

ADVERSARY PROCEEDING COVER SHEET

ADVERSARY PROCEEDING NUMBER

(REV. 5/00)

(Instructions on Reverse)

(Court Use Only)

THIRD-PARTY PLAINTIFF Armstrong World Industries, Inc.		THIRD-PARTY DEFENDANTS Monsanto Company and Solutia, Inc.	
ATTORNEYS (Firm Name, Address, and Telephone No.) Joanne P. Pinckney (I.D. No. 3344) Bouchard Margules & Friedlander 222 Delaware Avenue, Suite 1400 Wilmington, DE 19801 (302) 573-3500 (302) 573-3501 Facsimile		ATTORNEYS (If Known)	
PARTY (Check one box only) ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 U.S. NOT A PARTY			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Suit for declaratory judgment regarding indemnification and/or contribution for liability.			
NATURE OF SUIT (Check the one most appropriate box only.)			
☐ 454 To Recover Money or Property ☐ 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property ☐ 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property ☐ 424 To object or to revoke a discharge 11 U.S.C. § 727	☐ 455 To revoke an order of confirmation Of a Chap. 11, Cap. 12, or Chap. 13 Plan ☐ 426 To determine the dischargeability Of a debt 11 U.S.C. § 523 ☐ 434 To obtain an injunction or other equitable relief ☐ 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan	☐ 456 To obtain a declaratory judgment Relating to any of foregoing causes Of action ☒ 459 To determine a claim or cause of action removed to a bankruptcy court ☐ 498 Other (specify)	
ORIGIN OF PROCEEDINGS (Check one box only.)		☒ 1 Original Proceeding ☒ 2 Removed Proceeding ☐ 4 Reinstated Or Reopened ☐ 5 Transferred from Another Bankruptcy Court	
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23			
DEMAND	NEAREST THOUSAND	OTHER RELIEF SOUGHT Declaration that Third-Party Defendants are solely liable on claims.	☒ JURY DEMAND
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR Armstrong World Industries, Inc.		BANKRUPTCY CASE NO. 00-4471 (RJN)	
DISTRICT IN WHICH CASE IS PENDING Delaware	DIVISIONAL OFFICE		NAME OF JUDGE Randall J. Newsome
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT		ADVERSARY PROCEEDING NO.
DISTRICT	DIVISIONAL OFFICE		NAME OF JUDGE
FILING FEE (Check one box only.) ☒ FEE ATTACHED ☐ FEE NOT REQUIRED ☐ FEE IS DEFERRED			
DATE January 31, 2003	PRINT NAME Joanne P. Pinckney	SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Joanne P. Pinckney	

HARTOLDMON0095412

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

<u>In re</u>	:	Chapter 11
ARMSTRONG WORLD INDUSTRIES, INC., <i>et al.</i> ,	:	Case No. 00-4471 (RJN)
<u>Debtors.</u>	:	(Jointly Administered)
DIANA BIEHN and	:	
LISA BARNES SCHULYER,	:	
Executrixes of the ESTATE OF	:	
PATRICIA BARNES, and	:	
HERBERT FRIESE, individually	:	
Plaintiffs,	:	Civil Action No. 02CV5109 (JBS)
v.	:	
ARMSTRONG WORLD INDUSTRIES, INC.	:	
<u>Defendant.</u>	:	
ARMSTRONG WORLD INDUSTRIES, INC.	:	
Third-Party Plaintiffs,	:	
v.	:	Adv. Pro. No. _____
MONSANTO COMPANY, a Delaware Corporation	:	
and SOLUTIA, INC., a Delaware Corporation	:	
<u>Third-Party Defendants.</u>	:	

**THIRD PARTY COMPLAINT OF DEFENDANT AND THIRD-PARTY
PLAINTIFF, ARMSTRONG WORLD INDUSTRIES, INC.**

TO THE HONORABLE RANDALL J. NEWSOME,
UNITED STATES BANKRUPTCY COURT JUDGE:

Defendant, Armstrong World Industries, Inc. ("AWI"), through its attorneys, files this Third-Party Complaint and in support thereof avers as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334(b) and (e).

2. This action is a non-core proceeding pursuant to 28 U.S.C. § 157(b). This adversary proceeding, however, is related to AWI's chapter 11 case and, thus, this Court may preside over the adversary proceeding. AWI consents to the submission of this adversary proceeding to this Court pursuant to 28 U.S.C. § 157(c).

3. AWI submits that it consents to entry of final orders and judgments by this Court pursuant to Rule 7008(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

4. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

5. On December 6, 2000 (the "Commencement Date"), AWI and two of its affiliates (collectively, the "Debtors"), each commenced a case under chapter 11 of title 11 of the United States Code.

