

FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAY - 3 1984

JAMES E. DAVEY, Clerk

FLETCHER MCDANIEL, et ux.,)
)
) Plaintiffs,)
)
) v.)
)
) ARMSTRONG WORLD INDUSTRIES,)
)
) INC., et al.,)
)
) Defendants.)

Civil Action No. 83-3520 ✓

Judge Flannery

FILED

APR - 3 1984

JAMES E. DAVEY, Clerk

NOTICE OF FILING IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO THE MOTIONS TO DISMISS OF
DEFENDANTS TURNER AND NEWALL, PLC, ATLAS TURNER,
INC., BELL ASBESTOS MINES, LTD., AND NICOLET,
INC. AND PLAINTIFFS' REQUEST FOR AN ORAL ARGUMENT

Plaintiffs in further support of their opposition to the motions to dismiss of defendants Turner and Newall, PLC, Atlas Turner, Inc., Bell Asbestos Mines, Ltd. and Nicolet, Inc. respectfully submit the attached Memorandum and Recommendation Re Motion of the Defendant Turner and Newall, PLC to Dismiss for Lack of Personal Jurisdiction issued on May 1, 1984 by Magistrate Robert J. DeGiacomo in Sheehan v. Owens Corning Fiberglas Corporation, C.A. No. 83-2160 et al. (D. Mass. 1984) recommending the denial of a similar motion to dismiss for lack of personal jurisdiction filed by defendant Turner and Newall, PLC. The Sheehan decision is of particular precedential import in the instant case as it is predicated upon a newly expanded factual record which closely parallels the record in this case. It is the first time, to plaintiffs knowledge, that this newly

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expanded record has been discussed in a memorandum and order setting by a United States District Court.^{1/} In addition, the legal analysis of the Sheehan court is particularly applicable here since the Massachusetts long-arm statute, Mass. Gen. Laws Ch. 223(A), §3(a) is virtually identical to the District of Columbia long-arm statute, D.C. Code §13-423.^{2/}

Plaintiffs submit that this Court's decision concerning the motions to dismiss of these defendants will have a significant impact upon the plaintiffs' ability to recover for the asbestos-related injuries suffered by Mr. McDaniel. As more fully appears in the plaintiffs' memoranda previously filed in opposition to these defendants' motions, plaintiff Fletcher McDaniel during his 32 years of work as a plasterer's helper was heavily exposed to defendant Turner and Newall, PLC's^{3/} Sprayed Limpet Asbestos product which was distributed by defendants Atlas Turner, Inc., Bell Asbestos Mines, Ltd. and

^{1/} This Honorable Court should be informed that Magistrate DeGiacomo has been appointed by the chief judge of the United States District Court for the District of Massachusetts to coordinate, schedule and to recommend orders in all pre-trial matters affecting all asbestos cases (several thousand in number) filed in that court.

^{2/} Like the District of Columbia, Massachusetts has adopted the Uniform Interstate and International Procedure Act.

^{3/} Interestingly, movant herein Turner and Newall, PLC denies the jurisdiction of this Court. This is the same Turner and Newall, PLC, plaintiff in Civil Action No. 82-1339 before this Honorable Court in which Turner and Newall, PLC has successfully invoked the jurisdiction of this Court (See Order by Flannery, J. dated November 2, 1982).

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Nicolet, Inc.'s predecessor. Because of the significance of these motions, plaintiffs respectfully request the opportunity to appear before this Honorable Court and present oral argument in opposition to these motions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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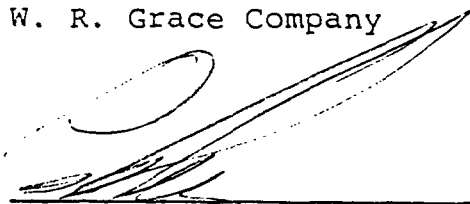
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAY 02 1984

THOMAS F. SHEEHAN, JR. and
SYBIL E. SHEEHAN, his wife,

Plaintiffs,

v.

OWENS-CORNING FIBERGLAS
CORPORATION, ET AL.,

Defendants.

CIVIL ACTION NO.
83-2160-Mc

ERNEST GHILANI and
MILDRED L. GHILANI, his wife,

Plaintiffs,

v.

