UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JUL 2 8 1982
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

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TURNER & NEWALL PLC, :

Plaintiff, : Civil Action No. 82-1339 (Judge Flannery)

v. :

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, :

Defendant. :

- x

PLAINTIFF'S EXHIBIT
TN-5357

AFFIDAVIT OF PHILIP L. GRAHAM, JR. IN OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Philip L. Graham, Jr., being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York and of the law firm of Sullivan & Cromwell, counsel for plaintiff Turner & Newall PLC ("T&N"). I have been admitted to practice before this Court with respect to the present action.

2. Since 1977 I have been the lawyer at Sullivan & Cromwell responsible for coordinating the defense of T&N in all of the asbestos-related litigation brought against it throughout the United States. As a result, I have personal

knowledge of the cases that underlie the present insurance claims, of the location of documents and witnesses, and of numerous other aspects of the asbestos litigation. On that basis I set forth below some of the factual background upon which T&N relies in the memorandum being submitted to this Court in opposition to defendant's motion to transfer.

3. T&N is a large English corporation; however, it has no offices or operations in the United States. From 1934 until 1967 T&N owned stock in Keasbey & Mattison Company, a Pennsylvania corporation with factories in Pennsylvania, Missouri and California.

4. From 1934 until 1937 T&N owned a majority of the stock of Keasbey; from 1937 until the dissolution of Keasbey, T&N owned beneficially 100% of Keasbey's stock. During that period, T&N owned Keasbey's stock directly until 1951. Thereafter, the stock was owned through a Canadian company, Turner & Newall (Overseas). The sole function of Turner & Newall (Overseas) was to hold T&N's North American investments. At all times T&N owned 100% of the stock of Turner & Newall (Overseas).

5. In 1962 Keasbey's assets were sold to several operating companies in the United States unrelated to T&N. Keasbey thereupon ceased doing business and filed a certificate of dissolution. The dissolution became finally effective in 1967.

6. T&N has been sued in over two thousand cases brought by asbestos workers throughout the United States

against most of the asbestos industry. Several hundred of these cases were brought against T&N by plaintiffs and third party plaintiffs on the theory that T&N is liable to plaintiff because it was a shareholder and/or the alleged alter ego of Keasbey. Claimants in these cases take the position that T&N is responsible for injuries caused by exposure to asbestos products manufactured, sold or distributed by Keasbey.

7. Claims against T&N with respect to Keasbey take several forms. In most of the more recent cases, allegations regarding Keasbey are explicit. Attached as Exhibits A, B and C are examples of typical assertions of liability on account of the acts of Keasbey. Exhibit A alleges that T&N is the "former owner" of Keasbey, Exhibit B alleges that T&N is the "alter ego" of Keasbey, and Exhibit C alleges that T&N is the "successor" to Keasbey. Other complaints, such as Exhibit D, consist of boilerplate pleadings that do not on their face show a connection between the lawsuit against T&N and the connection between T&N and Keasbey. In such instances, subsequent court papers may reveal that plaintiff has asserted a claim against T&N on account of the torts of Keasbey. Attached as Exhibit E is an example of such an assertion, relating to the boilerplate complaint attached as Exhibit D.

8. American Mutual is a substantial insurance company that is incorporated in Massachusetts and does business in the District of Columbia, in every state and

in Puerto Rico and Canada. Attached as Exhibit F is a copy of the relevant portion of Moody's Bank and Finance Manual showing pertinent financial information about American Mutual as well as the fact that it operates throughout the country.

9. Although American Mutual has stated that it has no office in this District, it advertises in the yellow pages of the Washington, D.C. telephone directory and lists itself both in the yellow pages and white pages of this directory as having an office in Towson, Maryland with a "Washington Area" telephone number. Attached as Exhibit G is a copy of these telephone listings. I am informed that Towson, Maryland is an hour or less by car from the courthouse.

10. Prior to commencing this action T&N conducted an extensive investigation, including converations with American Mutual, to determine the extent of coverage that Keasbey had under policies issued by defendant. Although the details of our case on the merits are not relevant to this motion, it may be useful to set out the basis on which we conclude that standard form insurance policies were issued to Keasbey over a period of many years.

a. Prior to the commencement of this litigation American Mutual was apparently sued by injured asbestos worker plaintiffs. In that series of actions, the first of which

is entitled Brandon, et ux. v. American Mutual Liability Insurance Company, et al., No. 1-387-80 (Circuit Court, Knox County, Tennessee), American Mutual admitted in its court papers that it was "the insurer of Keasbey & Mattison for a period from approximately 1946 through 1965. Coverage was written for products liability, comprehensive general liability and liability." American Mutual attached to its papers in that action standard form insurance policies that it said had been issued to Keasbey during the time period indicated.

b. American Mutual supplied to T&N index cards purportedly showing each policy issued by American Mutual to Keasbey along with the effective dates of those policies. It was from this set of cards that T&N compiled Exhibit A to plaintiff's complaint, which organizes all the policies listed by prefix and places them in chronological order.

c. For the later years, unequivocal business records of Keasbey & Mattison now in the possession of Turner & Newall in England reflect the existence of products liability coverage. An example of such records, showing products liability in the amount of $250,000 per

person with an aggregate limit of $500,000 under the policy is attached hereto as Exhibit H.

