transmitted to American Mutual (as well as a number of settled suits) were brought in various Pennsylvania courts (Def. Mem. at 14). In fact, the principal, if not exclusive, sources of information about the nature of those plaintiffs' claims against T&N will be documentary. In the first instance, the pleadings often reveal whether Turner & Newall is sued because of the torts of Keasbey & Mattison or on some other basis. For example, in some cases, the caption shows that Turner & Newall is sued as the "former owner," "alter ego" or "successor" of Keasbey. Examples of such complaints are appended to the Graham Affidavit as Exhibits A, B and C. In other instances, the complaint itself will be ambiguous, and it is only subsequent assertions in plaintiffs' court papers that reveal the fact that T&N is sued on the basis of its connection with Keasbey. An example of such a subsequent court paper is attached as Exhibit E to the Graham Affidavit. (See Graham Aff. ¶ 7)

In the rare instances where statements of plaintiff rather than assertions of legal theories by plaintiff's counsel might be relevant, deposition transcripts would surely

provide the necessary information.* As national coordinating counsel for T&N, Sullivan & Cromwell is the principal repository of court papers from T&N's lawsuits around the country. Certainly moving this case to Philadelphia away from Sullivan & Cromwell's office will not advance the flow of information on this subject.

In short, most facts in the underlying asbestos suits are irrelevant to the rights and obligations created by the insurance policies issued by American Mutual to Keasbey.** It will be a rare occasion indeed when injured plaintiffs or their lawyers are required to testify on these insurance claims, and there is no basis for concluding that such a witness is significantly more likely to be in Philadelphia than in any other state in which claims are pending.

Finally, defendant charges that T&N chose this forum solely to take advantage of the decision in Keene Corp. v. Insurance Co. of North America, 667 F.2d 1034

* The Court of Appeals for this Circuit has specifically noted that depositions and affidavits are the preferable method for developing any necessary information not already in the record. * Keene Corp., 667 F.2d at 1052 n.41.

** Cf. Keene Corp. v. Insurance Co. of North America, 667 F.2d 1034, 1040 (D.C. Cir. 1981), cert. denied, 50 U.S.L.W. 3716 (Mar. 2, 1982) (declaratory judgment action by asbestos company against insurer held justiciable despite defendant's claim that the rights and obligations created by the policies could not be determined without consideration of the facts of each underlying tort suit).

(D.C. Cir. 1981), cert. denied, 50 U.S.L.W. 3716 (Mar. 2, 1982). (Def. Mem. at 15n.*)" In addition to being untrue, this allegation does nothing to satisfy American Mutual's burden of showing that the District of Columbia is significantly less convenient than the Eastern District of Pennsylvania. See Securities and Exchange Commission v. Savoy Industries, 587 F.2d at 1154. Indeed, defendant's failure to make any such showing strongly suggests that it is defendant who is shopping for a forum -- any forum other than the one in which Keene was decided.

In any event, a plaintiff is not prohibited from seeking a forum with favorable law as long as the chosen forum is not oppressively inconvenient to defendants. See Austin v. Johns-Manville Corp., 524 F. Supp. 1166, 1168 (E.D. Pa. 1981); Cheeseman v. Carey, 485 F. Supp. 203, 215 (S.D.N.Y.), remanded on other grounds, 623 F.2d 1387 (2d Cir. 1980). Indeed, the United States Supreme Court held in Van Dusen v. Barrack, 376 U.S. 612 (1964) that if a defendant's 1404(a) motion to transfer is granted, the law of the transferor court should apply. In doing so, the Court recognized that a plaintiff is entitled to choose a forum with favorable law and should not by virtue of a transfer motion lose any advantage gained from that choice. 376 U.S. at 635.*

* While Van Dusen addressed the issue in terms of state law under Erie R. Co. v. Tompkins, 304 U.S. 64 (1938), the Court's recognition that a plaintiff may choose a forum with favorable law and be protected in that choice is of broader application.

II. THIS COURT'S DECISION IN OWENS-ILLINOIS, INC. V. AETNA CASUALTY & SURETY CO. IS FULLY APPLICABLE TO THE FACTS OF THIS CASE

On March 30, 1982, this Court rejected a defendant's § 1404(a) motion to transfer a declaratory judgment brought by an asbestos company seeking a declaration of its rights to coverage in multi-state asbestos litigation under standard insurance policies issued by the defendant insurer. As demonstrated below, the reasons given by this Court in Owens-Illinois for refusing transfer are fully apposite to the facts of this case:

Reasons Given in Owens-Illinois for Refusing Transfer

"The litigants are two large corporations who conduct extensive business in the District; neither party will be materially inconvenienced if suit proceeds in this forum." Slip Op. at 1.

Facts of This Case

Both T&N and American Mutual are large corporations (see pp. 3, 7, 9 supra). American Mutual conducts extensive business in the District (pp. 3, 7-8 supra) and will not be materially inconvenienced if suit proceeds in this forum (pp. 7-9, supra). While it is true that no forum is entirely convenient for this foreign plaintiff, it is clear that defendant may not assert plaintiff's inconvenience as a reason for transfer. See, e.g., American Can Co. v. Crown Cork & Seal Co., 433 F. Supp. 333, 338 (E.D. Wis. 1977) (and cases cited therein). Moreover, this District is more convenient for plaintiff than the proposed transferee District. (See pp. 9-10, supra).

Reasons Given in Owens-
Illinois for Refusing
Transfer

"Further, defendant has not demonstrated that suit in the District will significantly inconvenience potential witnesses." Slip Op. at 1.

"It appears that many of the underlying issues are purely legal in nature and that the residual factual inquiries can be largely resolved through documentary evidence. In addition, many of those witnesses who may be called are experts or officials of organizations responsible for drafting 'boiler-plate' language who are presumably dispersed throughout the country." Slip Op. at 1.

"It does not at this stage appear that the legal issues presented would most effectively and efficiently be resolved by a court familiar with state law. Ohio has no cases bearing directly on the issues before the Court. Further, plaintiff has not demonstrated that Ohio insurance law deviates from general insurance jurisprudence in important respects or

Facts of This Case

American Mutual has totally failed to identify any witnesses located in Pennsylvania or elsewhere, let alone ones who would be significantly inconvenienced by trial in the District of Columbia. (See p. 10-12, 17-20, supra).

The heart of this case is the interpretation of standard policy clauses, such as the "bodily injury" clause at issue in Keene and "shareholder-acting-as-such" clause discussed in Sherman v. Ambassador Insurance Co., 670 F.2d 251, 255-59 (D.C. Cir. 1981). Thus trial witnesses, if any, would likely be those officials, of presumably diverse residence, responsible for the "boiler-plate" provisions at issue here. (See pp. 10-11, 16, supra).

Other than one case -- which squarely rebuts one of defendant's substantive arguments against liability (see p. 14, supra) -- Pennsylvania has no cases bearing directly on the issues in this action. In contrast, courts in this District are quite experienced in dealing with such questions (see pp. 14-17, supra). American Mutual fails even to suggest that Pennsylvania law deviates from general insurance jurisprudence or contains nuances unique to that jurisdiction.

Reasons Given in Owens-
Illinois for Refusing
Transfer

contains nuances unique to that jurisdiction". Slip Op. at 2 (citations omitted).

