

11. Between June 19, 1985, and October 3, 1988, O-I and T&N were members of the Asbestos Claims Facility ("ACF"), a consortium of asbestos defendants organized for the purpose, among others, of jointly defending against asbestos personal injury claims brought throughout the United States. Phillip McWeeny was Assistant General Counsel of O-I and also a director and executive of the ACF. As a director of the ACF he was in a fiduciary relationship with T&N. Andrew T. Berry and his law firm, McCarter & English, LLP were one of the principal defense counsel hired to defend O-I, T&N, and other members of the ACF. For many years prior to June 1985 Andrew T. Berry and McCarter & English LLP had been national and/or regional asbestos defense counsel to O-I.

12. In the Spring and Summer of 1986, T&N's national counsel traveled regularly to England for the purpose of assembling in one place T&N's historical documents concerning the hazards of asbestos. During the course of that work, T&N's national counsel discovered T&N documents demonstrating that since the 1930s, T&N had been providing specific directions to end-users of finished insulation products concerning how to minimize health risks when handling such products. The specific directions contained in the documents were that end-users should cut finished insulation products only in well-ventilated areas and should wet down such products in order to reduce dust.

13. T&N's national counsel produced the documents containing the aforementioned directions to plaintiffs' counsel in United States litigation beginning no later than the end of 1986. In addition, in order to ensure that T&N's written answers to interrogatories were consistent with the knowledge reflected in the documents, T&N's national counsel sent to ACF attorneys amendments to standard interrogatory answers to reference specifically the fact that T&N gave the above instructions to end-users of finished insulation products since the 1930s. These amended answers were sent to Andrew T. Berry and others in or around the end of 1986. Third-party Defendants flatly refused to serve the new interrogatory answers.

14. Instead, on February 4, 1987, Third-party Defendants convened a meeting in order to convince T&N to alter the interrogatory amendments and delete the language concerning T&N's historical directions on how end-users should handle finished asbestos insulation products. Third-party Defendants informed T&N that O-I and other members of the ACF did not give similar directions to end-users of finished asbestos insulation products, and that public disclosure of T&N's amended interrogatory answers would "knife" O-I and other ACF members "in the back." Based upon false representations made to it by Third-party Defendants, T&N acceded to the demands of the Third-party Defendants, and the language reflecting T&N's specific directions to end-users was deleted.

15. In its complaint, O-I alleges that T&N conspired to fraudulently and negligently misrepresent that end-users of asbestos insulation products were not at risk of contracting asbestos-related diseases at times when it knew otherwise. O-I further alleges that in order to conceal its guilty knowledge, T&N made and served incomplete interrogatory answers in asbestos personal injury litigation. Third-party Defendants are liable to T&N for damages because **THEY** insisted that T&N remove the very language from its interrogatory answers concerning the dangers of asbestos to end-users, in order to protect O-I and other asbestos manufacturers in

the ACF.

16. Further, Third-party Defendant, Phillip McWeeny, while a board member of the ACF and a fiduciary to T&N, negotiated the reorganization plan of the Johns-Manville Bankruptcy. These negotiations resulted in a plan that discharged O-I's claims against Johns-Manville, and limited T&N's rights to recover contribution or indemnity from Johns-Manville. Phillip McWeeny has since instigated and authorized O-I's lawsuit against T&N for claims that are derivative of O-I's claims against Johns-Manville. O-I did not purchase fiber from or communicate with T&N; O-I's commercial dealings and communications were, therefore, with Johns-Manville, and any false statements, negligent omissions, or other wrongful acts were made or performed by Johns-Manville. O-I's suit seeks derivative liability against T&N and constitutes a clear breach of Phillip McWeeny's fiduciary duties.

17. For these reasons, T&N sues Third-party Defendants for negligence, legal malpractice, breach of fiduciary duty, fraud, aiding & abetting fraud, negligent misrepresentation, conspiracy, violation of the Racketeer Influenced and Corrupt Organizations Act, violation of Florida's Deceptive Trade Practices Act, and violations of the California Business & Professional Code. T&N seeks all actual and punitive damages caused or properly awarded thereby, including attorneys' fees, past and future actual damages, all applicable interest, and all other damages allowed under law.

18. In the alternative, if Third-party Defendants are found to be agents of O-I for purposes of this third-party action, then O-I itself is responsible for the very acts of which it complains in its suit against T&N, and therefore its lawsuit is a fraud upon the Court properly subject to Rule 11 sanctions.

E. PRAYER

19. For these reasons, T&N asks for judgment against Third-party Defendants, Phillip McWeeny, Andrew T. Berry, and McCarter & English, LLP for all damages, past and future, all applicable interest, all attorneys' fees, all actual and punitive damages and all relief allowed by law and justice.

Respectfully submitted,

By: _____
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CERTIFICATE OF CONFERENCE

Counsel for Defendant conferred with Counsel for Plaintiff, Mr. Paul Sadler, regarding the filing of the foregoing Third-Party Complaint and Mr. Sadler states he is unopposed to this Third-Party Complaint against Andrew T. Berry and McCarter & English, LLP, however, he is opposed to a Third-party Complaint against Phillip McWeeny.

W. MARK LANIER

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with the Federal Rules of Civil Procedure, on this _____ day of June, 2000.

W. MARK LANIER