OWENS-CORNING FIBERGLAS
CORPORATION, ET AL.,

Defendants.

CIVIL ACTION NO.
83-2161-Mc

FILED

MAY 13 1984

JAMES E. DAVEY, Clerk

JOSEPH F. FLAHERTY and
PAULINE FLAHERTY, his wife,

Plaintiffs,

v.

UNITED STATES GYPSUM COMPANY,
ET AL.,

Defendants.

CIVIL ACTION NO.
83-2169-Mc

FILED

APR 13 1984

JAMES E. DAVEY, Clerk

CA 83-3520

FRANK M. POWERS, LORRAINE POWERS,
his wife, and MAUREEN FRANK, JR
and LORRAINE, JR., their children

Plaintiffs,

v.

UNITED STATES GYPSUM COMPANY,
ET AL.,

Defendants.

CIVIL ACTION NO.
83-2170-Mc

ALGER KRUKONIS,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY,
ET AL.,

Defendants.

CIVIL ACTION NO.
83-2185-Mc

THOMAS P. CASHMAN,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY,
ET AL.,

Defendants.

CIVIL ACTION NO.
83-2186-Mc

VETO J. PATRICK, and
VERA PATRICK, his wife,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY,
ET AL.,

Defendants.

CIVIL ACTION NO.
83-2291-Mc

BARBARA D. HODGON, Individually
and as Administrator of the
Estate and ALLEN HODGEN, and
DEBRA HODGEN and DAVID HODGEN,
their children,

Plaintiffs,

v.

UNITED STATES GYPSUM COMPANY,
ET AL.,

Defendants.

CIVIL ACTION NO.
83-3196-Mc

MEMORANDUM AND RECOMMENDATION RE MOTION
OF THE DEFENDANT TURNER & NEWALL PLC TO
DISMISS FOR LACK OF PERSONAL JURISDICTION

May 1, 1984

DeGIACOMO, U.S.M.

This matter can best be described as one that has been heavily briefed. The material submitted is replete with affidavits, corrections, brochures, reference to other pleadings, and copious citations. Oral argument has been vigorous and lengthy. Jurisdiction is the issue, and:

. . . [A] court may assert jurisdiction only when both of the following questions are answered affirmatively: "(1) is the assertion of jurisdiction authorized by the statute, and (2) if authorized, is the exercise of jurisdiction under State law consistent with basic due process requirements mandated by the United States Constitution?" Good Hope Industries, Inc. v. Ryder Scott Co., 378 Mass. 1, 389 N.E.2d 76, 79 (1979).

Hahn v. Vermont Law School, et al., 698 F.2d 48, 50 (1st Cir. 1983). It is the position of the plaintiffs that they meet

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this test in that (1) jurisdiction exists under the Massachusetts long-arm statute, Mass. Gen. Laws, ch. 223(A), § 3(a) and § 3(d) which provide that:

A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action in law or equity arising from the person's

(a) transacting any business in this commonwealth; . . .

(d) causing tortious injury in this commonwealth by an act or omission outside this commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this commonwealth; . . .

and (2) the exercise of this jurisdiction meets the basic due process requirements of the United States Constitution.

The several plaintiffs allege exposure in Massachusetts to (1) asbestos-containing products manufactured by a wholly-owned subsidiary of the defendant Turner & Newall, and (2) exposure to an asbestos spray insulation product known as Sprayed Limpet Asbestos, manufactured by Turner & Newall. The argument turns on the corporate structure of Turner & Newall and the extent of any control exercised by it over its various wholly-owned subsidiaries and distributors. The basic facts of corporate structure and distribution are not in dispute. The extent and type of control resulting therefrom is vigorously disputed. It is the position of the plaintiffs that T&N exercised through its interlocking corporate chain such a pervasive control that jurisdiction in Massachusetts is proper either on an alter ego theory, or one of agency.

