

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF GENERAL SERVICES,	:	
	:	
Plaintiff	:	
and	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION,	:	
	:	
Intervenor/Plaintiff	:	
	:	
v.	:	NO. 284 M.D. 1990
	:	
UNITED STATES MINERAL	:	
PRODUCTS COMPANY,	:	
	:	
Defendant	:	

COMPLAINT OF INTERVENOR/PLAINTIFF
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

PRELIMINARY STATEMENT

1. This is an action for compensatory damages and other relief stemming from the asbestos fiber contamination of the Transportation and Safety Building located in the Capitol Complex in Harrisburg, Pennsylvania.

2. Damages of intervenor/plaintiff Pennsylvania Department of Transportation ("PennDOT") include, but are not limited to, all costs incurred or to be incurred by it for removal of asbestos containing fireproofing in the building; air and bulk sampling and analysis; operations and maintenance attributable to the asbestos containing fireproofing; and relocation during the removal and replacement of the fireproofing.

3. PennDOT further seeks punitive damages from the defendant in an amount which is just and fair under the

Shield Type H, and CAFCO Blaze-Shield were used in the construction of the Transportation and Safety Building and remain in the building.

19. U.S. Mineral did not provide PennDOT with warnings regarding the dangers of asbestos.

20. U.S. Mineral's asbestos containing spray applied products used in the construction of the Transportation and Safety Building have deteriorated since their installation. They have not adhered permanently to the surfaces to which they were applied and debris from their deterioration has been found in numerous locations in the Transportation and Safety Building including areas housing PennDOT.

21. As a result of the deterioration of defendant's spray applied asbestos products, asbestos fibers have become suspended in the air of the building. They have been inhaled by PennDOT's employees and customers and have landed on interior surfaces and furnishings of the building where they pose a risk of becoming resuspended in the air and then being inhaled by PennDOT's employees and customers.

22. The release of asbestos fibers from the asbestos containing materials manufactured by defendant has contaminated the areas of the Transportation and Safety Building housing PennDOT.

23. To safeguard the health of its employees and customers, PennDOT has implemented measures in the building to reduce the level of asbestos fibers in the work environment and to safeguard against their accidental release. These measures are

COUNT I - STRICT LIABILITY

27. Paragraphs 1 through 26 are incorporated herein by reference.

28. U.S. Mineral is in the business of selling and did sell the asbestos containing spray applied products in the Transportation and Safety Building.

29. U.S. Mineral's asbestos containing spray applied products were installed in the Transportation and Safety Building without substantial change in the condition in which they left the control of U.S. Mineral.

30. U.S. Mineral's asbestos containing spray applied products in the Transportation and Safety Building are defective and unreasonably dangerous to PennDOT, its employees, and other persons using the spaces housing PennDOT because the products contain asbestos fibers.

31. U.S. Mineral's asbestos containing spray applied products were defectively designed because they contain asbestos, a hazardous substance unnecessary to the manufacture of such products. Functionally equal spray applied products not containing asbestos could have been manufactured by U.S. Mineral.

32. U.S. Mineral's sale of defectively designed asbestos containing spray applied products is a proximate cause of PennDOT's injuries.

33. U.S. Mineral provided no warning to PennDOT as to the dangerous nature of its asbestos containing spray applied products.

34. U.S. Mineral's failure to warn was a proximate cause of PennDOT's injuries.

WHEREFORE, intervening plaintiff prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficient punish it and discourage repetition of its outrageous, reckless, willful, and wanton conduct;

C. PennDOT recover its costs and disbursements of this suit; and

D. the Court grant such other and further relief as it deems just and proper.

COUNT II - NEGLIGENCE

35. Paragraphs 1 through 34 are incorporated herein by reference.

36. At all times material, U.S. Mineral knew, or with the exercise of reasonable care should have known, that its asbestos containing spray applied products would be used in facilities such as the Transportation and Safety Building.

37. At all times material, U.S. Mineral knew, or with the exercise of reasonable care should have known, that its asbestos containing spray applied products were inherently dangerous, defective, and hazardous and could cause harm to persons working in or visiting facilities such as the Transportation and

Safety Building and would contaminate and thereby cause harm to the buildings themselves.

38. U.S. Mineral owed a duty to PennDOT, and breached that duty, when it failed to adequately test the safety of asbestos or its asbestos containing products. As a result, U.S. Mineral supplied defectively designed products which have contaminated the Transportation and Safety Building, including those portions housing PennDOT, with a hazardous substance.

39. U.S. Mineral owed a duty to PennDOT, and breached that duty, when it failed to recommend the removal of its asbestos containing spray applied products from the market and to undertake the responsibility of locating, removing, and replacing these products in the Transportation and Safety Building although it knew or should have known that the presence of the carcinogen asbestos in these products posed a health hazard in the building.

40. In breaching its duties to PennDOT as set forth above, U.S. Mineral acted recklessly, willfully, wantonly, and outrageously.