6. By previous order of this Court, the chapter 11 cases of the Debtors are being jointly administered pursuant to Fed. R. Bankr. P. 1015.

7. Since the Commencement Date, the Debtors have remained debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. On or about December 12, 2002, Plaintiffs filed an Amended Complaint against AWI, alleging that a ceiling tile product manufactured by AWI and installed at Burlington County College ("BCC") was coated with a plastisol formulation that included as a component polychlorinated biphenyls (PCBs), and that those ceiling tiles had injured Patricia Barnes and caused her to contract lung cancer. A true and correct copy of the Amended Complaint filed in the Diana Biehn and Lisa Barnes Schulyer, Executrixes of the Estate of

Patricia Barnes and Herbert Friese, Individually v. Armstrong World Industries Inc. case (No. 1:02cv05109) in the U.S. District Court for the District of New Jersey is attached hereto as Exhibit "A" (the "Barnes Complaint").

9. On or about December 30, 2002, upon the request of AWI and with the consent of Plaintiffs, U.S. District Judge Jerome Simandle entered an Order granting AWI an extension of time through and including February 1, 2003, in which to answer or otherwise respond to the Complaint.

10. This Third-Party Complaint is being filed pursuant to Rule 14 of the Federal Rules of Civil Procedure, which permits a Third-Party Complaint to be filed without leave of court at any time prior to or within ten days after the date on which the Answer to the Complaint is filed.

11. Third-Party Plaintiff AWI 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.

12. 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.

13. Third-Party Defendant Solutia, Inc. ("Solutia") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 10300 Olive Boulevard, St. Louis, Missouri.

14. The Estate of Plaintiff-decedent, Patricia Barnes, alleges that Patricia Barnes contracted lung cancer at BCC through exposure to ceiling tiles containing PCBs.

According to the Barnes Complaint, the ceiling tiles at issue were coated with Aroclor 1254, a chemical consisting of, or containing, PCBs.

15. AWI did not manufacture or supply Aroclor 1254. AWI purchased Aroclor 1254 exclusively from the manufacturer of that chemical product, Third-Party Defendant Monsanto, for the purpose of using it in a fire retardant plastisol coating to be applied to certain ceiling tiles manufactured by AWI.

COUNT I

ARMSTRONG WORLD INDUSTRIES, INC. v. MONSANTO COMPANY

16. AWI incorporates by reference the allegations of paragraphs 1 through 15, inclusive, as if fully set forth herein.

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

18. If Plaintiffs establish that they suffered the injuries and damages as alleged (which allegations AWI 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.

19. 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.

20. Plaintiffs have alleged that ceiling tiles supplied by AWI 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, AWI 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 AWI by way of indemnification for all or some of such damages.

21. Plaintiffs have alleged that AWI is liable in strict liability pursuant to the common law of the State of New Jersey. If, as a result of Plaintiffs' claims of strict liability, AWI 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 AWI by way of indemnification for all or some of such damages.

22. In the alternative, if as a result of the matters alleged in the Barnes Complaint AWI 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 AWI to Plaintiffs for such injuries and damages, and is liable over to AWI by way of contribution for all such damages.

WHEREFORE, AWI 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 AWI, that AWI may have judgment over and against Monsanto by way of indemnification and/or contribution for all or part of the judgment against AWI, together with costs; and
- c. such other relief as the Court may deem appropriate under the circumstances.

COUNT II

ARMSTRONG WORLD INDUSTRIES, INC. v. SOLUTIA, INC.

23. AWI incorporates by reference herein the allegations of paragraphs 1 through 22, inclusive, as if fully set forth herein.
24. As of September 1, 1997, Solutia, Inc. ("Solutia") assumed all or some of the assets and liabilities of the chemical business formerly owned and operated by Monsanto.
25. At certain times which are or may be material to the Barnes Complaint, Solutia was in the business of manufacturing, supplying, distributing and/or selling Aroclor 1254, or has assumed liability for such activities of Monsanto.
26. If Plaintiffs establish that they suffered the injuries and damages as alleged (which allegations AWI 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.

27. 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, and Solutia has assumed all or part of such liability from Monsanto.

28. Plaintiffs have alleged that ceiling tiles supplied by AWI 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, AWI is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, Solutia is the party primarily liable for such injuries and damages, and is liable to AWI by way of indemnification for all or some of such damages.