T&N was formed in 1920 by the merger of four United Kingdom manufacturers of asbestos-containing products, one of which was J. W. Roberts, Ltd. In 1934 T&N acquired a majority interest in Keasbey & Mattison Co., a Pennsylvania asbestos company founded in 1873 and incorporated in 1892 with its headquarters in Ambler, Pennsylvania. By 1937 T&N had acquired all the stock of K&M, and until 1962 operated it as a wholly-owned subsidiary. K&M manufactured various asbestos products in plants located in Pennsylvania, Missouri, and Louisiana. The raw materials used to manufacture these products were supplied exclusively by T&N. Complete authority over K&M's internal affairs and general policy decisions was exercised by T&N. In a T&N brochure issued in 1950, it was stated that:

. . . . Sales are effected through upwards of 700 Keasbey & Mattison distributors. Their warehousing distribution, sales and service activities, now embrace all the major trading areas of the nation and serve to place various Keasbey & Mattison products virtually at the doorsteps of retailers and ultimate users throughout the United States. . . .

Insurance policies providing coverage with respect to products and materials manufactured, sold or distributed by K&M, were purchased from the American Mutual Liability Insurance Company, a Massachusetts corporation. T&N subsequently sold the assets of K&M, and it was subsequently formally dissolved in 1967 when a certificate of dissolution was filed.

Prior to the dissolution of K&M, T&N acquired and became the sole stockholder of a Canadian corporation, Atlas Asbestos

Co., which manufactured asbestos-containing products initially for the Canadian market. In 1963, it became a division of another T&N wholly-owned subsidiary, Bell Asbestos Mines, Ltd. Atlas became a separate corporate entity in 1977.

J. W. Roberts, Ltd., one of the original four United Kingdom manufacturers of asbestos-containing products involved in the merger forming T&N, had continued to function as a branch company of T&N. Responsibility for the conduct of JWR is not denied by T&N. A product known as Sprayed Limpet Asbestos, a spray insulation product consisting of amosite asbestos fibers together with cement applied in a fine spray of water, widely used in acoustical insulation, and fire-proofing applications, was developed by JWR with the necessary application machinery as part of a patented Sprayed Limpet Asbestos process. This product, manufactured by T&N acting through JWR in England, was distributed throughout the world through a series of exclusive license agreements, which designated a defined territory and required the purchase of all supplies of asbestos spray fibers from JWR, with sales being made by JWR only to the licensees.

JWR initially entered into such a licensing agreement with K&M, granting it the exclusive right of distribution in the United States. In the mid-1950s, K&M entered into a sub-license agreement with the Frederick A. Connor Company, Inc. of Lowell, Massachusetts, granting it the exclusive right to use, sell and install Sprayed Limpet in Massachusetts.

In 1962, as K&M went out of existence, JWR entered into an exclusive licensing agreement with Armstrong Contracting & Supply Corp. for the distribution of Sprayed Limpet Asbestos in the United States. Armstrong, an insulation contracting company, had sales offices throughout the United States including Boston, Springfield, and Worcester, Massachusetts. It had the exclusive right of distribution for five years, could only use the products supplied by JWR, and was authorized to enter into sub-license agreements subject to prior approval by JWR. In 1963, Armstrong entered into a new sub-license agreement with the Connor Company whereby Connor was permitted to use, sell, and install Sprayed Limpet Asbestos in the Commonwealth of Massachusetts. Connor, as an original sub-licensee to K&M and to Armstrong used the Sprayed Limpet Asbestos product in buildings in Massachusetts. The Sprayed Limpet product was shipped to and stored in the Connor warehouse in Lowell, Massachusetts.

In 1967, JWR, Atlas, and Armstrong entered into an agreement whereby the Armstrong license was transferred to Atlas and Atlas became the exclusive licensee for the distribution of the Sprayed Limpet product in the United States. Atlas was allowed to manufacture Sprayed Limpet Asbestos for sale in the United States. JWR received royalties from these sales. The product continued to be made from amosite asbestos fiber, most of which was supplied by a T&N company, Turner's Asbestos Fibers, Limited, located in Manchester, England. Atlas shipped the product into the United States from 1967 until 1972.

In 1961, Chaippisi Brothers Co., Inc., of Needham Heights, Massachusetts, entered into a sub-license agreement with Atlas for the Sprayed Limpet product. It was delivered and stored in the Chaippisi warehouse in Needham Heights, Massachusetts. Among the buildings in the Greater Boston area where this product was used were the Prudential Building Complex. The Connor Company, as sub-licensee from the mid-1950s through 1967, received \$75,000 to \$100,000 per year from sales in Massachusetts.