"Conversely, Keene Corp. v. Insurance Co. of North America, No. 81-1179 (D.C. Cir. October 1, 1981), cert. denied, 50 U.S.L.W. 3711-12 (March 8, 1982) strongly suggests that the issues before the court will not turn on legal principles to Ohio but, rather, the court will primarily be guided by 'basic principles governing the interpretation of insurance policies.' Id., slip op. at 10-11." Slip Op. at 2.

"In fact, the 'interests of justice' may suffer if the case is transferred. It is undisputed that the docket in the District of Columbia is less congested than that in the Northern District of Ohio and that there is only one active judge sitting on that court. Thus, the comparative speed of resolution of the dispute favors retaining the case in this jurisdiction." Slip Op. at 2.

Facts of This Case

Because the crucial issues in this case involve the interpretation of standard insurance policies, Keene's observation that such principles are not unique to the law of any particular state applies here. Even the issues raised by American Mutual concerning the effect of Pennsylvania's dissolution statute (Def. Mem. at 3, 12) are not legal principles specific to Pennsylvania, inasmuch as the dissolution statute is based on a section of the Model Corporation Law which has been adopted in a great many jurisdictions. (See p. 14, supra).

While there are numerous active judges sitting in the Eastern District of Pennsylvania, the docket in the District of Columbia is less congested than in the Eastern District of Pennsylvania. (See p. 17, supra).

Reasons Given in Owens-
Illinois for Refusing
Transfer

"Finally, because the case involves the relative responsibility of two interstate corporate entities for damage suits filed throughout the United States, it is inaccurate to characterize the dispute as an Ohio controversy. It is actually a dispute that spills over state boundaries in terms of interest and effect and, as such, it can just as appropriately proceed in the District of Columbia as in Ohio." Slip Op. at 3.

Facts of This Case

Like Owens-Illinois, this case is intended to resolve the issue of liability for hundreds of asbestos damage cases pending across the country. It is no more a Pennsylvania case than Owens-Illinois was an Ohio case.

CONCLUSION

For the foregoing reasons, American Mutual's motion pursuant to 28 U.S.C. § 1404(a) to transfer this action to the Eastern District of Pennsylvania should be denied.

Dated: July 19, 1982

Respectfully submitted,

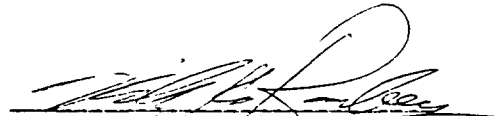

David Lesser

SULLIVAN & CROMWELL
1775 Pennsylvania Avenue
Washington, D.C. 20006
(202) 857-1000

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

AFFIDAVIT OF SERVICE

MARK F. ROSENBERG, being duly sworn, deposes and says that on July 19, 1982, I served a copy of Turner & Newall PLC's Statement of Points and Authorities In Opposition To Defendant's Motion Pursuant To 28 U.S.C. § 1404(a) To Transfer This Case To The District Court For The Eastern District of Pennsylvania and the Affidavit of Philip L. Graham, Jr., In Opposition to Defendant's Motion to Transfer, and Exhibits appended thereto, personally upon Siff & Newman P.C., Attorneys for Defendant American Mutual Liability Insurance Company, 233 Broadway, New York, New York 10279, and by United States mail upon Cole & Corette, Attorneys for Defendant American Mutual Liability Insurance Company, 1200 17th Street, N.W., Washington D.C. 20036.


MARK F. ROSENBERG

Sworn to before me this
19th day of July, 1982


Notary Public
SIDNEY KOENIG
NOTARY PUBLIC, State of New York
Residing in Bronx County
Bronx Co. Clk's No. 03-4640942
Certificate Filed in
New York Co. Clk's
Commission Expires March 30, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

- - - - - x
TURNER & NEWALL PLC, :
Plaintiff, : Civil Action
: No. 82-1339
: (Judge Flannery)
v. :
AMERICAN MUTUAL LIABILITY :
INSURANCE COMPANY, :
Defendant. :
- - - - - x

AFFIDAVIT OF PHILIP L. GRAHAM, JR. IN
OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Philip L. Graham, Jr., being duly sworn, deposes
and says:

1. I am a member of the Bar of the State of New
York and of the law firm of Sullivan & Cromwell, counsel for
plaintiff Turner & Newall PLC ("T&N"). I have been admitted
to practice before this Court with respect to the present
action.

2. Since 1977 I have been the lawyer at Sullivan
& Cromwell responsible for coordinating the defense of T&N
in all of the asbestos-related litigation brought against it
throughout the United States. As a result, I have personal

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knowledge of the cases that underlie the present insurance claims, of the location of documents and witnesses, and of numerous other aspects of the asbestos litigation. On that basis I set forth below some of the factual background upon which T&N relies in the memorandum being submitted to this Court in opposition to defendant's motion to transfer.

3. T&N is a large English corporation; however, it has no offices or operations in the United States. From 1934 until 1967 T&N owned stock in Keasbey & Mattison Company, a Pennsylvania corporation with factories in Pennsylvania, Missouri and California.

4. From 1934 until 1937 T&N owned a majority of the stock of Keasbey; from 1937 until the dissolution of Keasbey, T&N owned beneficially 100% of Keasbey's stock. During that period, T&N owned Keasbey's stock directly until 1951. Thereafter, the stock was owned through a Canadian company, Turner & Newall (Overseas). The sole function of Turner & Newall (Overseas) was to hold T&N's North American investments. At all times T&N owned 100% of the stock of Turner & Newall (Overseas).

5. In 1962 Keasbey's assets were sold to several operating companies in the United States unrelated to T&N. Keasbey thereupon ceased doing business and filed a certificate of dissolution. The dissolution became finally effective in 1967.

6. T&N has been sued in over two thousand cases brought by asbestos workers throughout the United States

against most of the asbestos industry. Several hundred of these cases were brought against T&N by plaintiffs and third party plaintiffs on the theory that T&N is liable to plaintiff because it was a shareholder and/or the alleged alter ego of Keasbey. Claimants in these cases take the position that T&N is responsible for injuries caused by exposure to asbestos products manufactured, sold or distributed by Keasbey.

7. Claims against T&N with respect to Keasbey take several forms. In most of the more recent cases, allegations regarding Keasbey are explicit. Attached as Exhibits A, B and C are examples of typical assertions of liability on account of the acts of Keasbey. Exhibit A alleges that T&N is the "former owner" of Keasbey, Exhibit B alleges that T&N is the "alter ego" of Keasbey, and Exhibit C alleges that T&N is the "successor" to Keasbey. Other complaints, such as Exhibit D, consist of boilerplate pleadings that do not on their face show a connection between the lawsuit against T&N and the connection between T&N and Keasbey. In such instances, subsequent court papers may reveal that plaintiff has asserted a claim against T&N on account of the torts of Keasbey. Attached as Exhibit E is an example of such an assertion, relating to the boilerplate complaint attached as Exhibit D.

8. American Mutual is a substantial insurance company that is incorporated in Massachusetts and does business in the District of Columbia, in every state and

in Puerto Rico and Canada. Attached as Exhibit F is a copy of the relevant portion of Moody's Bank and Finance Manual showing pertinent financial information about American Mutual as well as the fact that it operates throughout the country.