11. Sullivan & Cromwell has been nationwide coordinating counsel for T&N throughout T&N's involvement in the asbestos litigation. For a substantial portion of that period, lawyers responsible for T&N's defense were located in Sullivan & Cromwell's Washington office. Although those lawyers are no longer with the firm, the staff of our office in Washington is fully familiar with the litigation and the best means of communicating with Turner & Newall in England, both directly and by courier through Sullivan & Cromwell's London office. Teletype facilities in our offices allow easy direct connection with Turner & Newall's offices from our offices here. In addition, Sullivan & Cromwell has computerized typing facilities that permit briefs, affidavits and other documents typed in Washington to be typed automatically on compatible equipment in our London office. From there, transmission of physical documents to Turner & Newall's headquarters is quite simple. Rapifax communications are similarly available for transatlantic photocopying of relevant documents. A paralegal in our Washington office has been working on many aspects of the T&N asbestos cases for several years.

12. Sullivan & Cromwell has no office in Philadelphia and, although -- at a price -- facilities of the kind described above are probably available, the cost to T&N will undoubtedly be higher. This is a major consideration

given the ever-increasing cost of the asbestos litigation and the fact that T&N has incurred very substantial losses worldwide for several years.

13. Defendant suggests that Philadelphia is a logical forum for this litigation because Keasbey & Mattison operated there. Our investigations have shown, however, that there is nothing to be gained by conducting this litigation in Philadelphia. Keasbey's assets were all sold in 1962 and were absorbed into ongoing businesses unrelated to T&N. None of the principal officers of Keasbey at the time of its dissolution remains in Philadelphia. The president of Keasbey, for example, moved to California, the next senior officer moved to Montreal and the corporate secretary moved to Baltimore. We are not aware of any Keasbey files located anywhere in Philadelphia. The only relevant extant Keasbey documents of which we are aware are now located at T&N's offices in England.

14. Several years ago we did write to one Patricia Light, at the Bryn Mawr office of American Mutual, seeking information about the whereabouts of Keasbey policies. Ms. Light did not supply any information and, in subsequent conversations with American Mutual's internal counsel and claims personnel, I was told that it had been foolish to write about such a matter to Ms. Light rather than addressing my questions to American Mutual at its corporate headquarters in Massachusetts. In the course of those same meetings I was also told by Mr. Lake, Assistant Vice President of American

Mutual, and Mr. Brady, Assistant Vice President and General Counsel of American Mutual, that no pertinent documents were located in Philadelphia and that its only documents relating to insurance coverage of Keasbey were moved some time ago to American Mutual's offices in Massachusetts. Indeed, Lake produced from the Wakefield, Massachusetts files of American Mutual the index cards from which T&N compiled Exhibit A to plaintiff's complaint. Lake represented that the only other pertinent documents still in existence were copies of standard form policies in effect during the relevant time periods. He subsequently supplied me with copies of those policies from his office in Wakefield, Massachusetts.

15. Like American Mutual, we thought it possible that relevant documents would be found in the court files remaining from an antitrust action brought by the United States against Johns-Manville and Keasbey many years ago. We sought those files first by a Freedom of Information Act inquiry in Washington and subsequently by a supplementary search of files in the courthouse in Philadelphia. We found nothing of relevance to the insurance litigation, and doubt that American Mutual will fare any better. In any event, litigation need not be pending in Pennsylvania in order for American Mutual's New York counsel to visit the Philadelphia courthouse to make that inspection.

16. Despite months of investigation, we are not aware of a single witness likely to testify at trial who lives in Pennsylvania or of a single document likely to be offered in evidence that is located at present in Pennsylvania. Significantly, American Mutual names no such witness and identifies no such document despite its rank speculation that some such may somewhere exist.

Philip L. Graham, Jr.

Sworn to before me this
16th day of July, 1982

Notary Public

ANGELO TORRE
NOTARY PUBLIC, State of New York
Residing in Queens County
Queens Co. Cl's No. 41-4623473
Certificate Filed in N. Y. Co. Cl's Office
Commission Expires March 30, 1984

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, postate prepaid, this 10th day of February, 1986 to:

H. Patrick Donohue, Esq.
DONAHUE, EHRMANTRAT & MONTEDONICO, CHARTERED
51 Monroe Street
Suite 700
Rockville, Maryland 20850
Attorney for Atlas Turner, Inc. and Bell Asbestos Mines, Ltd.

