

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

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TURNER & NEWALL PLC,
20 St. Mary's Parsonage,
Manchester M3 2NL, England
Telephone No. 011-44-61-833-9272,

Plaintiff,

v.

AMERICAN MUTUAL LIABILITY
INSURANCE COMPANY,
Wakefield, Massachusetts 01880
Telephone No. (617) 245-6000,
Serve: Superintendent of
Insurance
District of Columbia
614 H Street, N.W.
Washington, D.C. 20001.

Defendant.

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Civil Action No. 82- 1339

FILED

MAY 14 1982

JAMES F. DAVEY, Clerk

FLANNERY, J.

COMPLAINT FOR DECLARATORY JUDGMENT
AND FOR DAMAGES

Plaintiff Turner & Newall PLC, by its attorneys Sullivan & Cromwell, for its complaint herein alleges:

1. Turner & Newall PLC ("T&N") is a corporation organized and existing under the laws of England with its principal place of business in Manchester, England.

2. Upon information and belief, American Mutual Liability Insurance Company ("American Mutual") is an insurance company organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business in Wakefield, Massachusetts.

3. American Mutual is licensed to do business and is doing and transacting business in the District of Columbia.

EXHIBIT 17

4. The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars ($10,000). Jurisdiction is conferred on this Court by 28 U.S.C. § 1332 and 28 U.S.C. § 2201.

5. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) and (c) because defendant resides in this judicial district and the claim arose in this judicial district.

6. This is an action seeking damages and a declaratory judgment that American Mutual is obligated (a) to defend numerous lawsuits which have been and which may be brought against plaintiff by virtue of alleged bodily injuries purportedly caused by exposure to asbestos products manufactured, sold, or distributed by plaintiff's former subsidiary, Keasbey and Mattison Company ("Keasbey"); and (b) to pay all expenses which have been and which may be incurred by plaintiff in connection with such lawsuits, including attorneys' fees, defense costs, judgments, settlements and expenses incurred by plaintiff at defendant's request.

7. Keasbey was a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Ambler, Pennsylvania.

8. Keasbey was a manufacturer, seller and distributor of asbestos-containing products.

9. Keasbey was duly dissolved as a corporation in 1967 pursuant to the provisions of Pennsylvania law (15 Pa. Stat. Ann § 2105).

10. From 1928 until at least 1965 Keasbey was insured under various policies of insurance issued to it by American Mutual. A list of these policies, compiled from the business records of American Mutual, is attached hereto as Exhibit A. Upon information and belief, throughout this period, American Mutual provided comprehensive general liability coverage, including product liability coverage with respect to all products and materials manufactured, sold or distributed by Keasbey.

11. With respect to product liability, the policies of insurance issued to Keasbey by American Mutual required American Mutual, among other things, (a) to pay on behalf of the "insured," as that term is defined in the policies, all sums which the insured is legally obligated to pay as damages because of bodily injury, sickness or disease, including death, sustained by any person arising out of the use of Keasbey products and (b) to defend against all such claims and to pay all costs of defense of the insured, including attorneys fees, as well as all expenses incurred at American Mutual's request.

12. Upon information and belief, the insurance policies issued by American Mutual to Keasbey defined the persons insured under the policy to include any stockholder of Keasbey while acting within the scope of its duties as such.

13. Beginning in 1934, T&N was a stockholder of Keasbey as follows:

    a) From 1934 to 1937, T&N beneficially owned and held directly a majority of the common stock of Keasbey;

b) From 1938 until 1951 T&N beneficially owned and directly held 100% of the common stock of Keasbey;

c) From 1951 to 1967 T&N beneficially owned 100% of the common stock of Keasbey and held such stock indirectly through T&N's wholly-owned holding company Turner & Newall (Overseas) Ltd. ("T&N(O)"), a Canadian corporation.

14. From 1962 through at least 1965, Keasbey and T&N(O) were both named insureds under the policies of insurance issued by American Mutual.

15. T&N is and has been a defendant, third or fourth party defendant in numerous actions, brought in various federal and state courts in the United States, in which plaintiffs, third party-plaintiffs and others have alleged that T&N is liable for bodily injuries and deaths caused by exposure to asbestos products manufactured, distributed or sold by Keasbey. The rationale for the assertion of liability against T&N in such lawsuits is that T&N was formerly the stockholder of Keasbey.