9. Although American Mutual has stated that it has no office in this District, it advertises in the yellow pages of the Washington, D.C. telephone directory and lists itself both in the yellow pages and white pages of this directory as having an office in Towson, Maryland with a "Washington Area" telephone number. Attached as Exhibit G is a copy of these telephone listings. I am informed that Towson, Maryland is an hour or less by car from the courthouse.

10. Prior to commencing this action T&N conducted an extensive investigation, including conversations with American Mutual, to determine the extent of coverage that Keasbey had under policies issued by defendant. Although the details of our case on the merits are not relevant to this motion, it may be useful to set out the basis on which we conclude that standard form insurance policies were issued to Keasbey over a period of many years.

a. Prior to the commencement of this litigation American Mutual was apparently sued by injured asbestos worker plaintiffs. In that series of actions, the first of which

is entitled Brandon, et ux. v. American Mutual Liability Insurance Company, et al., No.

1-387-80 (Circuit Court, Knox County, Tennessee), American Mutual admitted in its court papers that it was "the insurer of Keasbey & Mattison for a period from approximately 1946 through 1965. Coverage was written for products liability, comprehensive general liability and liability." American Mutual attached to its papers in that action standard form insurance policies that it said had been issued to Keasbey during the time period indicated.

b. American Mutual supplied to T&N index cards purportedly showing each policy issued by American Mutual to Keasbey along with the effective dates of those policies. It was from this set of cards that T&N compiled Exhibit A to plaintiff's complaint, which organizes all the policies listed by prefix and places them in chronological order.

c. For the later years, unequivocal business records of Keasbey & Mattison now in the possession of Turner & Newall in England reflect the existence of products liability coverage. An example of such records, showing products liability in the amount of \$250,000 per

person with an aggregate limit of \$500,000 under the policy is attached hereto as Exhibit H.

11. Sullivan & Cromwell has been nationwide coordinating counsel for T&N throughout T&N's involvement in the asbestos litigation. For a substantial portion of that period, lawyers responsible for T&N's defense were located in Sullivan & Cromwell's Washington office. Although those lawyers are no longer with the firm, the staff of our office in Washington is fully familiar with the litigation and the best means of communicating with Turner & Newall in England, both directly and by courier through Sullivan & Cromwell's London office. Teletype facilities in our offices allow easy direct connection with Turner & Newall's offices from our offices here. In addition, Sullivan & Cromwell has computerized typing facilities that permit briefs, affidavits and other documents typed in Washington to be typed automatically on compatible equipment in our London office. From there, transmission of physical documents to Turner & Newall's headquarters is quite simple. Rapifax communications are similarly available for transatlantic photocopying of relevant documents. A paralegal in our Washington office has been working on many aspects of the T&N asbestos cases for several years.

12. Sullivan & Cromwell has no office in Philadelphia and, although -- at a price -- facilities of the kind described above are probably available, the cost to T&N will undoubtedly be higher. This is a major consideration

given the ever-increasing cost of the asbestos litigation and the fact that T&N has incurred very substantial losses worldwide for several years.

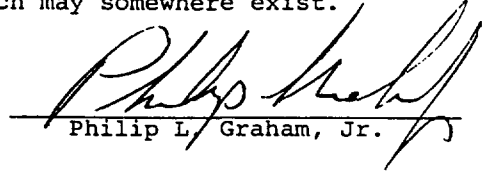
13. Defendant suggests that Philadelphia is a logical forum for this litigation because Keasbey & Mattison operated there. Our investigations have shown, however, that there is nothing to be gained by conducting this litigation in Philadelphia. Keasbey's assets were all sold in 1962 and were absorbed into ongoing businesses unrelated to T&N. None of the principal officers of Keasbey at the time of its dissolution remains in Philadelphia. The president of Keasbey, for example, moved to California, the next senior officer moved to Montreal and the corporate secretary moved to Baltimore. We are not aware of any Keasbey files located anywhere in Philadelphia. The only relevant extant Keasbey documents of which we are aware are now located at T&N's offices in England.

14. Several years ago we did write to one Patricia Light, at the Bryn Mawr office of American Mutual, seeking information about the whereabouts of Keasbey policies. Ms. Light did not supply any information and, in subsequent conversations with American Mutual's internal counsel and claims personnel, I was told that it had been foolish to write about such a matter to Ms. Light rather than addressing my questions to American Mutual at its corporate headquarters in Massachusetts. In the course of those same meetings I was also told by Mr. Lake, Assistant Vice President of American

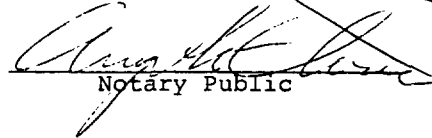
Mutual, and Mr. Brady, Assistant Vice President and General Counsel of American Mutual, that no pertinent documents were located in Philadelphia and that its only documents relating to insurance coverage of Keasbey were moved some time ago to American Mutual's offices in Massachusetts. Indeed, Lake produced from the Wakefield, Massachusetts files of American Mutual the index cards from which T&N compiled Exhibit A to plaintiff's complaint. Lake represented that the only other pertinent documents still in existence were copies of standard form policies in effect during the relevant time periods. He subsequently supplied me with copies of those policies from his office in Wakefield, Massachusetts.

15. Like American Mutual, we thought it possible that relevant documents would be found in the court files remaining from an antitrust action brought by the United States against Johns-Manville and Keasbey many years ago. We sought those files first by a Freedom of Information Act inquiry in Washington and subsequently by a supplementary search of files in the courthouse in Philadelphia. We found nothing of relevance to the insurance litigation, and doubt that American Mutual will fare any better. In any event, litigation need not be pending in Pennsylvania in order for American Mutual's New York counsel to visit the Philadelphia courthouse to make that inspection.

16. Despite months of investigation, we are not aware of a single witness likely to testify at trial who lives in Pennsylvania or of a single document likely to be offered in evidence that is located at present in Pennsylvania. Significantly, American Mutual names no such witness and identifies no such document despite its rank speculation that some such may somewhere exist.


Philip L. Graham, Jr.

Sworn to before me this
16th day of July, 1982


Notary Public

NOTARY PUBLIC
JUL 16 1982
16th day of July, 1982
Philadelphia, Pennsylvania

INSURANCE -- PHYSICAL ASSETS AND GENERAL

<u>Description</u>	<u>Coverage as of 3/31/61</u>	<u>Premiums Approx. Annual Per Current Data</u>	<u>Claims - Incurred Paid and Pending 4/1/60 - 3/31/61 (unless otherwise indicated)</u>
1. FIRE PROPERTY DAMAGE-All Plants <u>Covers:</u> Blanket Coverage-Bldg. and Contents-Fire, Lightning, Sprinkler Leakage, Extended Coverage, Riot and Civil Commotion and Vandalism, Earthquake Damage-Santa Clara Plant only- <u>Limit of Liability</u> 3,000,000 <u>Carrier:</u> Factory Insurance Association <u>Note:</u> Texas Plant Builders' Risk Policy cancelled 2/28/61 and coverage transferred to Blanket Policies	\$ 37,280,000	\$ 29,200	\$ 885
2. FIRE BUSINESS INTERRUPTION-All Plants <u>Covers:</u> Same perils as Fire Property Damage. Earthquake Damage-Santa Clara Plant only <u>Limit of Liability</u> 2,470,000 <u>Carrier:</u> Factory Insurance Association	7,020,700	5,880	0
3. FIRE PROPERTY DAMAGE-Contents Branch Offices <u>Covers:</u> Fire, Lightning, Extended Coverage, Sprinkler Leakage <u>Carrier:</u> Boston Insurance Co.	26,000	55	0
4. FIRE PROPERTY DAMAGE-Buildings New Orleans, La. Plant <u>Insures</u> American Marine Corp. with loss payable to K&M Co. <u>Covers:</u> Fire, Lightning, Extended Coverage <u>Carrier:</u> Fire Association of Philadelphia	252,000	6,050 (Paid by Tenant)	0
5. BOILER AND MACHINERY <u>Covers:</u> The Company is insured WOP & loss from an accident defined in the policy to an object insured while connected or in use for: 1. Loss on the Company's property 2. Expediting Expenses for temporary repairs not to exceed \$1000 3. Property Damage Liability for loss of property of others 4. Bodily Injury Liability 5. Business Interruption resulting from boilers and unfired pressure vessels <u>Limit of Loss per Accident</u> 24,000max. Daily Indemnity 3,600,000		5,250	13,250
Objects insured are: 1. Boilers 2. Unfired Pressure Vessels 3. Turbo-Generators of 1000 HP capacity or more			

