

Pen 407 / Plaintiff
2/12/90

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF GENERAL SERVICES,

Plaintiff

v.

UNITED STATES MINERAL PRODUCTS
COMPANY,

Defendant

NO. 284 M.D. 1990

N O T I C E

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICES SET FORTH BELOW TO FIND OUT WHETHER YOU CAN GET LEGAL HELP.

Central Pennsylvania Legal Services, Inc.
213 North Front Street
Harrisburg, PA 17101
(717) 232-0581

Public Services and Lawyers Referral Committee,
Dauphin County Bar Association
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF GENERAL SERVICES, :
 :
Plaintiff :
 :
v. : NO. _____ M.D. 1990
 :
UNITED STATES MINERAL PRODUCTS :
COMPANY, :
 :
Defendant :

COMPLAINT

PRELIMINARY STATEMENT

1. This is an action for compensatory damages and other relief brought by the Commonwealth of Pennsylvania, Department of General Services (hereinafter DGS), stemming from the asbestos fiber contamination of the Transportation and Safety Building located in the Capitol Complex in Harrisburg, Pennsylvania.

2. DGS's damages include, but are not limited to, the costs of surveying the Transportation and Safety Building to determine where spray applied asbestos is present; all costs of permanently abating the hazards caused by the existence in the building of spray applied asbestos containing products manufactured by the defendant; replacement of these products with non-asbestos containing products; the provision of substitute office space during abatement; and all other costs incurred or to be incurred by DGS as a result of the contamination caused by defendant.

3. DGS further seeks punitive damages from the defendant in an amount which is just and fair under the circumstances. The demand for punitive damages is based on the wanton and willful actions of the defendant in causing Pennsylvania's citizens, employees, and property to be exposed to a hazardous and toxic substance.

JURISDICTION

4. This Court has jurisdiction pursuant to 42 Pa.C.S. § 761(a)(2) over this action brought by an agency of the Commonwealth government.

PARTIES

5. Plaintiff DGS is an administrative department of the Commonwealth of Pennsylvania, successor to the General State Authority (GSA), a body corporate and politic, organized pursuant to Act No. 34 of 1949, as amended. DGS, as successor to GSA, is charged with the duty, inter alia, of constructing, maintaining, and repairing Commonwealth buildings. See 71 P.S. § 631.1.

6. Defendant United States Mineral Products Company (hereinafter U.S. Mineral) is incorporated under the laws of the State of New Jersey and conducts business in Pennsylvania. U.S. Mineral has its principal place of business at Furnace Street, Stanhope, New Jersey 07874.

FACTUAL ALLEGATIONS

7. DGS owns the Transportation and Safety Building located at Commonwealth and Forster Streets in Harrisburg, Pennsylvania. The building contains the principal offices of the Pennsylvania Department of Transportation and the Pennsylvania Emergency Management Agency. In addition, it houses offices of numerous other Commonwealth agencies, including the Department of General Services, the Department of Health, the Public Utility Commission, the Board of Claims, and the Department of State. More than one thousand Commonwealth employees work in this building, which is also visited on a daily basis by hundreds of members of the general public.

8. Construction of the Transportation and Safety Building commenced in 1965 and was completed in 1967.

9. Asbestos containing spray-applied materials are found throughout the Transportation and Safety Building.

10. Asbestos is a known human carcinogen.

11. Inhalation of asbestos fibers can lead to mesothelioma, lung cancer, and other serious and irreversible health impairments.

12. Health problems associated with asbestos can lead to death.

13. While exposure to asbestos fibers will not always result in mesothelioma, lung cancer or other health impairments, even low level or episodic exposure can lead to serious health problems or fatalities.

14. There is no known safe threshold of exposure to asbestos fibers.

15. The latency period for disease resulting from exposure to asbestos ranges from five to thirty years.

16. Asbestos fibers are virtually indestructible.

17. A disturbance of asbestos containing materials or asbestos dust will cause asbestos fibers to become airborne. The fibers can remain airborne for a long period due to their size and shape, thus facilitating their inhalation by humans.