16. T&N is being sued in these actions as the stockholder of Keasbey while acting within the scope of its duties as such. T&N is therefore insured under policies of insurance issued to Keasbey by American Mutual.

17. T&N is being sued in these actions as allegedly having exercised such control over Keasbey that Keasbey was T&N's alter ego or mere instrumentality.

18. While T&N denies that liability may properly be imposed upon it on the basis of the allegations described in paragraphs 15 through 17, it has been and continues to be forced to defend such cases. To date, the cost of defense of such litigation has exceeded $2,000,000.

19. From time to time, on the basis of its assessment of the costs and risks of litigating such cases to judgment, T&N has settled and will continue to settle such cases, without admission of liability, for the purposes of avoiding risks and costs that would otherwise be incurred. To date the costs of such settlements have exceeded $1,000,000.

20. All costs incurred and all settlements entered have been prudent and the result of responsible good faith business judgments by T&N.

21. The lawsuits described above state claims that are covered by the policies of insurance issued to Keasbey by American Mutual, and the bodily or personal injuries alleged in such lawsuits occurred during the time defendant's insurance policies with Keasbey were in full force and effect.

22. Pursuant to the terms of the insurance policies identified above, defendant contracted and agreed to indemnify plaintiff for all sums expended with respect to asbestos-related claims and lawsuits brought against plaintiff, where plaintiff is sued by virtue of its status as the shareholder or alleged alter ego of Keasbey. Such sums include amounts paid by plaintiff

for plaintiff's defense, the payment of judgments and settlements by plaintiff to third parties, and all costs incurred by plaintiff at defendant's request.

23. Bodily or personal injury within the meaning of defendant's policies results from any part of the injurious process that begins with initial exposure to asbestos, continues through exposure in residence, and culminates in manifestation of an asbestos-related disease or injury.

24. Any asbestos-related bodily injury resulting from exposure to products manufactured, sold, or distributed by Keasbey constitutes an occurrence, accident or happening under each of defendant's policies.

25. Plaintiff has duly demanded that defendant defend it against such claims and indemnify it for losses arising from such claims, but defendant has failed and refused to comply with such demands.

26. American Mutual was fully paid the premiums due and owed it under the policies of insurance under which claims are here made.

27. T&N has given American Mutual sufficient and timely notice of the pendency of the claims asserted against T&N.

28. T&N, T&N(O) and Keasbey each complied with each and every obligation imposed upon it by the policies of insurance issued to Keasbey and T&N(O).

29. American Mutual has denied that it is required to defend, indemnify or pay costs of any kind with respect to any of the actions brought against T&N for Keasbey's alleged torts.

30. Such denial constitutes a breach of the insurance contracts issued to Keasbey under which T&N is an insured for the reasons set out herein.

WHEREFORE, T&N demands

(1) That the Court adjudge

a. that American Mutual insured Keasbey with respect to product liability claims from 1928 through at least 1965 and T&N(O) from 1962 through at least 1965;

b. that in any action in which T&N is sued on account of the alleged torts of Keasbey, T&N is an "insured" within the meaning of each applicable policy issued by American Mutual;

c. that American Mutual is obligated to defend, or reimburse T&N for the costs of defense, of all such claims, including attorneys' fees;

d. that American Mutual is obligated to indemnify T&N for the cost of any judgment entered against it on account of the torts of Keasbey;

e. that American Mutual is obligated to pay or reimburse T&N for the costs of reasonable and appropriate settlement of the claims against T&N on account of the alleged torts of Keasbey.

(2) Judgment against the defendant as follows:

(a) An amount to be ascertained, in excess of $3,000,000, to reimburse T&N for the costs incurred by it in connection with its defense of all insured claims asserted to the date of judgment in this action;

(b) An amount to be ascertained, in excess of $1,000,000, to reimburse T&N for the costs incurred by it in settling claims against it;

(c) For interest according to law;

(d) For its reasonable attorneys' fees and the costs and expenses of this suit.

(e) For such other and further relief as to the Court may appear just and proper.

Dated: Washington, D.C.
May 14, 1982

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By: _____
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