<u>Description</u>	<u>Coverage as of 3/31/61</u>	<u>Premiums Approx. Annual Per Current Data</u>	<u>Claims - Incurred Paid and Funding 4/1/60 - 3/31/61 (unless otherwise indicated)</u>
9. AUTO INSURANCE (Cont'd)	\$	\$	\$
Bodily Injury Liability Limits per person	250,000		
Bodily Injury Liability Limits per accident	500,000		
Property Damage Liability Limits per accident	25,000		
Carrier: The Aetna Casualty and Surety Company			
10. COMPREHENSIVE GENERAL LIABILITY		4,908	2,795 (4/1/60 - 1/1/61)
Covers: The Company's legal liability for:			
1. Bodily injury, sickness or disease including death.			
2. Damages because of injury to or destruction of property including loss of use thereof.			
A. Hazards Covered are:			
1. Premises Operations			
2. Elevators			
3. Independent Contractors Operations			
4. Products			
5. Contractual			
6. Malpractice of Nurse			
7. Company Sponsored Athletic Games for Employees			
B. Limits of Liability			
1. Bodily Injury per person	250,000		
" " per accident	500,000		
aggregate products	500,000		
2. Property Damage per occurrence	50,000		
aggregate operations	300,000		
aggregate protective	300,000		
aggregate products	300,000		
aggregate contractual	500,000		
Carrier: American Mutual Liability Insurance Company			
11. NON-OWNED AIRCRAFT LIABILITY		1,400	0
Covers: The Company's legal liability for Bodily Injury and Property Damage to others resulting from the operation or use of a non-Owned aircraft having not more than 5 passenger seats. Limit of liability resulting from any and all occurrences or accidents	2,000,000		
Medical Payments-Maximum each passenger (not crew)	2,500		
Medical Payments-Maximum each accident	12,500		
Admitted Liability-Maximum each passenger	50,000		
Admitted Liability-Maximum each accident	250,000		
Carrier: Insurance Company of North America			
Operators of Company airplane carry liability insurance protecting their interest as well as I&M. Maximum single limit per accident	2,000,000		

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American Economic Association 1952-53 Year Book - 80

[illegible]

Insurance (Cont'd)



A guide grouped by types of insurance, appears immediately following these listings

STATE INSURANCE—Continued

NORTHERN VIRGINIA SALES OFFICES—Continued

Allstate Insurance Companies—Continued

Days West Springfield Center
6230-48 Palling Rd. — 569-9800
Springfield Mall —
6700 Lonsdale Rd. — 971-8830
Westridge-Dale City —
Center Plaza — 703 690-2266
4357 Dale Blvd. — 703 670-3143
Vienna —
302 Maple Ave. — 281-6650
Falls Church —
Lakeside Shopping Ctr.
2140-M Pimmit Dr. — 893-0440
Fairfax —
Fairfax Square
9800 Main St. — 991-6166
University Mall
10649 Braddock Rd. — 991-1650
8300 Arlington Blvd. — 698-8200

NORTHERN VIRGINIA SALES OFFICES—SEARS BLDG

Allstate Insurance Companies

Fairfax —
Fair Oaks Mall — 591-0350
12003 Lee Jackson Highway — 273-8030
Sterling —
Town Center Shopping Ctr. — 430-8222
Arlington —
1700 Wilson Blvd. — 527-2263
2800 Wilson Blvd. — 527-4900
Alexandria —
Landmark Shopping Ctr. — 354-9566
Landmark Shopping Ctr. — 354-2234
Manassas —
Manassas Shopping Center
VA. — 703 361-7131
Woodbridge —
Me Center Plaza VA. — 703 494-9008
WASHINGTON GROUP SALES OFFICE

Allstate Group Sales 1833 K St NW—822-8223

CLAIMS OFFICE

Allstate Insurance Companies
Virginia Claims
8300 Arlington Blvd. Fairfax — 498-4500
West DC - Southern Md Claims
8300 Arlington Blvd. Fairfax — 498-4600
Montgomery Co Md Claims
29 Fairfield Rd. Gaithersburg — 258-5700

Auto Insurance Companies
125 K St NW
OR INSURANCE AGENCY INC
135 Jefferson Davis Hwy. Arlington — 897-4800
101 17th St NW — 452-8900

AMALGAMATED CASUALTY INSURANCE CO—



- STOP-LOWER YOUR AUTOMOBILE INSURANCE COST
- DIAL FOR LOWER AUTOMOBILE RATES
- IMMEDIATE COVERAGE
- FINANCING AVAILABLE

"AUTHORIZED AGENTS"

CAPITOL HILL S.E.
CAPITOL HILL INSURANCE AGENCY
2001 PA AT SE — 547-2400

DOWNTOWN-N.W.

STONERIDGE AUTO INSURANCE
AGENCY INC 1000 11th St NW — 618-2047
UNIVERSAL INS AGENCY INC
1107 14th St NW — 332-7211

NORTHEAST

NATIONAL INSURANCE AGENCY INC
2012 P Street NE and NE — 226-5267

NORTHWEST

WISCONSIN INSURANCE AGENCY
100 64th St NW — 802-8171

"Continued"

AMALGAMATED CASUALTY INSURANCE CO—

Continued

SOUTHEAST
L & S INSURANCE AGENCY
3410 Denham Dr. Fairfax — 738-1050
STAPLETON INSURANCE AGENCY
6304 Old Branch Av
Camp Springs — 448-5805

Amalgamated Casualty Insurance Co
415 2nd Ave. — 547-8700

Amend Dallas H
1001 Broadleaf Rd. Springfield — 978-7788

AMERICAN AUTO INSURANCE AGENCY

403 N Glebe Rd. Arlington — 524-8500

AUTO-CYCLE

ALL DRIVERS

524-8500

403 N Glebe Rd. Arlington — 524-8500

AMERICAN CAPITAL LIFE INSURANCE CO

The Family Insurance Company

Home Office
1413 K St NW — 783-0136

American Capital Life Insurance Co
1735 1st St NW — 636-8404

American Centurian Ins Assoc Inc
412 H St NE — 544-3077

AMERICAN CITIZENS LIFE INSURANCE

CORP

A Local Company - Life - Endowment -
Health - Accident - Hospitalization
919 Shawan Dr — 726-6800

American Council Of Life Insurance
1839 K St NW — 862-4000

AMERICAN DEFENDER LIFE INSURANCE

CE-CEL ASSOCIATES INC

817 Silver Spring Ave. Silver Spring — 589-2626

AMERICAN FOREIGN INSURANCE ASSOCIATION

See AFIA

American Guarantee & Liability Insurance
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American Insurance Association
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American Insurance Association
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Company

American International Life
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American International Companies
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American Mutual Liability Insurance Co
7215-A York Rd
Towson — Washington/Tel No. — 621-4790

American National Insurance Company—
Combination District Office Life-Health—
N W Ouse Dist Mgr

121 N Wash Ave. — 548-1335

Ordinary Branch Office Life-Health—
John Campbell Const Agent
33 WICH CEN — 657-3226

American Road Insurance Co The
11620 Parkway Dr. Rockville — 668-5900

635 West Ave NW — 824-4827

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OR - 22

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PAYMENT • PAYMENTS

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699-8977

8200 OTIS ST.

MT. RAINIER, MD.