29. Plaintiffs have alleged that AWI is liable in strict liability pursuant to the common law of the State of New Jersey. If, as a result of Plaintiffs' claims of strict liability, AWI is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, Solutia is the party primarily liable for such injuries and damages, and is liable to AWI by way of indemnification for all or some of such damages.

30. In the alternative, if as a result of the matters alleged in the Barnes Complaint, AWI is held liable for all or a part of such injuries or damages as Plaintiffs may have sustained, Solutia is jointly and/or severally liable with AWI to Plaintiffs for such injuries and damages, and is liable over to AWI by way of contribution for all such damages.

WHEREFORE, AWI demands:

- a. if there is any liability to Plaintiffs, judgment that Solutia is solely liable to Plaintiffs;
- b. in the event that a judgment is obtained by Plaintiffs against AWI, that AWI may have judgment over and against Solutia by way of indemnification and/or contribution for all or part of the judgment against AWI, together with costs; and
- c. such other relief as the Court may deem appropriate under the circumstances.

BOUCHARD MARGULES & FRIEDLANDER

/s/ Joanne P. Pinckney

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LEAD LITIGATION COUNSEL TO
DEBTORS AND DEBTORS IN POSSESSION
DATED: January 31, 2003

EXHIBIT A

ATRIUM 11, Suite 330
 3000 Atrium Way
 Mt Laurel, New Jersey 08054
 Attorneys for the Plaintiffs
 (856) 727-1991

RECEIVED
 JUDICIAL CLERK

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY

DEC - 9 11:34

DIANA BIEHN and
 LISA BARNES SCHULYER,
 Executrixes of the ESTATE OF
 PATRICIA BARNES, and
 HERBERT FRIESE, individually

:
:
:
:
:

CIVIL ACTION NO. 02CV5109(JBS)

Plaintiff(s)

:

ORIGINAL FILED

vs.

:

ARMSTRONG WORLD INDUSTRIES, INC.

:

DEC - 9 10:00

Defendant(s)

:

JUDICIAL CLERK

AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs, Diana Biehn, Executrix of the Estate of Patricia Barnes, residing at 352 Shady Lane in the Boro of Marlton, County of Burlington and State of New Jersey, by way of Complaint against the defendant, says:

JURISDICTION AND VENUE

1. Jurisdiction is based upon diversity of citizenship and jurisdictional amount pursuant to 28 U.S.C. section 1132, and 28 U.S.C. section 1333.

2. Plaintiffs, Diana Biehn, Lisa Barnes Schulyer and Herbert Friese are residents of the State of New Jersey.

3. Defendant, Armstrong World Industries, Inc. has its principle place of business in the Commonwealth of Pennsylvania.

World Industries Inc., filed for bankruptcy. -----

5. Patricia Barnes was diagnosed with cancer on March 9, 2001 and her cause of action did not accrue until that date.

6. The matter in controversy exceeds, exclusive of interests and costs, the sum of one hundred thousand dollars. (\$100,000.00)

7. Venue lies in this District pursuant to the provisions of 28 U.S.C. section 1391 in that:

- (a) One or more of the plaintiffs reside in this district;
- (b) A substantial part of the events and omissions giving rise to the claim occurred in this District.

FIRST COUNT

1. In or about 1970 defendant, Armstrong World Industries Inc., hereinafter referred to as Armstrong, was engaged in the business of manufacturing, designing, assembling and/or distributing certain ceiling tiles, coated with Aroclor 1254, a substance containing a chemical known as PCB.

2. In or about 1970 the defendant, Armstrong, did design, manufacture, assemble and/or otherwise distribute or caused to be distributed, the aforesaid ceiling tiles. Said ceiling tiles were caused to be installed in various areas at the Burlington County College, Burlington, New Jersey.

3. The ceiling tiles that defendant, Armstrong, made available were not safe for their intended use in that they were improperly designed, contained no instructions for their

otherwise defective. Specifically, they contained PCB's a substance at the time of its use, known to be a probable human carcinogen.

4. On or about March 9, 2001 Patricia Barnes was diagnosed with lung cancer.

5. As a direct and proximate result of the foregoing, plaintiff's decedent, Patricia Barnes, was caused to contract cancer, sustained severe, permanent and crippling injuries; has suffered great pain and anguish of mind and body was confined for a long period of time; became seriously incapacitated and restricted in her normal activities; had to undergo medical treatment; continued to endure much physical and mental pain and suffering, disability and permanent injury and has otherwise been damaged.