18. The cost of removing asbestos containing materials from buildings is much higher than removal costs of materials which do not contain asbestos. The sole reason for this cost differential is the hazardous nature of asbestos.

19. Asbestos containing spray applied products manufactured, marketed, and sold by U.S. Mineral, including but not necessarily limited to Cafco Blaze Shield Type D, Cafco Blaze Shield Type H, and Cafco Blaze Shield were used in the construction of the Transportation and Safety Building and remain in the building.

20. U.S. Mineral did not provide DGS with warnings regarding the dangers of asbestos prior to or after the sale of its asbestos containing products.

21. U.S. Mineral's asbestos containing spray applied products used in the construction of the Transportation and Safety Building have deteriorated since their installation. They have not adhered permanently to the surfaces to which they were applied

and debris from their deterioration has been found in numerous locations in the Transportation and Safety Building.

22. As a result of the deterioration of defendant's spray applied asbestos products, asbestos fibers have become suspended in the air of the building. They have been inhaled by persons in the building and have landed on interior surfaces and furnishings of the building where they pose a risk of becoming resuspended in the air and then being inhaled by persons within the building.

23. The release of asbestos fibers from the asbestos containing materials manufactured by defendant has contaminated the Transportation and Safety Building.

24. To safeguard the health of building occupants, DGS implemented measures to reduce the level of asbestos fibers in the air of the building. These measures have proved insufficient to remove all such fibers from the building.

25. In order to decontaminate the building and to ensure that contamination will not recur, defendant's asbestos products will have to be removed and contaminated surfaces within the building will have to be cleaned of asbestos fibers. In addition, the removed materials will have to be replaced by non-asbestos substitutes.

26. Regulations promulgated by the Environmental Protection Agency require DGS to remove defendant's asbestos containing materials from the Transportation and Safety Building before undertaking major renovations to the building or demolishing it. The regulations were promulgated by EPA to

protect the public health and safety by minimizing human exposure to asbestos fibers. The cost to DGS of undertaking major renovations to or demolishing the Transportation and Safety Building has increased significantly as a result of the building's contamination with spray applied asbestos.

COUNT I - STRICT LIABILITY

27. Paragraphs 1 through 26 are incorporated herein by reference.

28. U.S. Mineral's asbestos containing spray applied products were sold to DGS without substantial change in the condition in which they left the control of U.S. Mineral.

29. U.S. Mineral's asbestos containing spray applied products sold to DGS are defective and unreasonably dangerous to DGS, its employees, and other persons using the Transportation and Safety Building because they contain asbestos fibers.

30. U.S. Mineral was in the business of selling and did sell the asbestos containing spray applied products in the Transportation and Safety Building.

31. U.S. Mineral's asbestos containing spray applied products were defectively designed because they contain asbestos, a hazardous substance unnecessary to the manufacture of such products. Functionally equal spray applied products not containing asbestos could have been manufactured by U.S. Mineral.

32. U.S. Mineral's sale of defectively designed asbestos containing spray applied products is a proximate cause of DGS's injuries.

33. U.S. Mineral provided no warning to DGS as to the dangerous nature of its asbestos containing spray applied products.

34. U.S. Mineral's failure to warn is a proximate cause of DGS's injuries.

WHEREFORE, plaintiff prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful and wanton conduct;

C. DGS recover its costs and disbursements of this suit;
and

D. the Court grant such other and further relief as it deems just and proper.

COUNT II - BREACH OF EXPRESS WARRANTY

35. Paragraphs 1 through 34 are incorporated herein by reference.

36. U.S. Mineral expressly warranted that Cafco Blaze Shield Type D would not "dust or flake."

37. DGS relied upon this express representation when it purchased Cafco Blaze Shield Type D for use in the Transportation and Safety Building.

38. U.S. Mineral breached its express warranty by the sale to DGS of a product which "dusts."

39. U.S. Mineral's breach of its express warranty has harmed DGS.

40. DGS has given U.S. Mineral timely and adequate notice of the breach of its express warranty by letter dated December 15, 1989.