Corner Of Eastern & P. 1 Ave

(D.C. LINE)

Anderson Phillis S. Woodward Bg — 783-1540

Armstrong Lucille 1820 N St NW — 331-9200

Armstrong Lewis T 1820 N St NW — 331-9200

ANCHOR ASSOCIATES

3200 Old St. Mt Rainier

ANCHOR INSURANCE AGENCY

4747 Lee Hwy. Arlington — 524-5877

Anderson Norace W 7242 Wiscav Beth — 654-4753

ANCOVER COMPANIES

AGENTS

BERNARD MARCEL E

1109 Spring St SE — 568-7700

ANFALZ INSURANCE AGENCY

Northern Virginia - Complete Insurance
Services

7151 Maple Hill Annapolis — 841-4377

Arnell James L 4717 Chalk Dr. Beth — 624-6130

Arnell Ruelph CIO 1010 Canaan Hwy — 244-4300

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351 23rd St S Arlington — 243-6262

"Continued"

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621-4270

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AUSTIN THE W TED INS AGCY INC

452 W Broad FilCh — 333-1200

AYEMCO GROUP THE

AYEMCO Aircraft Investment Corporation

7315 Wisav Beth — 986-4700

AYEMCO Corporation 7315 Wisav Beth — 986-4700

Ayemco Insurance Brokerage Inc

All Forms Of Insurance

7315 Wisav Beth — 986-4700

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Next To Div. Of Motor Vehicles

(Continued Next Page)

FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

WILLIAM RALPH HOLTON and wife,
ONEDA ANN P. HOLTON,

Plaintiffs,

VS.

CIVIL ACTION
NO. 1-77-294

JOHNS-MANVILLE SALES CORPORATION,
ET AL,

Defendants.

PLAINTIFFS' BRIEF OF LAW IN SUPPORT
OF THEIR RESPONSE TO DEFENDANT'S, TURNER & NEWALL,
LIMITED, MOTION TO DISMISS

I. The Defendant, Turner & Newall, Limited, controlled and is therefore liable for the torts of its subsidiary, Keasbey and Mattison Company.

It is generally held that it is necessary that something more than ownership of virtually all of a subsidiary's stock by a parent corporation be shown prior to holding the parent liable for the torts of the subsidiary. Califf v. Coca-Cola Co. (D.C., Ill.) 326 F. Supp. 540; Lucas v. Mobile Oil Corp. (D. C., Tex) 331 F. Supp. 957.

The principle is also well-established that where a parent corporation not only owns all of the common stock of the subsidiary but there is also an identity of directors and other "enlacements and interweavings between the two companies" the parent should be held to answer for the torts of the subsidiary. Harolds v. Litton Industries, Inc., (D.C., Wisc.) 326 F. Supp. 965.

In the case of American Trading & Production Corp. Fischbach & Moore, Inc., (D.C., Ill.) 311 F. Supp. 412, the Court stated that there were three elements necessary to establish a parent company's liability for the torts of its subsidiary. These elements are as follows:

United States District Court

ENTERED

FOR THE

EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

CIVIL ACTION FILE NO. 1-77-294

WILLIAM RALPH HOLTON and wife, ONEDA ANN P.
HOLTON

Plaintiffs

vs.

JOHNS-MANVILLE SALES CORP., RAY-BESTOS-MANHATTAN, INC.,
THE CELOTEX CORP., ROCK WOOL MANUFACTURING CO., INC.,
FORTY EIGHT INSULATION, INC., EAGLE-PICHER IND., INC.,
ARMSTRONG CORK AND INS. CO., UNARCO INDUSTRIES, INC.,
KEENE CORP., PITTSBURG-CORNING, CORP., OWENS-CORNING
FIBERGLASS CORPORATION, FIBREBOARD CORP.,
ATLAS ASBESTOS CO., GAF CORPORATION, NICOLET
INDUSTRIES, SOUTHERN ASBESTOS COMPANY, HOLMES
INSULATIONS, LTD., OWENS-ILLINOIS CORP.,
TURNER-NEWALL, LTD., EMPIRE-ACE INSULATION
MANUFACTURING CORPORATION

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon

Paul T. Gillenwater
Gillenwater and Wheelchel

plaintiff's attorney , whose address

6401 Baum Drive
Knoxville, Tennessee 37894-7465

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

KARL D. SAULPAW, JR.

Clerk of Court.

Bertha Morgan
Deputy Clerk.

Date: November 21, 1977

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

11/21/77

EX-100

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF TENNESSEE, SOUTHERN DIVISION

WILLIAM RALPH HOLTON and wife,
ONEDA ANN P. HOLTON,

Plaintiffs,

vs.

NO. 1-77-294

JOHNS-MANVILLE SALES CORPORATION
successor by merger to Johns-Manville
Products, Inc., c/o 1614 Island Home
Pike, Knoxville, Knox County, Tennes-
see;

RAYBESTOS-MANHATTAN, INC.,
A New Jersey Corporation,
c/o C. T. Corporation System,
Statutory Agent
Union Commerce Building
Cleveland, Ohio 44115;

THE CELOTEX CORPORATION,
A Delaware Corporation,
c/o C. T. Corporation System
1412 Hamilton Bank Building
Knoxville, Tennessee;

ROCK WOOL MANUFACTURING COMPANY,
INC., An Alabama Corporation
Leeds, Alabama;

THE FLINTKOTE COMPANY,
A Massachusetts Corporation,
c/o C. T. Corporation System
Statutory Agent
Carew Tower
Cincinnati, Ohio;

FORTY-EIGHT INSULATION, INC.,
An Illinois Corporation,
Post Office Box 1148
Aurora, Illinois;

EAGLE-PICHER INDUSTRIES, INC.,
An Ohio Corporation,
580 Walnut Street
Cincinnati, Ohio 45201;

ARMSTRONG CORK AND INSULATING COMPANY

A Pennsylvania Corporation
c/o Attorney Robert R. Campbell
Hodges, Doughty & Carson
911 Hamilton Bank Building
Knoxville, Tennessee;

UNARCO INDUSTRIES, INC.,

An Illinois Corporation
c/o C. T. Corporation System
Statutory Agent
1412 Hamilton Bank Building
Knoxville, Tennessee;