6. As a further direct and proximate result and effect of the foregoing, plaintiffs' decedent, Patricia Barnes, was caused to suffer certain severe and permanent personal injuries as hereinabove set forth; had suffered great pain, discomfort and mental anguish, had been forced to expend large sums of money for hospitalization, medical treatment and nursing care in an effort to cure said injuries; had been prevented from attending to her normal daily, economic and social pursuits, thereby resulting in a loss of income; and has otherwise been damaged for which defendant, Armstrong, is liable in strict liability pursuant to the common Law of the State of New Jersey.⁷⁷

WHEREFORE, plaintiffs, Diana Biehn and Lisa Barnes

deceased demands judgment against the defendant, Armstrong, for such sums as would reasonably and properly compensate the Estate of Patricia Barnes for her damages in accordance with the laws of the State of New Jersey, together with interest and costs of suit.

SECOND COUNT

1. Plaintiff repeats and incorporates each and every allegation contained in the previous counts but for the sake of brevity same are not set forth herein at length.

2. The plaintiff, Herbert Friesse, is the husband of the plaintiff, Patricia Barnes, deceased, and is entitled to her services and society.

3. The plaintiff, Herbert Friesse, was deprived of his wife's consortium, society and services.

4. The plaintiff, Herbert Friesse, had been caused to incur great expenses for medical treatment in an effort to cure his wife of the injuries caused her by the defendant's negligence.

WHEREFORE, plaintiff, Herbert Friesse, demands judgment against the defendant, Armstrong, for damages plus interest and cost of suit.

THIRD COUNT

1. Plaintiff repeats and incorporates each and every allegation contained in the First, and Second counts but for the sake of brevity the same are not set forth herein at length.

2. Patricia Barnes left her surviving her husband, Herbert Friesse, and two daughters, Diana Biehn and Lisa Barnes, being

instituted on their behalf.

3. This action is commenced within two years from the date of death of Patricia Barnes.

4. As a result of the negligence of the defendants as aforesaid, and as a result of the death of Patricia Barnes, plaintiffs, Herbert Frieze, Diana Biehn and Lisa Barnes have suffered pecuniary loss including but not limited to loss of income, loss of companionship and loss of advice and guidance and were otherwise damaged.

WHEREFORE, plaintiff, Diana Biehn and Lisa Barnes Schuyler, Executrixes of the Estate of Patricia Barnes, deceased, demands judgment against the defendant, Armstrong, for damages, interest and cost of suit.

FOURTH COUNT

1. Plaintiff repeats and incorporates each and every allegation contained in the First Count but for the sake of brevity are not set forth herein at length.

2. In or about 1970 the defendant, Armstrong, knew or should have known of the potential health risks to people exposed to the Aroclor 1254. Despite this knowledge, the defendant, Armstrong failed to notify its customers of the potential health risks.

3. The failure of defendant, Armstrong to notify its customers was reckless, intentional, willful and in wanton disregard of the health and well being of its customers and people exposed to the product containing Aroclor 1254 and resulted in the continuous exposure of this plaintiff,

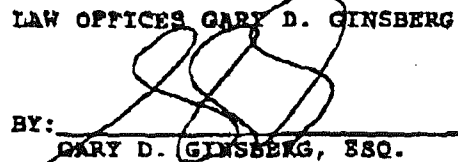
WHEREFORE, the plaintiff, Diana Biehn, Lisa Barnes Schuyler, Executrixes of the Estate of Patricia Barnes and Herbert Frieze, individually demands judgement against the defendant, Armstrong World Industries, Inc. for such sums as would punish and deter the defendant, Armstrong World Industries Inc., from engaging in such conduct and for punitive damages in accordance with the laws of the State of New Jersey, together with interest, attorneys fees and costs of suit.

LAW OFFICES GARY D. GINSBERG

BY: 
GARY D. GINSBERG, ESQUIREJURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues contained herein.

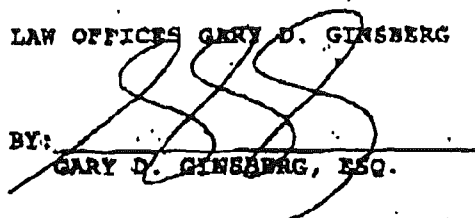
LAW OFFICES GARY D. GINSBERG

BY: 
GARY D. GINSBERG, ESQ.

CERTIFICATION

GARY D. GINSBERG, Esquire, hereby certifies that there are actions pending involving the subject matter under docket numbers 95-2849 and 01-05321 before the Honorable Jerome B. Simandle and Joel B. Rosen. I certify the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

LAW OFFICES GARY D. GINSBERG

BY: 

GARY D. GINSBERG, ESQ.

Dated: December 6, 2002