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UNITED STATES
DISTRICT COURT
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DUANE, MORRIS & HECKSCHER
By: Nolan N. Atkinson, Jr. (NNA 9315)
Frank A. Luchak (FAL 2444)
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(609) 488-7300

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. Third Party Defendants	Civil Action No. I-95-CV 02849 (JBS)

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JUN 7 1996
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FIRST AMENDED THIRD PARTY COMPLAINT

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

1. On May 15, 1996, U.S. Magistrate Judge Joel B. Rosen entered Scheduling Order No. 2 in this action, granting plaintiffs until May 23, 1996 in which to amend its pleadings as of right, and granting defendants until June 10, 1996 in which to amend their pleadings as of right. A true and correct copy of Scheduling Order No. 2 is attached hereto as Exhibit "A".

2. On May 23, 1996, Plaintiffs Joan Maertin, et al. filed against Armstrong World Industries, Inc. ("Armstrong") a Fifth Amended Complaint, a copy of which is attached hereto as Exhibit "B."

3. Third Party Plaintiff Armstrong World Industries, Inc. 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.

4. Third Party Defendant Monsanto Company ("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.

5. Third Party Defendant American Mineral Spirits Company ("American Mineral Spirits") 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.

6. 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.

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7. Joan Maertin, et al. 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.

8. Of the 54 Plaintiffs named in the Fifth Amended Complaint, 44 were present or former employees of Burlington County Community College ("BCCC"), and 10 were spouses or family members of BCCC employees.

9. The employee Plaintiffs have alleged that they sustained injuries at BCCC through exposure to ceiling tiles containing Polychlorinated Biphenyls ("PCB's"). According to Plaintiffs, the ceiling tiles at issue were coated with Aroclor 1254, a chemical consisting of or containing PCB's.

10. 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

11. Armstrong herein incorporates by reference the allegations of paragraphs 1 through 10, inclusive, as fully as though set forth herein at length.

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

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13. 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;

(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.

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14. 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.

15. 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.

16. 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 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.

17. In the alternative, if as a result of the matters alleged in the Fifth 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

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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

18. Armstrong herein incorporates by reference the allegations of paragraphs 1 through 17, inclusive, as fully as though set forth herein at length.

19. At all times material to the Fifth Amended Complaint, American Mineral Spirits was in the business of supplying, distributing and/or selling Aroclor 1254.

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

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(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 American Mineral Spirits 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 American Mineral Spirits knew or should have known of the hazards of exposure to it; and

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

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

22. Plaintiffs have alleged that ceiling tiles supplied by Armstrong were not safe for their intended use because they were

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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, American Mineral Spirits 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.

23. 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, American Mineral Spirits 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.

24. In the alternative, if as a result of the matters alleged in the Fifth Amended Complaint, Armstrong is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, American Mineral Spirits 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:

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(a) if there is any liability to Plaintiffs, judgment that American Mineral Spirits 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 American Mineral Spirits 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.
Frank A. Luchak
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 a true and correct copy of the foregoing First Amended Third Party Complaint was served via first-class mail, postage prepaid, return receipt requested, this 7th day of June, 1996, on counsel of record as follows:

Gary D. Ginsberg, Esquire
Atrium II, Suite 101
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Mt. Laurel, NJ 08054

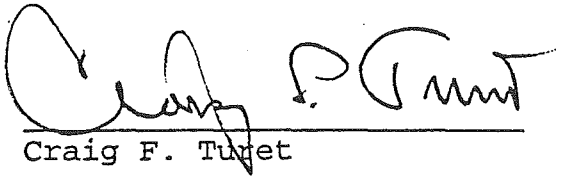
Attorney for Plaintiffs

James E. Tyrrell, Jr., Esquire
Pitney, Hardin, Kipp & Szuch
P.O. Box 1945
Morristown, NJ 07932-0950

Attorney for Third-Party Defendant, Monsanto Company

Carolyn O'Connor, Esquire
Wilson, Elser, Moskowitz, Edelman & Dicker
Two Gateway Center, Suite 1200
Newark, NJ 07102-5311

Attorney for Third-Party Defendant, American Mineral Spirits Company



Craig F. Turet

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EXHIBIT "A"

MAY 2 9 1996

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOAN MAERTIN, Executrix of the Estate of LOTHER MAERTIN, *et al.*,	HON. JEROME B. SIMANDLE, U.S.D.J. HON. JOEL B. ROSEN, U.S.M.J. CIVIL ACTION NO. 95-2849 (JBS)
Plaintiffs,	
v.	
ARMSTRONG WORLD INDUSTRIES, INC.,	SCHEDULING ORDER NO. 2
Defendant/Third-Party Plaintiff,	
v.	
MONSANTO COMPANY, and AMERICAN MINERAL SPIRITS CO.,	
Third-Party Defendants.	