WHEREFORE, plaintiff prays that

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. DGS recover its costs and disbursements of this suit;
and

C. the Court grant such other and further relief as it deems just and proper.

COUNT III - BREACH OF IMPLIED WARRANTIES

41. Paragraphs 1 through 40 are incorporated herein by reference.

42. U.S. Mineral impliedly warranted that its asbestos containing spray applied products sold to DGS were of good and merchantable quality.

43. U.S. Mineral had not disclaimed its implied warranties before DGS purchased its products.

44. U.S. Mineral breached its implied warranties by the sale to DGS of carcinogenic and otherwise hazardous products.

45. U.S. Mineral's breach of its implied warranties has harmed DGS.

46. DGS has given U.S. Mineral timely and adequate notice of the breach of its implied warranties by letter dated December 15, 1989.

WHEREFORE, plaintiff prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. DGS recover its costs and disbursements of this suit;
and

C., the Court grant such other and further relief as it deems just and proper.

COUNT IV - NEGLIGENCE

47. Paragraphs 1 through 46 are incorporated herein by reference.

48. At all times material U.S. Mineral knew, or with the exercise of reasonable care should have known, that its asbestos containing spray applied products would be used in facilities such as the Transportation and Safety Building.

49. At all times material U.S. Mineral knew, or with the exercise of reasonable care should have known, that its asbestos containing spray applied products were inherently dangerous, defective, and hazardous and could cause harm to persons working in or visiting facilities such as the Transportation and Safety Building and would contaminate and thereby cause harm to the buildings themselves.

50. U.S. Mineral owed a duty to DGS, and breached that duty, when it failed to adequately test the safety of asbestos or its asbestos containing spray applied products. As a result, U.S. Mineral supplied DGS with defectively designed products which have contaminated the Transportation and Safety Building with a hazardous substance.

51. U.S. Mineral owed a duty to DGS, and breached that duty, when it failed to represent accurately to DGS, either directly or indirectly, that its asbestos containing spray applied products posed a health hazard and would likely cause personal injury and would cause property damage. As a result, DGS was induced to purchase and utilize U.S. Mineral's unsafe and hazardous products in the Transportation and Safety Building.

52. U.S. Mineral owed a duty to DGS, and breached that duty, when it failed to recommend the removal of its asbestos containing spray applied products from the market and to undertake the responsibility of locating, removing, and replacing these products in the Transportation and Safety Building although it knew, or should have known, that the presence of the carcinogen asbestos in these products posed a health hazard in the building.

53. U.S. Mineral owed a duty to DGS, and breached that duty, when it sold unsafe cancer-causing products for use as fireproofing and insulation.

54. In breaching its duties to DGS as set forth above, U.S. Mineral acted recklessly, willfully, wantonly, and outrageously.

55. U.S. Mineral's actions and its failure to act when it had a duty to do so were proximate causes of DGS's injuries.

WHEREFORE, plaintiff prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful and wanton conduct;

C. DGS recover its costs and disbursements of this suit;
and

D. the Court grant such other and further relief as it deems just and proper.

COUNT V - FRAUDULENT MISREPRESENTATION

56. Paragraphs 1 through 55 are incorporated herein by reference.

57. Through advertisements, U.S. Mineral misrepresented its products by failing to state that asbestos was a hazardous

substance and by stating that Cafco Blaze Shield Type D would not dust.

58. U.S. Mineral's misrepresentations were made knowingly, deceptively, and in bad faith in order to induce purchasers such as DGS to utilize its products in building projects.

59. DGS relied upon U.S. Mineral's misrepresentations when it purchased products which it believed to be safe and dust free.

60. DGS was damaged by U.S. Mineral's material misrepresentations because it was induced to purchase defendant's unsafe, carcinogenic products which are deteriorating and contaminating the Transportation and Safety Building with asbestos fibers.