KEENE CORPORATION

A Delaware Corporation
c/o Prentice-Hall Corporation
System
450 Maclellan Building
Chattanooga, Tennessee;

PITTSBURGH - CORNING CORPORATION

A Pennsylvania Corporation
One Gateway Center
Pittsburgh, Pennsylvania 15222;

OWENS-CORNING FIBERGLASS
CORPORATION

A Delaware Corporation
c/o C. T. Corporation System
Statutory Agent
1412 Hamilton National Bank Bldg.
Knoxville, Tennessee;

FIBREBOARD CORPORATION,

A Delaware Corporation
c/o C. T. Corporation System
Statutory Agent
1412 Hamilton Bank Building
Knoxville, Tennessee;

ATLAS ASBESTOS COMPANY

A Canadian Corporation
5600 Hochelaga Street
Montreal, Canada;

CAF CORPORATION,

A Delaware Corporation,
c/o Hugh J. Moore, Esq.
Attorney at Law
1100 American National Bank Bldg.
Chattanooga, Tennessee;

NICOLET INDUSTRIES, successor by
merger to Keasbey & Mattison Company

A Pennsylvania Corporation
25 Skippack Pike
Broad Axe, Pennsylvania 19002

SOUTHERN ASEESTOS COMPANY,
Thermoid Division,
Subsidiary of H. K. Porter
Company, Inc.
Seaboard Street,
Charlotte, North Carolina 28206;

HOLMES INSULATIONS, LTD.,
Subsidiary of Babcock & Wilcox,
561 Scott Road
Post Office Box 2079,
Sarnia, Ontario, Canada N7T7L4;

OWENS-ILLINOIS CORPORATION,
An Illinois Corporation,
c/o C. T. Corporation System,
Statutory Agent,
1412 United American Bank Bldg.,
Knoxville, Tennessee;

TURNER-NEWALL, LTD.,
A foreign corporation, upon whom
service of process may be had
through the Secretary of State
at their registered address at
77 Fountain Street,
Manchester, M22EA, England;

EMPIRE-ACE INSULATION
MANUFACTURING CORPORATION,
A foreign corporation,
1 Cozine Avenue
Brooklyn, New York 11207;

Defendants.

C O M P L A I N T

Come the plaintiffs, residents of the State of Tennessee,
and sue the defendants, and each of them, for damages both compen-
satory and punitive and for cause of action say:

I

Defendants are all corporations incorporated under the
laws of the various States of the United States, as well as
Canada and England, as indicated for each corporation in the
caption hereof and all of whom may be served as indicated in the
caption hereof or under and by virtue of the Laws of the State of

Tennessee, either through their authorized agent, servant, and/or employee for service as indicated in the caption hereof, or through the Secretary of the State of Tennessee.

II

That defendants, and each of them, in the past have been engaged in the manufacture, sale and/or distribution of asbestos and asbestos-containing materials.

III

That the male plaintiff has from 1942 been an asbestos insulation applicator who during the course of his employment used and installed asbestos-containing thermal insulation products manufactured, distributed and/or sold by the defendants. That these products were used by the male plaintiff in the manner and for the purposes for which they were intended. That these products, at the time male plaintiff used them, were in the same condition as when they left defendants' control and possession.

IV

That when used by the male plaintiff, and manufactured, distributed and/or sold as aforesaid by the defendants, said asbestos-containing thermal insulation products were in a defective and unreasonably dangerous condition in that they were in a condition not contemplated by the male plaintiff as a foreseeable user.

V

That as a direct result of the defective and unreasonably dangerous condition of the products sold or distributed by the defendant, male plaintiff inhaled asbestos fibers in the dust emitted by the normal use of said products, proximately causing him to develop the disease of asbestosis and/or its related maladies. That male plaintiff has suffered and will continue to suffer pain, mental anguish and his life expectancy has been shortened. Further, his injuries are permanent in nature and he has incurred medical expenses and will continue to incur medical

expenses in the future in an effort to medically control and monitor his disease or diseases. Male plaintiff further alleges that he has been caused to lose wages to date and that his ability to earn an income has been greatly impaired.

VI

That the plaintiff, Oneda Ann P. Holton, is, and was, the lawfully wedded wife of the male plaintiff and as a result of his contracting the aforesaid disease or diseases, she has been deprived of her husband's services and consortium and, therefore, she has been damaged.

VII

Plaintiffs allege that the defective and unreasonably dangerous condition of the asbestos-containing thermal insulation products manufactured, sold, and/or distributed by the defendant were the direct and proximate cause of their injuries, losses and damages and that plaintiffs were without fault in the premises.

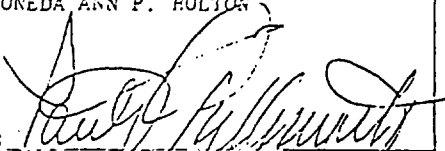
VIII

Plaintiff learned of his disease as stated on December 6, 1976.

WHEREFORE, male plaintiff sues the defendant for compensatory damages in the amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 (\$1,500,000.00) DOLLARS and female plaintiff sues the defendant for compensatory damages in the amount of FIVE HUNDRED THOUSAND AND NO/100 (\$500,000.00) DOLLARS; and both plaintiffs sue the defendant, for punitive damages in the amount of THREE MILLION AND NO/100 (\$3,000,000.00) DOLLARS and costs and demand a jury to try this cause.

WILLIAM RALPH HOLTON and wife,
ONEDA ANN P. HOLTON

I certify this is a true and
correct copy of the foregoing
filed in 1976 May 27
JSH

BY: 
GILDENWATER AND BELCHER
ATTORNEYS FOR PLAINTIFFS
6401 EAM DRIVE
KNOXVILLE, TENNESSEE 37919

United States District Court

FOR THE

EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

RECEIVED
HARGRAVE
12 4 DEC 1981

CIVIL ACTION FILE NO. B-81-808-CA

RODNEY J. HARGRAVE,

Plaintiff

v.

FIBREBOARD, INC., ET AL,

Defendant and Third-Party Plaintiff

v.

TURNER & NEWALL, LTD.,

Third-Party Defendant

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon Alvin E. Wiggins,

plaintiff's attorney, whose address is Young & Morrow
520 South Twin City Hwy.
Nederland, TX 77627

and upon Jack E. Urquhart, Holtzman & Urquhart,

who is attorney for the above-named defendant and third-party plaintiff, and whose address is
Five Greenway Plaza, Conoco Tower, Suite 600, Houston, TX 77046,

an answer to the third-party complaint which is herewith served upon you within 30 days after the
service of this summons upon you exclusive of the day of service. If you fail to do so, judgment
default will be taken against you for the relief demanded in the third-party complaint. There is a
served upon you herewith a copy of the complaint of the plaintiff which you may but are not required
to answer.

MURRAY L. HARRIS

Clerk of the Court

By *[Signature]* Deputy Clerk

Dated: 12-7-81

[Seal of Court]

Note.—This summons is issued pursuant to Rule 14 of the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILE
U. S. DISTRICT
EASTERN DISTRICT

DEC-4

MURRAY L. MA
BY DEPUTY C. ZUN

RODNEY J. HARGRAVE

VS.

FIBREBOARD, INC., ET AL

\$
\$
\$
\$
\$

CIVIL ACTION NO. B-81-

THIRD-PARTY COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NICOLET, INC. ("Nicolet"), Defendant in the above-entitled and numbered cause files this Third-Party Complaint complaining of Turner & Newall, Ltd., (T & N), as follows:

I.

