12/30/97
MF100 - Maertin

DUANE, MORRIS & HECKSCHER
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Attorneys for Defendant,
Armstrong World Industries, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOAN MAERTIN, Executrix of the Estate of Lothar Maertin, et al. Plaintiffs, v. ARMSTRONG WORLD INDUSTRIES, INC. Defendant and Third Party Plaintiff v. MONSANTO COMPANY and AMERICAN MINERAL SPIRITS CO. and SOLUTIA, INC. Third Party Defendants	Civil Action No. I-95-CV 02849 (JBS)

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GERARD H. DAVIDSON, JR.

SECOND AMENDED THIRD PARTY COMPLAINT

Defendant and Third Party Plaintiff, Armstrong World Industries, Inc. ("Armstrong"), through its attorneys, Duane, Morris & Heckscher, files the following Second Amended Third Party Complaint and in support thereof avers as follows:

1. On March 31, 1995, plaintiffs filed a Complaint against Armstrong, alleging that a ceiling tile product manufactured by Armstrong and installed at Burlington County College ("BCC") was coated with a plastisol formulation that included as a component polychlorinated biphenyls (PCBs), and that those ceiling tiles injured them or caused them to fear future injury.

2. Following a series of Amended Complaints which added or subtracted plaintiffs, or which changed the alleged injuries of particular plaintiffs, on April 17, 1997, plaintiffs filed a Seventh Amended Complaint against Armstrong. A true and correct copy of the Seventh Amended Complaint is attached as Exhibit "A" hereto.

3. On June 7, 1996, Armstrong filed a First Amended Third Party Complaint against Monsanto Company ("Monsanto") and American Mineral Spirits Company ("AMSCO"). A true and correct copy of the First Amended Third Party Complaint is attached hereto as Exhibit "B".

4. On July 11, 1996, Monsanto filed an Answer to the First Amended Complaint, a true and correct copy of which is attached hereto as Exhibit "C".

5. On June 24, 1996, AMSCO filed an Answer to the First Amended Complaint, a true and correct copy of which is attached hereto as Exhibit "D".

6. This Second Amended Third Party Complaint is being filed pursuant to an Order entered in this action on December 22, 1997 (a true and correct copy of which is attached hereto

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as Exhibit "E"), which granted Armstrong until December 31, 1997 in which to file its Second Amended Third Party Complaint.

7. Third Party Plaintiff Armstrong is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at 313 W. Liberty Street, Lancaster, Pennsylvania 17603.

8. Third Party Defendant Monsanto is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 800 N. Lindbergh Boulevard, St. Louis, Missouri 63141.

9. Third Party Defendant AMSCO is a corporation organized and existing under the laws of Delaware, with its principal place of business located at 1900 East Golf Road, Schaumberg, Illinois.

10. Third Party Defendant Solutia, Inc. ("Solutia") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 10300 Olive Boulevard, Saint Louis, Missouri.

11. This Court has jurisdiction over the parties by virtue of Section 1332(a) of Title 28, U.S. Code, by reason of diversity of citizenship between the parties, and the amount in controversy exceeds $50,000 exclusive of interest and costs.

12. Plaintiffs instituted this action originally in the Superior Court of Camden County, New Jersey. Armstrong subsequently removed the case to the United States District Court for the District of New Jersey.

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13. The employee Plaintiffs have alleged that they sustained injuries at BCC through exposure to ceiling tiles containing PCBs. According to Plaintiffs, the ceiling tiles at issue were coated with Aroclor 1254, a chemical consisting of or containing PCBs.

14. Armstrong did not manufacture or supply Aroclor 1254. Armstrong purchased Aroclor 1254 exclusively from Third-Party Defendant Monsanto and Third-Party Defendant American Mineral Spirits for the purpose of applying it as a plasticizer coating on the Armstrong-manufactured tiles.

COUNT I
Armstrong World Industries, Inc. v. Monsanto Company

15. Armstrong herein incorporates by reference the allegations of paragraphs 1 through 13, inclusive, as fully as though set forth herein at length.

16. At all times material to the Seventh Amended Complaint, Monsanto was in the business of manufacturing, supplying, distributing and/or selling Aroclor 1254.