WHEREFORE, plaintiff prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful and wanton conduct;

C. DGS recover its costs and disbursements of this suit;
and

D. the Court grant such other and further relief as it deems just and proper.

COUNT VI - CONSPIRACY

61. Paragraphs 1 through 60 are incorporated herein by reference.

62. U.S. Mineral was a founding member of the Sprayed Mineral Fiber Manufacturers Association (SMFMA). Other members were Keene Corporation, Asbestospray Corporation, and Smith and Kanzler Corporation. The members of the SMFMA engaged in a conspiracy to misrepresent the safety of spray applied asbestos containing materials.

63. Early in the SMFMA's existence, it sought out the Johns-Manville Corporation for assistance in an attempt to rebut or minimize information in the public domain on the hazards of asbestos.

64. The SMFMA arranged for tests designed to measure the erosion of asbestos fiber from sprayed asbestos fireproofing. The results of these tests, known to the SMFMA while U.S. Mineral's asbestos containing products were still being sold and shipped to DGS for use in the Transportation and Safety Building, showed that spray applied asbestos fireproofing could not meet federal government standards for air erosion. The SMFMA did not release these results to the public.

65. The members of the SMFMA agreed to and did fraudulently misrepresent to purchasers that spray applied asbestos containing materials were safe and would not release asbestos fibers.

66. U.S. Mineral and its co-conspirators showed by their actions a conscious disregard for the health and safety of all persons exposed to hazardous asbestos fibers released from spray applied asbestos containing materials, including employees in and visitors to the Transportation and Safety Building.

67. U.S. Mineral and its co-conspirators acted maliciously in that they demonstrated reckless disregard for the consequences of their acts and their social duty.

68. As a result of the actions of U.S. Mineral and its co-conspirators, DGS was injured by being induced to purchase, install, and keep spray applied asbestos containing materials in the Transportation and Safety Building.

WHEREFORE, plaintiff prays that

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful and wanton conduct;

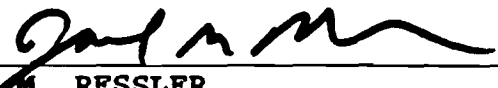
C. DGS recover its costs and disbursements of this suit; and

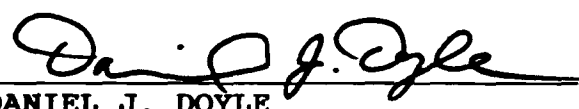
D. the Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

ERNEST D. PREATE, JR.
Attorney General

BY:


JOEL M. RESSLER
Senior Deputy Attorney General


DANIEL J. DOYLE
Deputy Attorney General

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

Office of Attorney General
15th Floor
Strawberry Square
Litigation Section
Harrisburg, PA 17120
(717) 783-1471

DATED: August 28, 1990

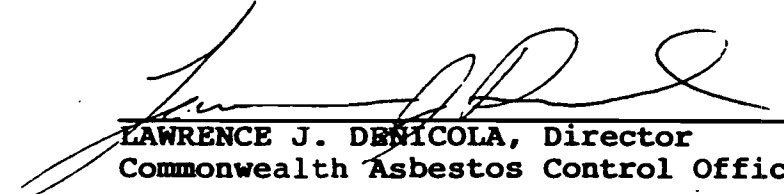
V E R I F I C A T I O N

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF DAUPHIN

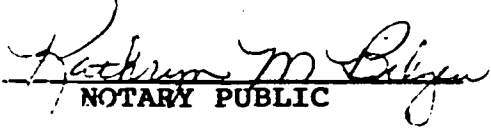
:

I, LAWRENCE J. DENICOLA, Director, Commonwealth
Asbestos Control Office, Department of General Services,
being first duly sworn, hereby state that I have read
the foregoing complaint and believe it to be true and
correct to the best of my knowledge, information, and
belief.


LAWRENCE J. DENICOLA, Director
Commonwealth Asbestos Control Office

Sworn to and subscribed

before me this 20th day
of August, 1990.
~~July~~


NOTARY PUBLIC

Notarial Seal
Kathryn M. Blyeu, Notary Public
Harrisburg, Dauphin County
My Commission Expires Feb. 21, 1994