In 1982, T&N's sales to companies located in Massachusetts amounted to 15,745 pounds sterling. Its total sales for the same year were 293,000,000 pounds sterling.¹

I am satisfied, on this record, that the plaintiffs have sustained their burden of establishing jurisdiction by making a prima facie showing of the facts upon which it may be based.

I. THE MASSACHUSETTS LONG-ARM STATUTE, MASS. GEN. LAWS, CH. 223(A), §§ 3(a) and 3(d)

Section 3(a) requires a prima facie showing that T&N either directly or through an agent transacted business in the Commonwealth, and that the cause of action arose from such transaction of business. Good Hope Industries, supra, at 80. In order to reach T&N its relationship with Keasbey & Mattison on the one hand and J. W. Roberts on the other is crucial, for as to the former the issue of pervasive control must be met, while as to the latter control is admitted. All parties have

¹ For the above facts see Plaintiff's Brief in Opposition to Motion to Dismiss with reference to the several affidavits, Docket No. 40; affidavits of John Mason Atkinson in support of Motion to Dismiss.

cited My E. Bad Baking Co. v. Cumberland Farms, Inc., 353 Mass.
614 (1968), 223 N.E.2d 748. There, the Supreme Judicial Court
set forth the test:

The general principle is not of unlimited application. A corporation or other person controlling a corporation and directing, or participating actively in . . . , its operation may become subject to civil or criminal liability on principles of agency or of causation. . . . This may sometimes occur where corporations are formed, or availed of, to carry out the objectives and purposes of the corporations or persons controlling them. . . . The circumstances in which one corporation or a person controlling it, may become liable for the acts or torts of an affiliate or a subsidiary under common control have been frequently discussed. Although common ownership of the stock of two or more corporations together with common management, standing alone, will not give rise to liability on the part of one corporation for the acts of another corporation or its employees, additional facts may be such as to permit the conclusion that an agency or similar relationship exists between the entities. Particularly is this true (a) where there is active and direct participation by the representatives of one corporation, apparently exercising some form of pervasive control, in the activities of another, and there is some fraudulent or injurious consequence of the intercorporate relationship, or (b) when there is a confused intermingling of activity of two or more corporations engaged in a common enterprise with substantial disregard of the separate nature of the corporate entities, or serious ambiguity about the manner and capacity in which the various corporations and their respective representatives are acting. In such circumstances, in imposing liability upon one or more of a group of "closely identified" corporations, a court "need not consider with nicety which of them" ought to be held liable for the act of one corporation "for which the plaintiff deserves payment".
(citations omitted)

I am satisfied that a sufficient showing has been made that T&N apparently exercised some form of pervasive control over K&M, and that an injurious consequence of this intercorporate relationship has been shown at least to the extent of meeting the jurisdictional requirement. In coming to this conclusion I am mindful that the Fifth Circuit in Hargrave v. Fibreboard Corp., 710 F.2d 1154 (1983), found to the contrary. In Hargrave, however, at issue was the Texas long-arm statute, as interpreted by the courts of that State, and a completely different record. In my opinion, K&M on this record emerges simply as a division of T&N and as such carried on its business. K&M's activities were clearly geared to and under the control of T&N. Under the standards of My Bread this is sufficient. See Commonwealth v. Beneficial Finance Co., 275 N.E.2d 33, 92 (Mass. 1971).

Even assuming however, arguendo, that the type of control required of K&M did not exist, there is absolutely no question that it existed with J. W. Roberts. There the chain is perfectly complete and admittedly so.

The defendant has also argued that its contacts were so minimal as to be insufficient to be considered doing business under either (a) or (d) of the statute. I disagree, and adopt the reasoning of Judge Julian in Mark v. Obear & Sons, Inc., 313 F.Supp. 373 (D.Mass. 1970), with reference to the terms doing business or deriving substantial revenue. He held there that the statutory use of "substantial revenue" is necessarily imprecise; that "Ratio, however, is not the test

since ratio -- not itself a quantity but merely the relation of one quantity to another." The admitted revenue derived by T&N from sales in Massachusetts in 1982, plus the showing made by the plaintiffs of other revenue, in my opinion is sufficient to meet the test. In summary, I am satisfied that T&N has acted through K&M and JWR within the provisions of the Massachusetts long-arm statute, both subsections (a) and (d).