17. If Plaintiffs establish that they suffered the injuries and damages as alleged (which allegations Armstrong denies), the injuries and damages were caused solely by Monsanto's negligence in failing to provide a safe product in the following respects:

(a) carelessly and negligently manufacturing, distributing, supplying and/or selling a PCB-containing product in a dangerous condition so as to cause injuries;

(b) carelessly and negligently creating and allowing a dangerous condition to exist by failing to provide proper instructions for the handling of and exposure to a PCB-containing product;

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(c) failing to exercise the requisite degree of care and caution in the manufacture, distribution, supply and sale of a PCB-containing product;

(d) failing to warn of the dangers of a PCB-containing product when Monsanto knew or should have known that the use of and/or exposure to a PCB-containing product would cause disease and injury;

(e) failing to test a PCB-containing product in order to ascertain the dangers involved;

(f) failing to remove a PCB-containing product from the market when Monsanto knew or should have known of the hazards of exposure to it; and

(g) failing to use due care and caution under the circumstances.

18. As a result of the aforesaid acts and omissions, Monsanto is solely liable to Plaintiffs for any alleged injuries and damages they may have suffered.

19. Plaintiffs have alleged that ceiling tiles supplied by Armstrong were not safe for their intended use because they were improperly designed, contained no instructions for their proper use and were otherwise defective. If, as a result of Plaintiffs' claims of improper design, inadequate instructions or other defect, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, Monsanto is the party primarily liable for such injuries and damages, and is liable to Armstrong by way of indemnification for all or some of such damages.

20. Plaintiffs have alleged that Armstrong is liable in strict liability pursuant to N.J.S.A. 2A:58C-1. et seq. If, as a result of Plaintiffs' claims of strict liability, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, Monsanto is

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the party primarily liable for such injuries and damages, and is liable to Armstrong by way of indemnification for all or some of such damages.

21. In the alternative, if as a result of the matters alleged in the Seventh Amended Complaint, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, Monsanto is jointly and/or severally liable with Armstrong to Plaintiffs for such injuries and damages, and is liable over to Armstrong by way of contribution for all such damages.

WHEREFORE, Armstrong demands:

(a) if there is any liability to Plaintiffs, judgment that Monsanto is solely liable to Plaintiffs;

(b) in the event that a judgment is obtained by Plaintiffs against Armstrong, that Armstrong may have judgment over and against Monsanto by way of indemnification and/or contribution for all or part of the judgment against Armstrong, together with costs; and

(c) such other relief as the Court may deem appropriate under the circumstances.

COUNT II
Armstrong World Industries, Inc. v.
American Mineral Spirits Company

22. Armstrong herein incorporates by reference the allegations of paragraphs 1 through 20, inclusive, as fully as though set forth herein at length.

23. At all times material to the Seventh Amended Complaint, AMSCO was in the business of supplying, distributing and/or selling Aroclor 1254.

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24. If Plaintiffs establish that they suffered the injuries and damages as alleged (which allegations Armstrong denies), the injuries and damages were caused solely by AMSCO's negligence in failing to provide a safe product in the following respects:

(a) carelessly and negligently, distributing, supplying and/or selling a PCB containing product in a dangerous condition so as to cause injuries;

(b) carelessly and negligently creating and allowing a dangerous condition to exist by failing to provide proper instructions for the handling of and exposure to a PCB-containing product;

(c) failing to exercise the requisite degree of care and caution in the distribution, supply and sale of a PCB-containing product;

(d) failing to warn of the dangers of a PCB-containing product when AMSCO knew or should have known that the use of and/or exposure to a PCB-containing product would cause disease and injury;

(e) failing to test a PCB-containing product in order to ascertain the dangers involved;

(f) failing to remove a PCB-containing product from the market when AMSCO knew or should have known of the hazards of exposure to it; and

(g) failing to use due care and caution under the circumstances.

25. As a result of the aforesaid acts and omissions, AMSCO is solely liable to Plaintiffs for any alleged injuries and damages they may have suffered.

26. Plaintiffs have alleged that ceiling tiles supplied by Armstrong were not safe for their intended use because they were improperly designed, contained no instructions for their

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proper use and were otherwise defective. If, as a result of Plaintiffs' claims of improper design, inadequate instructions or other defect, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, AMSCO is the party primarily liable for such injuries and damages, and is liable to Armstrong by way of indemnification for all or some of such damages.

27. Plaintiffs have alleged that Armstrong is liable in strict liability pursuant to N.J.S.A. 2A:58C-1. et seq. If, as a result of Plaintiffs' claims of strict liability, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, AMSCO is the party primarily liable for such injuries and damages, and is liable to Armstrong by way of indemnification for all or some of such damages.

28. In the alternative, if as a result of the matters alleged in the Seventh Amended Complaint, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, AMSCO is jointly and/or severally liable with Armstrong to Plaintiffs for such injuries and damages, and is liable over to Armstrong by way of contribution for all such damages.