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JOEL B.
U.S. MAGISTRATE JUDGE

IT IS on this 15th day of May 1996:

ORDERED that

1. To the extent such information has not already been produced by plaintiffs, by June 10, 1996, plaintiffs shall provide Armstrong, Monsanto and AMS with:

A. the identity, last known address and applicable dates of treatment for each health care provider who examined, treated or otherwise rendered medical services to each plaintiff, including, but not limited to, each plaintiff's current treating physician(s);

B. the identity and last known address of each life, health, medical and workers' compensation insurance company that provided or denied benefits to each plaintiff;

C. the identity and last known address of each educational institution attended by each plaintiff;

D. the identity and last known address of each present and former employer of each plaintiff;

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E. the identity and last known address of each union to which each plaintiff ever belonged; and

F. the identity and last known address of each armed force in which each plaintiff served and the dates of service.

2. Plaintiffs shall provide executed authorizations on behalf of each plaintiff by June 10, 1996, which authorize Armstrong, Monsanto and AMS to obtain each plaintiff's medical, insurance, workers' compensation, educational, union and armed forces' records. In addition, plaintiffs shall cooperate and facilitate the acquisition of records from persons, institutions, companies, schools, unions and armed forces identified in response to paragraph 1.

3. Plaintiffs claim to have suffered a variety of personal injuries, including a number of different types of cancer, as a result of exposure to polychlorinated biphenyls ("PCBs") during the course of their employment at Burlington County College. Certain plaintiffs also allege a "fear of cancer" as a result of such exposure. Prior to expending substantial time and money on the defense of this action, plaintiffs shall provide Armstrong, Monsanto and AMS with the scientific basis and expert opinions upon which each plaintiff relies in alleging that exposure to PCBs caused each of the personal injuries about which each plaintiff complains. Such information shall be provided by ~~July~~ August 10, 1996.

4. Plaintiffs shall complete all amendments, if any, to pleadings, including the naming of any additional parties, by May 23, 1996. Armstrong, Monsanto and AMS shall complete all amendments to pleadings, including the naming of any additional parties, by June 10, 1996.

5. Monsanto and AMS shall serve a joint set of Interrogatories and Document Requests, if any, on plaintiffs, which are not duplicative of the Interrogatories and Document Requests previously served on plaintiffs by Armstrong, by June 10, 1996.

6. Each plaintiff shall serve certified Responses to the joint Interrogatories and Document Requests served by Monsanto and AMS by August 12, 1996.

7. Plaintiffs shall serve all discovery requests, if any, on Armstrong, Monsanto and AMS by June 10, 1996.

8. Armstrong, Monsanto and AMS shall serve certified Responses to the plaintiffs' discovery requests by August 12, 1996.

9. In an effort to expedite discovery, avoid duplication and promote efficiency in this action, Armstrong, Monsanto and AMS shall coordinate efforts to schedule and conduct discovery. In furtherance of these efforts, any communications, whether written or oral, by and between Armstrong, Monsanto and AMS shall be considered privileged and protected from disclosure pursuant to the joint defense privilege.

10. Armstrong, Monsanto and AMS shall be permitted to conduct a joint deposition of each plaintiff at a reasonable time after acquiring each plaintiff's medical and other records as set forth in paragraphs 1 and 2. Armstrong, Monsanto and AMS shall, in consultation with plaintiffs' counsel, make their best efforts to take the depositions at a rate of two plaintiffs a week for as long as is necessary to complete the depositions. The parties shall make their best efforts to complete the depositions of all plaintiffs by January 15, 1997.

11. Depositions of fact witnesses on behalf Armstrong, Monsanto and AMS shall be completed by January 15, 1997.

12. All fact discovery shall be completed by March 1, 1997.

13. Plaintiffs shall serve final expert reports for each of their experts by April 1, 1997 or be barred from introducing such expert testimony at the time of trial.

14. Armstrong, Monsanto and AMS shall be permitted to conduct a joint independent medical examination ("IME") of each plaintiff. IMEs of plaintiffs shall be completed by June 15, 1997.

15. Armstrong, Monsanto and AMS shall be permitted to conduct a joint deposition of each of plaintiffs' experts. Depositions of each of plaintiffs' experts shall be completed by August 1, 1997.

16. Armstrong, Monsanto and AMS shall serve final expert reports on plaintiff by October 1, 1997 or be barred from introducing such expert testimony at the time of trial.

17. Plaintiffs shall complete the depositions of all experts by December 1, 1997.

18. Such other discovery as may be required on issues of liability shall be addressed at a future Status/Scheduling Conference.

19. Any party may file a dispositive motion at any time during the course of discovery, but all such motions shall be filed by December 31, 1997.

20. A final pre-trial conference shall be scheduled before this Court on January 7, 1998.

21. A status conference will be held before me on October 21, 1996 at 1:30 p.m.

22. The failure of a party or an attorney to obey this Order may result in the imposition of sanctions pursuant to Fed. R. Civ. P. 16(f).

Joel B. Rosen

JOEL B. ROSEN
United States Magistrate Judge

cc: Honorable Jerome B. Simandle
Lynn Vito, Deputy Clerk

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EXHIBIT "B"