II. THE DUE PROCESS REQUIREMENTS OF THE UNITED STATES CONSTITUTION

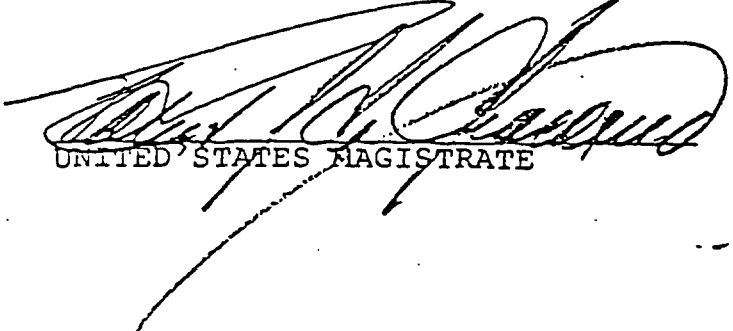
Even though the state jurisdictional requirement is met, the assertion of this jurisdiction must meet the requirements of due process. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980). There the court stated that

[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. . . . Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. (citations omitted)

World-Wide Volkswagen held, very simply, that if a product is purchased in the forum State by a consumer, that State may assert jurisdiction over everyone in the chain of distribution. Here, there is no question of the chain of distribution from T&N through to the forum State where the exposure to its products is alleged to have taken place. Nothing further is required, and the many cases cited merely reiterate this holding.

The position of the defendant T&N that on this record it can sit in the United Kingdom in jurisdictional safety behind an impenetrable shield while controlling and profiting from the distribution of these asbestos products is a scene more appropriate to The Lord of the Rings than the world of due process.

I have carefully reviewed all the material submitted and remain thoroughly satisfied that the motion to dismiss should be denied. I so RECOMMEND.



UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FLETCHER MCDANIEL, et ux.,
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ARMSTRONG WORLD INDUSTRIES,
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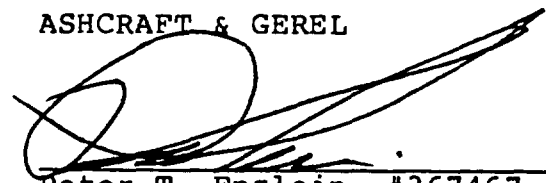
CLERK, U.S. DISTRICT COURT,
DISTRICT OF COLUMBIA

NOTICE OF FILING IN SUPPORT OF PLAINTIFFS'
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DEFENDANTS TURNER AND NEWALL, PLC AND NICOLET, INC.

Plaintiffs in further support of their opposition to the motions to dismiss of defendants Turner and Newall, PLC and Nicolet, Inc. respectfully submit the attached memorandum and order in Davis v. Turner and Newall, Ltd., No. 80-0722C(4) (D. Mo. 1981) denying a similar motion to dismiss of defendant Turner and Newall, PLC. The Davis decision is predicated upon the Missouri long-arm statute, Mo. Rev. Stat. §506.500, which is similar to the District of Columbia long-arm statute, D.C. Code §13-423.

Respectfully submitted,

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ATTACHMENT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

OCT 19 1981

ROBERT DAVIS, et al.,
Plaintiffs,

v.

TURNER & NEWALL, LTD.,
et al.,

Defendants.

EWON HENDERHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

FILED

No. 80-0722C(4)

MAY 22 1984

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

CA 83-3520

ORDER

A memorandum dated this day is hereby incorporated
into and made a part of this order.

IT IS HEREBY ORDERED that this Court's order dated
June 9, 1981, be and the same is amended as set forth
below:

IT IS HEREBY ORDERED that defendants'
separate motions to quash service and to dismiss
the complaint and cross-claims for lack of
personal jurisdiction of the following defendants
be and the same are denied:

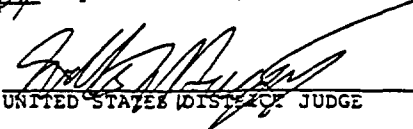
Turner and Newall, Ltd.
Turners Asbestos Fibres, Ltd.