41. U.S. Mineral's actions and its failure to act when it had a duty to do so were proximate causes of PennDOT's injuries.

WHEREFORE, intervening plaintiff prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances

and which will sufficient punish it and discourage repetition of its outrageous, reckless, willful, and wanton conduct;

C. PennDOT recover its costs and disbursements of this suit; and

D. the Court grant such other and further relief as it deems just and proper.

COUNT III - CONSPIRACY

42. Paragraphs 1 through 41 are incorporated herein by reference.

43. U.S. Mineral was a founding member of the Sprayed Mineral Fiber Manufacturers Association (hereinafter "SMFMA"). Other members were Keene Corporation, Asbestospray Corporation, and Smith & Kanzler Corporation. The members of the SMFMA engaged in a conspiracy to misrepresent the safety of spray applied asbestos containing materials.

44. Early in the SMFMA's existence, it sought out the Johns-Manville Corporation for assistance in an attempt to rebut or minimize information in the public domain on the hazards of asbestos.

45. The SMFMA sponsored tests designed to measure the erosion of asbestos fiber from sprayed asbestos fireproofing. The results of these tests, known to the SMFMA while U.S. Mineral's asbestos containing products were still being sold and shipped for use in the Transportation and Safety Building, showed that spray applied asbestos fireproofing could not meet federal government

standards for air erosion. The SMFMA did not release these results to the public.

46. The members of the SMFMA agreed to and did fraudulently misrepresent to purchasers that spray applied asbestos containing materials were safe and would not release asbestos fibers.

47. U.S. Mineral and its co-conspirators showed by their actions a conscious disregard for the health and safety of all persons exposed to hazardous asbestos fibers released from spray applied asbestos containing materials, including employees in and visitors to the Transportation and Safety Building.

48. U.S. Mineral and its co-conspirators acted maliciously in that they demonstrated reckless disregard for the consequences of their acts and their social duty.

49. As a result of the actions of U.S. Mineral and its co-conspirators, the Department of General Services was induced to purchase, install, and keep spray applied asbestos containing materials in the Transportation and Safety Building, including those portions housing PennDOT, all to the injury of PennDOT.

WHEREFORE, intervening plaintiff prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficient punish it and discourage repetition of its outrageous, reckless, willful, and wanton conduct;

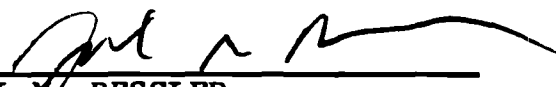
C. PennDOT recover its costs and disbursements of this suit;
and

D. the Court grant such other and further relief as it deems
just and proper.

Respectfully submitted,

ERNEST D. PREATE, JR.
Attorney General

BY:


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DATED: August 20, 1993

V E R I F I C A T I O N

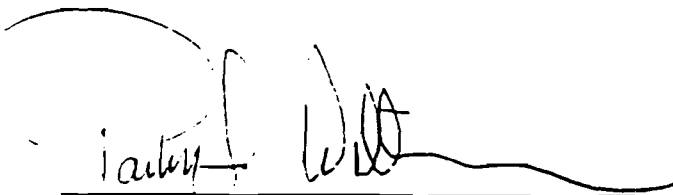
COMMONWEALTH OF PENNSYLVANIA:

: ss.

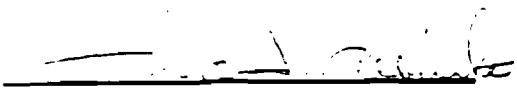
COUNTY OF DAUPHIN

:

I, PARKER F. WILLIAMS, Deputy Secretary for Administration, Department of Transportation, being first duly sworn, hereby state that I have read the foregoing complaint and believe it to be true and correct to the best of my knowledge, information, and belief.


PARKER F. WILLIAMS

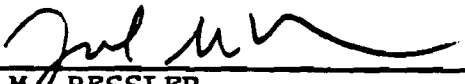
Sworn to and subscribed
before me this 2nd day
of June, 1993.


NOTARY PUBLIC
NOTARIAL SEAL
MARGARET I. ALBRIGHT, NOTARY PUBLIC
CITY OF HARRISBURG DAUPHIN COUNTY
MY COMMISSION EXPIRES APR. 8, 1996

CERTIFICATE OF SERVICE

I, JOEL M. RESSLER, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on August 20, 1993, I caused to be served a copy of the foregoing document entitled COMPLAINT OF INTERVENOR/PLAINTIFF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, by depositing same in the United States Mail, first class, postage prepaid, in Harrisburg, Pennsylvania, upon the following:

Peter C. Kennedy, Esquire
HECKER, BROWN, SHERRY & JOHNSON
1700 Two Logan Square
18th and Arch Street
Philadelphia, PA 19103



JOEL M. RESSLER
Senior Deputy Attorney General