Nicolet is a New York Corporation with its principal place of business in Pennsylvania. Turner & Newall, Ltd. is a public corporation organized under the laws of the United Kingdom. T & N may be served by forwarding summons to the Senior Master of the Supreme Court, Royal Courts of Justice, Strand, London, W.C.2, for service on Patrick Waldron Cobham Griffith, Chairman, Turner & Newall, Ltd., at its registered office St. Mary's Parsonage, Manchester, M3 2NL, pursuant to the provisions of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. T & N has done business in Texas giving rise to this cause of action as more fully set forth in the following paragraph. Jurisdiction of this cause is based upon diversity of citizenship and amount in controversy in excess of \$10,000, exclusive of costs.

II.

This is a complaint by Nicolet seeking a declaratory judgment, in a case of actual controversy pursuant to 28 USC §2201, that T & N is the successor in interest to Keasbey and Mattison Company (K-M) and that T & N is liable for injury caused

by Plaintiff's alleged exposure to insulation products manufactured by K-M. Nicolet also seeks indemnity and contribution from T & N in the event a judgment is entered against it.

III.

Plaintiff has sued Nicolet for damages which he alleges to have sustained as a result of exposure to asbestos containing insulation products manufactured and distributed by Nicolet and other defendants. Nicolet specifically denies these allegations. Plaintiff further alleges or will allege that he was exposed to asbestos containing insulation products manufactured by K-M, and he alleges that Nicolet is the successor in interest to K-M and liable for injuries caused by exposure to products manufactured by K-M. Nicolet denies each of these allegations, contained in Plaintiff's Original Complaint, a copy of which is attached to this Third Party Complaint and incorporated by reference.

IV.

Prior to its dissolution, K-M was a wholly owned subsidiary of T & N. The profits from sales of asbestos insulation products sold by K-M accrued to T & N. T & N operated Keasbey-Mattison as an internal division rather than as a separate corporation, ignoring the separate existence of K-M. T & N, or its wholly owned subsidiaries, supplied all of the asbestos used in the manufacture of K-M products prior to September 1962. T & N ultimately received the cash paid by Nicolet for certain assets owned by K-M prior to its dissolution.

V.

Nicolet has been required and will continue to be required to pay judgments and contribute to settlements where Plaintiffs have not been exposed to Nicolet products, but only K-M products. Consequently, Nicolet seeks a judgment declaring that T & N is the successor in interest to Keasbey-Mattison or, alternatively, that Keasbey-Mattison was the alter ego of Turner & Newall, Ltd, and thus liable for injury caused by K-M products.

VI.

Alternatively, if judgment is entered against Nicolet based on Plaintiff's alleged exposure to products manufactured by Keasbey-Mattison, Nicolet is entitled to indemnity from Turner & Newall, Ltd. for the full amount of such judgment because T & N supplied the asbestos fiber used in the manufacture of K-M insulation products.

VII.

Further, if Nicolet is liable to Plaintiff under the allegations contained in his Original Complaint, Turner & Newall, Ltd. would also be liable and is thus a joint tort-feasor, and Nicolet is entitled to contribution for the reasons set forth in the preceding paragraph.

WHEREFORE, Nicolet prays that citation issue requiring Turner & Newall, Ltd. to appear and answer and that the Court declare that Turner & Newall, Ltd. is the successor in interest to Keasbey and Mattison and liable for harm caused by its insulation products or alternatively, that Keasbey and Mattison was the alter ego of Turner and Newall, Ltd. or alternatively, that Nicolet be indemnified by Turner & Newall, Ltd. in the event a judgment is entered against Nicolet, or that Turner & Newall, Ltd. be required to contribute under the laws of the State of Texas if any judgment is entered against Nicolet and that Nicolet have its costs, and for such other and further relief as to which it may be entitled.

HOLTZMAN & URQUHART

BY: 
JACK E. URQUHART
TBA No. 20415600
JAMES H. POWERS
TBA No. 16217400
Five Greenway Plaza
Conoco Tower - Suite 600
Houston, Texas 77046
Telephone: (713) 850-0511

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing
Third-Party Complaint was sent to all counsel of record on this
2nd day of December, 1981, by certified mail, return
receipt requested.



JACK E. URQUHART
JAMES H. POWERS

ENTERED

MORLEY, CRAMER, TANSEY, HAGGERTY & FANNING, ESQS.
135 Green Street
Woodbridge, New Jersey 07095
Tel. (201) 634-7880
Attorneys for Defendant, NICOLET, INC.

SOPHIE VILOIS, as Executrix of
the Estate of Joseph M. Vilois,
deceased, and individually,

Plaintiff,

-vs-

JOHNS-MANVILLE CORPORATION;
JOHNS-MANVILLE PRODUCTS CORPORA-
TION; JOHNS-MANVILLE SALES
CORPORATION; ARMSTRONG-CORK
COMPANY, also known as ARMSTRONG
WORLD INDUSTRIES, INC.; THE
RUBEROID COMPANY; GAF CORPORATION;
PABCO, also known as FIBREBOARD
CORPORATION; NICOLET, INC.;
OWENS-CORNING FIBERGLAS CORP.;
UNARCO INDUSTRIES, INC.;
RAYBESTOS-MANHATTAN, INC.;
STANDARD ASBESTOS MANUFACTURING
AND INSULATING CO.; KEASBY-
MATTISON; NICOLET, INC., a
successor to KEASBY-MATTISON;
CLIFFORD SHECKLER; JOHN DOE 1
through JOHN DOE 30,

Defendants.

and

NICOLET, INC.

Defendant/
Third-Party Plaintiff,

-vs-

TURNER & NEWALL, LTD.,

Third-Party Defendant.

:
:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
: UNION COUNTY
:
: DOCKET NO. L-53715-80

Civil Action
THIRD-PARTY COMPLAINT

Defendant/Third-Party Plaintiff, NICOLET INC., by Third-Party Complaint against Third-Party Defendant, TURNER NEWALL, LTD., says:

FIRST COUNT

1. Defendant/Third-Party Plaintiff, Nicolet Inc., a defendant in a case entitled Sophie Vilois, etc. -vs- John Manville Corporation, et al filed in the Superior Court of New Jersey, Union County on June 1, 1981. Copy of said Complaint, Amendment to Complaint and More Definite Statement to the Complaint is annexed herewith and made a part hereof.

2. Plaintiff alleges that Nicolet Inc. is liable to her, inter alia, by virtue of its being a successor corporation to Keasby-Mattison Corporation. Keasby-Mattison Corporation at all relevant times, a wholly owned subsidiary of Turner Newall, Ltd. and was operated as a mere instrumentality, agent or department of that corporation.

3. Turner & Newall, Ltd., at all relevant times, the alter ego of Keasby-Mattison and, therefore, chargeable with its torts.

WHEREFORE, Defendant/Third-Party Plaintiff, Nicolet Inc. is entitled to common law indemnification for any liability which it may be assessed based upon alleged successor liability including all costs and counsel fees.

SECOND COUNT

1. Defendant/Third-Party Plaintiff, Nicolet Inc. herein repeats the allegations of the First Count as if fully set forth at length herein.

1982 FEB 23 11:21 AM

Alice Mary Garfield and
Philip James Garfield,

Plaintiffs,

vs.