IT IS HEREBY FURTHER ORDERED that
defendants' separate motions to quash service
and to dismiss the complaint and cross-claims
for lack of personal jurisdiction of the
following defendants be and the same are
granted. Plaintiffs' claims against the
following defendants are dismissed without
prejudice at plaintiffs' costs:

Johns-Manville Amiante Canada, Inc.
Johns-Manville Canada, Inc.

IT IS HEREBY FURTHER ORDERED that plaintiffs' alterna-
tive motions for certification for appeal under 28 U.S.C. §
1292(b) and Rule 54(b) of the Federal Rules of Civil Procedure
be and the same are denied as moot.

Dated this 19th day of October, 1981.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

OCT 19 1981

ROBERT DAVIS, et al.,)
)
Plaintiffs,)
)
v.)
)
TURNER & NEWALL, LTD.,)
et al.,)
)
Defendants.)

EYON WENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

No. 80-0722C(4)

MEMORANDUM

This matter is before the Court for reconsideration of the Court's order of June 9, 1981, dismissing four defendants for lack of personal jurisdiction.

Defendant Brinco Mining, Ltd. (Brinco), formerly Cassiar Resources, Ltd., and plaintiffs, submitted suggestions, memoranda and depositions in support of jurisdiction. Defendants Turner & Newall, Ltd., Turners Asbestos Fibres, Ltd., Johns-Manville Amiante Canada, Inc., and Johns-Manville Canada, Inc., filed documents in opposition.

Personal jurisdiction over a non-resident defendant in diversity turns on two considerations: whether state law confers personal jurisdiction over the defendant, and whether such an assertion of jurisdiction is consistent with the due process clause of the fourteenth amendment. E.g., Data Disc, Inc. v. Systems Technology Associates, Inc., 557 F.2d 1280, 1286 (9th Cir. 1977).

As to the first inquiry, the Missouri long-arm statute extends jurisdiction over any corporation as to any cause of action arising from doing any of the following:

- (1) The transaction of any business within this state;
- (2) The making of any contract within this state;
- (3) The commission of a tortious act within this state;

(4) The ownership, use, or possession of any real estate situated in this state;

(5) The contracting to insure any person, property or risk located within this state at the time of contracting.

Mo. Rev. Stat. § 506.500 (Supp. 1981). Service of process under this statute is effective to extend jurisdiction over non-resident defendants to the limits allowed under the due process clause. State ex rel. Deere & Co. v. Pinnell, 454 S.W.2d 889, 892 (Mo. 1970). Therefore, the familiar test for determining the constitutionality of the exercise of personal jurisdiction applies: does the defendant have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). Accord World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291-94 (1980).

The plaintiff employees were allegedly exposed to the asbestos during the course of their employment at Certain-Teed Corporation's (Certain-Teed) plant in St. Louis, Missouri (formerly known as Keasbey & Mattison's plant). Plaintiffs' claims for personal injuries allegedly resulting from exposure to asbestos and asbestos-related products mined, manufactured, sold or distributed by the defendants fall within the ambit of the Missouri long-arm statute. See Fulton v. Chicago, Rock Island & Pac. Ry. Co., 481 F.2d 326 (8th Cir.), cert. denied, 414 U.S. 1040 (1973), interpreting the phrase "commission of a tortious act within this state" to include extraterritorial acts producing actionable consequences in Missouri.

To determine if the exercise of personal jurisdiction violates due process, courts generally weigh the following five factors:

1. The interest of the state in providing a forum for its residents;
2. The nature and quality of contacts with the forum state;

3. The quantity of contacts with the forum state;

4. The relationship of the cause of action to the contacts with the forum state; and

5. The convenience of the parties.

E.g., Block Industries v. DHJ Industries, Inc., 495 F.2d 256, 259 (8th Cir. 1974).

The Court recognizes that the State of Missouri has a strong interest in providing a forum for its residents who allegedly are injured by the defective products of foreign corporations.

