

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLAINTIFF'S
EXHIBIT

IN-5377

FLETCHER MCDANIEL, et ux.,

Plaintiffs,

v.

ARMSTRONG WORLD INDUSTRIES,
INC., et al.,

Defendants.

*

* Civil Action No. 83-3520

* Judge Thomas Flannery

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NOV 5 1985

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CLERK, U.S. DISTRICT COURT

PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL WITH PREJUDICE
OF DEFENDANTS TURNER & NEWALL PLC, (FORMERLY TURNER &
NEWALL, LTD.), J.W. ROBERTS, LTD., ARMSTRONG WORLD INDUSTRIES,
INC., AND AC&S COMPANY, INC.

Come now the Plaintiffs by and through their counsel,
Ashcraft & Gerel, and pursuant to Rule 41(a)(2) of the Federal
Rules of Civil Procedure move this Court for the entry of an
Order voluntarily dismissing, with prejudice, Plaintiffs' claim
against Defendants Turner & Newall, PLC (formerly Turner &
Newall, Ltd.), J. W. Roberts, Ltd., Armstrong World Industries,
Inc., and AC&S Company, Inc. The grounds supporting this Motion
are set forth in the accompanying Memorandum of Points and
Authorities.

Respectfully submitted,

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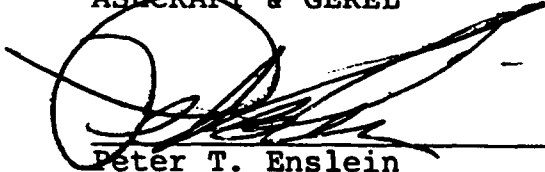
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL WITH PREJUDICE OF
TURNER & NEWALL, PLC (FORMERLY TURNER & NEWALL, LTD.), J.W.
ROBERTS, LTD., ARMSTRONG WORLD INDUSTRIES, INC.
AND AC&S COMPANY, INC.

Recently, Plaintiffs entered into a settlement agreement with Defendants Turner & Newall, PLC (formerly Turner & Newall, Ltd.), J. W. Roberts, Ltd., Armstrong World Industries, Inc. and AC&S Company, Inc. resolving their claims against these Defendants. Accordingly, Plaintiffs move the Court for an Order dismissing their action against these Defendants with prejudice as is provided by Rule 41(a)(2). Such a dismissal will not prejudice the rights of any of the remaining Defendants to this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed,
except as indicated below, postate prepaid, this 5th day
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RELEASE AND SETTLEMENT OF CLAIM

CLERK, U.S. DISTRICT COURT,
DISTRICT OF COLUMBIA

WHEREAS, the Plaintiffs, Fletcher McDaniel and Millie McDaniel (hereinafter sometimes referred to as "Plaintiffs"), have instituted a lawsuit captioned, Fletcher McDaniel, et al. v. Armstrong World Industries, Inc., et al., Civil Action No. 83-3520 in the United States District Court for the District of Columbia, against, inter alia, Turner & Newall PLC (formerly Turner & Newall Limited), J.W. Roberts, Ltd., Armstrong World Industries, Inc. and ACandS, Inc., hereinafter jointly referred to as the "Defendants", for personal injuries and damages; and

WHEREAS, Defendants deny any liability; and

WHEREAS, Defendants and the Plaintiffs desire to avoid the inconvenience and expense of litigation, including Defendants having to defend cross-claims and/or claims for contribution or indemnity; and

WHEREAS, a compromise settlement (the "Release") of all of Plaintiffs' claims and demands against the Defendants has been agreed upon;

NOW, THEREFORE, the Plaintiffs, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration paid to Plaintiffs and to their attorneys, Ashcraft & Gerel, receipt of which is hereby acknowledged, do hereby remise, release, acquit, and forever discharge the Defendants and all their present and former attorneys, officers, directors, agents, employees, servants, successors in interest, and predecessors in interest;

- Exhibit 1 -

all their present and former parent and subsidiary corporations (whether or not wholly-owned and whether or not directly owned); and all their assigns, and insurers and the agents, servants and employees of all such corporations (jointly and collectively referred to herein as "Releasees") from any and all claims, demands, damages (including all consequential, punitive and exemplary damages), actions, causes of action of whatsoever kind or nature, known, unknown, suspected or unsuspected arising out of or in any way growing out of personal injuries having already resulted or that may result at any time in the future, whether or not they are in the contemplation of the parties at the present time and whether or not they arise following the execution of this Release and Settlement of Claim, for any and all known and unknown injuries, diseases and/or disorders from the beginning of the world to the present. Notwithstanding the foregoing, Millie McDaniel reserves any existing or future right of action which she may have in the event that she contracts an actual physical disease as a result of her own exposure to asbestos or asbestos products manufactured, sold, marketed or distributed by the Releasees.

The Plaintiffs reserve the right to make a claim against any and every other person and organization and to claim that they, and not the Releasees, are solely liable to the undersigned for the injuries, losses and damages.

It is understood and agreed that this settlement is in compromise of a disputed claim, and that the payment made is not

to be construed as an admission of liability on the part of the Releasees, and that they deny liability and intend merely to avoid litigation and to buy their peace.

It is understood and agreed that the Plaintiffs rely wholly upon their own judgment, belief and knowledge of the nature, extent, effect and duration of said injuries or possible injuries and liability therefore, and that this Release is made without reliance upon any statement or representation by the Releasees or their representatives, the making of any such statements or representations being specifically denied.

In order to avoid inconvenience and expense to Releasees of defending any claims for contribution or indemnification, including, but not limited to, those in Civil Action No. 83-3520, pending in the United States District Court for the District of Columbia, it is further agreed that the execution of this Release shall operate as a satisfaction of Plaintiffs' claims against any person or entity not a party to this Release to the extent of the pro rata share of common liabilities of the Releasees whether or not the Releasees or any one of them are determined to be joint tortfeasors. This provision is intended to obviate the necessity and expense of having the Releasees be obliged to participate at their expense in a trial merely for the purpose of determining whether the Releasees or any one of them are joint tortfeasors.

It is further understood and agreed that the Plaintiffs will hold harmless the parties released herein from any and all

liability arising from subrogation claims under any compensation or medical payments due or claimed to be due under the law, state or federal, regulation or contract and from any and all other liability arising out of the claims by the Plaintiffs with the exception of the consideration recited herein. It is the intention of the parties to limit the Releasees' liability to the consideration recited herein.

The Plaintiffs agree that they shall take whatever steps are necessary to obtain an order of dismissal with prejudice of their pending claims as to the Releasees in Civil Action No. 83-3520 in the United States District Court for the District of Columbia. Plaintiffs agree that obtaining such dismissal is a precondition to final settlement and disbursement of the consideration recited herein. Plaintiffs shall bear their own costs of compliance with these provisions.

The Plaintiffs further agree to do all acts and to execute whatever documents are appropriate or necessary to give effect to the intent and language of this Release.

The Plaintiffs have carefully read the foregoing, and know and understand the content and meaning thereof, and sign the same as their own free act. Fletcher McDaniel and Millie McDaniel state that they have carefully read the foregoing RELEASE AND SETTLEMENT OF CLAIM and have signed it after consultation with their attorneys and intend to be legally bound hereby.

This Release and Settlement of Claim contains the entire Agreement between the parties hereto, and the terms of this Release are contractual, and not a mere recital.

IN WITNESS WHEREOF, and intending to be legally bound, I have hereunto set my hand and seal this ____ day of October, 1985, to this document consisting of a total of five (5) pages each bearing my initials.

WITNESSED BY:

FLETCHER MCDANIEL

WITNESSED BY:

MILLIE MCDANIEL