Patrick J. Attridge
BROMLEY, BROWN AND WALSH
51 Monroe Street
Suite 806
Rockville, Maryland 20850
Attorney for United States Mineral Products Company

Edward J. Lopata, Esq.
JORDAN, COYNE, SAVITS & LOPATA
1030 15th Street, N.W.
Suite 500
Washington, D.C. 20005
Attorney for W. R. Grace Company

Louis G. Close, Jr., Esq.
Edward M. Buxbaum, Esq.
WHITEFORD, TAYLOR, PRESTON,
TRIMBLE & JOHNSTON
500 Brawner Building
888 17th Street, N.W.
Washington, D.C. 20006
Attorneys for National Gypsum, U.S. Gypsum, and The Celotex Corporation

Peter T. Enslein
ASHCRAFT & GEREL
Suite 700
2000 L Street, N.W.
Washington, D.C. 20036
(202) 783-6400

5424A

LAW OFFICES
ASHCRAFT & GEREL
SUITE 700
2000 L STREET, N. W.
WASHINGTON, D. C. 20036
202-783-6400

SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA. 22304
703-751-7400

SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD. 20852
301-770-3737

SUITE 101
METRO 400 BUILDING
LANDOVER, MD. 20785
301-459-8400

SUITE 805
0 EAST BALTIMORE STREET
BALTIMORE, MD. 21202
301-539-1122

JORDAN, COYNE, SAVITS & LOPATA

Susan Marzec Hannigan
1030 15th Street, N.W.
Suite 500
Washington, D.C. 20005

Counsel for W.R. Grace & Co.

DONAHUE, EHRMANTRAT & MONTEDONICO

H. Patrick Donahue
91 Monroe Street
Suite 700
Rockville, Maryland 20850

Counsel for Atlas Turner, Inc., and Bell Asbestos Mines, Ltd.

6026A

LAW OFFICES
ASHCRAFT & GEREL
SUITE 700
2000 L STREET, N. W.
WASHINGTON, D. C. 20036
202-783-6400

SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA. 22304
703-751-7400

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BALTIMORE, MD. 21202
301-539-1122

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FLETCHER McDANIEL, et ux.

Plaintiffs,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

Civil Action No. 83-3520

Judge Thomas A. Flannery

FILED

FEB 12 1986

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

STIPULATION OF VOLUNTARY DISMISSAL

It is hereby stipulated that the above entitled action against defendants Atlas Turner, Inc., Bell Asbestos Mines, Ltd., United States Mineral Products Company and W.R. Grace & Co. may be dismissed without prejudice, each party to bear his own costs. In so dismissing these defendants, plaintiffs reserve their right to institute a new action against these defendants in the event that Fletcher McDaniel develops an asbestos-related cancer. Wilson v. Johns-Manville Sales Corp., 684 F.2d 111 (D.C. Cir. 1982).

ASHCRAFT & GEREL

Peter T. Enslein
2000 L Street, N.W.
Suite 700
Washington, D.C. 20036

Counsel for Plaintiffs

BROMLEY, BROWN & WALSH

Patrick J. Attridge
51 Monroe Street
Suite 806
Rockville, Maryland 20850

Counsel for United States Mineral Products Company

2-12-86. Let this be filed. [illegible] Judge

LAW OFFICES
ASHCRAFT & GEREL
SUITE 700
2000 L STREET, N. W.
WASHINGTON, D. C. 20036
202-783-6400

SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA. 22304
703-751-7400

SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD. 20852
301-770-3737

SUITE 101
METRO 400 BUILDING
LANDOVER, MD. 20785
301-459-8400

SUITE 805
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BALTIMORE, MD. 21202
301-539-1122

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Defendants.

Civil Action No. 83-3520

FILED

JAN 28 1986

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

ORDER

This matter came before the court at a pretrial conference held on January 24, 1986. After consultation with counsel, it is, by the court, this 28th day of January, 1986,

ORDERED that defendants must file their final list of exhibits no later than January 31, 1986; and it is further

ORDERED that plaintiff must asterisk their list of exhibits to show those to be used at trial no later than January 31, 1986; and it is further

ORDERED that both sides shall file briefs on the issue of whether evidence relating to cancer is admissible no later than January 31, 1986; and it is further

ORDERED that the parties shall file a list of depositions to be used at trial no later than January 31, 1986; and it is further

ORDERED that plaintiff shall respond to defendants' motion in limine on the issue of use of depositions at trial no later than January 27, 1986.

Thomas A. Flannery

UNITED STATES DISTRICT JUDGE

(W)

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Flannery 15

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CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

NOTICE

Mcdaniel, et al.
Plaintiff(s)

vs.

C.A. No. 83-3520

Armstrong World Industries
Defendant(s)

The following material has been filed and assigned these numbers on the docket sheet:

Number(s) assigned:	Material	Filing Date
	Deposition(s)	
219	Transcripts	7-8-86
	Bulky Pleadings	
	Exhibits	
	Sealed Material	

THIS NOTICE IS PLACED IN THE FILE JACKET TO ACCOUNT FOR NUMBERS ASSIGNED TO MATERIAL FILED IN THIS CASE BUT NOT FILED IN THE CASE JACKET