Fibreboard Corporation
(formerly Pabco); GAF
Corporation (formerly
Ruberoid Corp.); Johns-Manville
Sales Corporation; MacArthur
Corporation, a Minnesota
corporation; Nicolet Industries,
Inc. (successor-in-interest to
Sall Mountain Company and to
Keasbey Mattison Company);
Owens-Corning Fiberglas Corpora-
tion, a Delaware corporation;
and Turner and Newall Limited
(former owner of Keasbey and
Mattison Company),

Defendants.

ENTERED

THO/Ash,
Garfield et al.
88270 pgs

SUMMONS

FILE 788270
10P.L.C. - 5 .00
1PLTF \$ 20.00
1LAWL \$ 7.00
TOTAL \$ 27.00
CASH \$ 27.00

RECORDED SE#000101
HENNEPIN COUNTY
DISTRICT COURT
2/23/82

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon
plaintiffs attorneys an Answer to the Complaint which is
herewith served upon you within twenty (20) days after
service of this Summons upon you, exclusive of the day of
service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the Complaint.

SCHWEBEL, GOETZ, SIEBEN & HANSON, P.A.

By:

John C. Goetz
4924 IDS Center
Minneapolis, Minnesota 55402
(612) 333-8361

ATTORNEYS FOR PLAINTIFFS

1982 JUL 20 AM 2 30

Alice Mary Garfield and
Philip James Garfield,

COURT ADMINISTRATOR

ENTERED

Plaintiffs,

COMPLAINT

#

788270

vs.

Fibreboard Corporation
(formerly Pabco); GAF
Corporation (formerly
Rubercoid Corp.); Johns-Manville
Sales Corporation; MacArthur
Corporation, a Minnesota
corporation; Nicolet Industries,
Inc. (successor-in-interest to
Sall Mountain Company and to
Keasbey and Mattison Company);
Owens-Corning Fiberglas Corpora-
tion, a Delaware corporation;
and Turner and Newall Limited
(former owner of Keasbey and
Mattison Company),

Defendants.

Plaintiffs for their Complaint herein, state and allege
as follows:

I. PARTIES

Plaintiffs are residents of the State of Minnesota.
Defendants (which shall be understood to include all entities
identified in parentheses in the titles above) are or were
manufacturers of thermal insulation products containing
asbestos.

II. CAUSES OF ACTION

Plaintiffs allege causes of action in negligence, strict
liability for manufacture and sale of defective products, and
breach of express and implied warranties of merchantability
and fitness for intended purposes.

III. FACTS

1. At all times relevant to this action, the defendants
were engaged in the manufacture and sale of insulation products
containing dangerous amounts of asbestos.

2. Plaintiff Alice Mary Garfield is the wife of
plaintiff Philip James Garfield, a member of Local 34 of the
International Association of Heat and Frost Insulators and
Asbestos Workers, AFL-CIO. In his work as an insulator

J. Garfield was reportedly exposed to thermal insulation products manufactured by defendants which, although properly used by plaintiff Philip J. Garfield, produced dangerous concentrations of asbestos fibers in the air in the areas where he worked. These fibers accumulated on his clothes and body, and were transported to his home, where they were inhaled by plaintiff Alice Mary Garfield. As a result of that exposure to asbestos fibers, plaintiff Alice Mary Garfield has contracted severe lung disease.

3. As a result of this disease, plaintiff Alice Mary Garfield has suffered damages in the following respects. She has undergone, and will in the future undergo, great pain and suffering. Her life expectancy has been severely shortened. She has incurred, and will in the future incur, substantial medical expenses for the treatment of her condition. Damages total an amount greater than Fifty Thousand (\$50,000.00) Dollars.

4. Plaintiff Philip James Garfield has incurred separate damages for loss of the full services, society, and companionship of his wife, Alice Mary Garfield. His damages also exceed Fifty Thousand (\$50,000.00) Dollars.

5. Defendants caused plaintiffs' injuries and damages as stated above by their negligence in manufacturing and selling asbestos products which they had reason to know would endanger the health and life of plaintiffs Alice Mary Garfield and Philip James Garfield, without warning them at the time of sale, or subsequently, of the danger to their health and life from those products. Defendants were further negligent in failing to adequately test their insulation products to determine the hazards to users of those products and to others exposed to dust from those products. Defendants were further negligent in marketing insulation products containing dangerous amounts of asbestos when, by the exercise of reasonable care, defendants

not containing asbestos. For this negligence, defendants are liable to plaintiffs for their damages.

6. Defendants caused plaintiffs' injuries and damages as stated above by manufacturing and selling asbestos insulation products which were defective in that they were sold without warning of the dangers they posed to the health and life of plaintiffs and without instructions as to safe use, and which were further defective in that they were not adequately tested by defendants, and which were further defective in that, regardless of whether they were marketed with appropriate warnings, they were unreasonably dangerous to the user and should have been withdrawn from the market and replaced by safer products not containing asbestos.

7. Defendants caused plaintiffs' injuries and damages as stated above by manufacturing and selling asbestos insulation products which failed to meet express and implied warranties of merchantability and fitness for intended purposes upon which plaintiffs Alice Mary Garfield and Philip James Garfield had a right to rely, and did rely. For breach of these warranties, defendants are liable to plaintiffs for their damages.

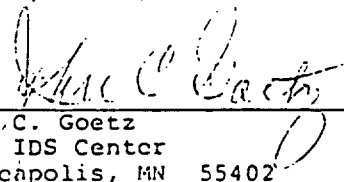
8. Defendants intentionally concealed the dangerous nature of their asbestos insulation products from plaintiffs and the public in general in order to increase their own profits, and thus recklessly and heedlessly caused plaintiffs' injuries and damages as stated above. For this intentional and reckless wrongdoing, defendants should be subjected to punitive damages as an example to others who might be tempted to engaged in similar misconduct.

WHEREFORE, plaintiffs demand relief as follows:

1. Compensatory damages for plaintiff Alice Mary Garfield in an amount greater than \$50,000.00;
2. Compensatory damages for plaintiff Philip James Garfield in an amount greater than \$50,000.00;
3. Punitive damages in an amount greater than \$50,000.00; and

SCHWEBEL, GOETZ, SIEBEN & HANSON, P.A.

By


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CO-COUNSEL FOR PLAINTIFFS

Dated: February 22, 1982

680270

STATE OF MINNESOTA)
) ss
 COUNTY OF HENNEPIN)

Connie Mae Skarp, being first duly sworn upon
 deposes and states that on the 24th day of February,
 1982, she served the attached Summons and Complaint upon
 defendant(s) below named, personally, by leaving with their
 registered agent for service of process, C. T. Corporation,
 10th Floor, Midland Bank Building, Minneapolis, Minnesota,
 Hennepin County, by handing to and leaving with _____

Millic Knutson, true and correct copies thereof:

GAF Corporation (formerly Ruberoid Corp.)

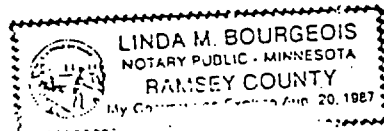
Johns-Manville Sales Corporation;

Owens-Corning Fiberglas Corporation, a
 Delaware corporation

Subscribed and sworn to before me
 this 24th day of February, 1982

Linda M. Bourgeois
 Notary Public

Connie Mae Skarp



[REDACTED]