WHEREFORE, Armstrong demands:

(a) if there is any liability to Plaintiffs, judgment that AMSCO is solely liable to Plaintiffs;

(b) in the event that a judgment is obtained by Plaintiffs against Armstrong, that Armstrong may have judgment over and against AMSCO by way of indemnification and/or contribution for all or part of the judgment against Armstrong, together with costs; and

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(c) such other relief as the Court may deem appropriate under the circumstances.

COUNT III
Armstrong World Industries, Inc. v.
Solutia, Inc.

29. Armstrong herein incorporates by reference the allegations of paragraphs 1 through 27, inclusive, as fully as though set forth herein at length.

30. As of September 1, 1997, Solutia, Inc. ("Solutia") assumed all or some of the assets and liabilities of the chemical business formerly owned and operated by Monsanto.

31. At certain times which are or may be material to the Seventh Amended Complaint, Solutia was in the business of manufacturing, supplying, distributing and/or selling Aroclor 1254, or has assumed liability for such activities of Monsanto.

32. If Plaintiffs establish that they suffered the injuries and damages as alleged (which allegations Armstrong denies), the injuries and damages were caused solely by Monsanto's negligence in failing to provide a safe product in the following respects:

(a) carelessly and negligently manufacturing, distributing, supplying and/or selling a PCB-containing product in a dangerous condition so as to cause injuries;

(b) carelessly and negligently creating and allowing a dangerous condition to exist by failing to provide proper instructions for the handling of and exposure to a PCB-containing product;

(c) failing to exercise the requisite degree of care and caution in the manufacture, distribution, supply and sale of a PCB-containing product;

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(d) failing to warn of the dangers of a PCB-containing product when Monsanto knew or should have known that the use of and/or exposure to a PCB-containing product would cause disease and injury;

(e) failing to test a PCB-containing product in order to ascertain the dangers involved;

(f) failing to remove a PCB-containing product from the market when Monsanto knew or should have known of the hazards of exposure to it; and

(g) failing to use due care and caution under the circumstances.

33. As a result of the aforesaid acts and omissions, Monsanto is solely liable to Plaintiffs for any alleged injuries and damages they may have suffered, and Solutia has assumed all of part of such liability from Monsanto.

34. Plaintiffs have alleged that ceiling tiles supplied by Armstrong were not safe for their intended use because they were improperly designed, contained no instructions for their proper use and were otherwise defective. If, as a result of Plaintiffs' claims of improper design, inadequate instructions or other defect, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, Solutia is the party primarily liable for such injuries and damages, and is liable to Armstrong by way of indemnification for all or some of such damages.

35. Plaintiffs have alleged that Armstrong is liable in strict liability pursuant to N.J.S.A. 2A:58C-1. et seq. If, as a result of Plaintiffs' claims of strict liability, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, Solutia is the

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party primarily liable for such injuries and damages, and is liable to Armstrong by way of indemnification for all or some of such damages.

36. In the alternative, if as a result of the matters alleged in the Seventh Amended Complaint, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, Solutia is jointly and/or severally liable with Armstrong to Plaintiffs for such injuries and damages, and is liable over to Armstrong by way of contribution for all such damages.

WHEREFORE, Armstrong demands:

(a) if there is any liability to Plaintiffs, judgment that Solutia is solely liable to Plaintiffs;

(b) in the event that a judgment is obtained by Plaintiffs against Armstrong, that Armstrong may have judgment over and against Solutia by way of indemnification and/or contribution for all or part of the judgment against Armstrong, together with costs; and

(c) such other relief as the Court may deem appropriate under the circumstances.

Respectfully submitted,
DUANE, MORRIS & HECKSCHER

BY: 

Nolan N. Atkinson, Jr.
Craig F. Turet
51 Haddonfield Road
Suite 340
Cherry Hill, NJ 08002-4810

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CERTIFICATE OF SERVICE

I, Craig F. Turet, certify that the foregoing Second Amended Third Party Complaint of Defendant, Armstrong World Industries, Inc., was filed with the Clerk of Court and also was served upon all counsel of record and unrepresented parties on this 30th day of December, 1997 via overnight mail as follows:

James E. Tyrrell, Jr. Esquire
Latham & Watkins
One Newark Center
Newark, NJ 07101-3474

Brian O'Connor, Esquire
Atrium II, Suite 101
3000 Atrium Way
Mt. Laurel, NJ 08054

James C. Orr, Esquire
Wilson, Elser, Moskowitz,
Edelman & Dicker
Two Gateway Center
Newark, NJ 07102-5311



Craig F. Turet

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