To determine whether the nature, quality and quantity of contacts with the forum state support personal jurisdiction, the Court must find that plaintiff has made a prima facie showing of jurisdictional facts, through submission of affidavits or other written materials, sufficient to avoid defendant's motion to dismiss. Data Disc, Inc. v. Systems Technology Associates, Inc., *supra* at 1285.

Plaintiffs and defendant Brinco alleged the following facts through affidavit, deposition, or other written materials concerning jurisdiction over Turner and Newall, Ltd., and Turners Asbestos Fibres, Ltd. (hereinafter collectively referred to as T & N).

1. Deposition testimony of Robert Hartman, an employee of Certain-Teed, in which Hartman testified that his business records showed that T & N supplied asbestos fiber to each Certain-Teed plant for the years 1963 to 1979, including the plant in St. Louis.

2. Deposition testimony of Robert R. Porter, former president of Keasbey & Mattison. Keasbey & Mattison was a wholly-owned subsidiary of T & N until 1962.¹ Porter testified

¹In 1963, Keasbey & Mattison amalgamated with Certain-Teed. T & N is the largest single stockholder of Certain-Teed.

that the chairman of the board of T & N made all the policy decisions for Keasbey & Mattison and that Keasbey & Mattison obtained all of its asbestos from divisions of T & N. Keasbey & Mattison had seven plants and ten sales offices, including a plant in St. Louis.

3. Affidavit of Ralph L. Lanz, retired employee of Keasbey & Mattison and Certain-Teed. Lanz states therein the following: a) that T & N officials knew that from 1956 through 1968, T & N shipped asbestos fiber directly to the Keasbey & Mattison plant, later the Certain-Teed plant, in St. Louis for use in St. Louis; b) Lanz prepared estimates of asbestos fiber requirements for Keasbey & Mattison's plants, later Certain-Teed's plants, including the plant in St. Louis. T & N used the estimates to allocate and distribute fiber to Keasbey & Mattison, and later Certain-Teed. Lanz then allocated and distributed the shipments of fiber to the plants, including the plant in St. Louis; c) from 1956 through 1968, Keasbey & Mattison, and later Certain-Teed, were under a contractual obligation to purchase all of its asbestos fiber requirements from T & N or some other supplier designated by T & N; d) from 1956 through 1968, Lanz had numerous discussions with T & N officials about the specific types and amounts of T & N asbestos fiber used in each of Keasbey & Mattison's, and later Certain-Teed's, plants, including the St. Louis plant.

The Court concludes that the record following jurisdictional discovery reveals sufficient contacts by T & N with Missouri to support the exercise of personal jurisdiction. The Court finds that T & N purposely availed itself of the privilege of conducting business in Missouri. Compare Hanson v. Denkla, 357 U.S. 235 (1958) with World Wide Volkswagen Corp. v. Woodson, supra.

The Court acknowledges the inconvenience and possible hardship that may result from compelling T & N, a foreign corporation, to defend itself in this forum. See Huston v. Fehr

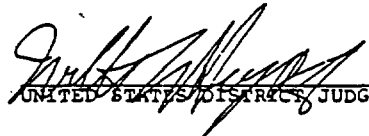
Brothers, Inc., 584 F.2d 833 (8th Cir.), cert. denied, 439 U.S. 961 (1978). However, any inconvenience to T & N is outweighed by the interest of the state in providing a forum for its residents; the nature, quality and quantity of T & N's contacts with the forum state; and the relationship of the cause of action to the forum state. See Block Industries v. DHJ Industries, Inc., supra. The Court, therefore, denies T & N's motions to quash service and to dismiss for lack of jurisdiction.

Upon an examination of the record, including the deposition of Robert Hartman, the Court finds insufficient facts to allege a prima facie showing of jurisdiction over the following defendants:

Johns-Manville Amiante Canada, Inc.
Johns-Manville Canada, Inc.

Since the Court has reconsidered its order of June 9, 1981, plaintiffs' alternative motions for certification for appeal under 28 U.S.C. § 1292(b) and Rule 54(b) of the Federal Rules of Civil Procedure are denied as moot.

Dated this 11th day of October, 1981.


UNITED STATES DISTRICT JUDGE