FILE NAME: Cape Asbestos (CAPE)

DATE: 1980 Apr 7

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STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL.)

IN RE:)
) Case No. 78-CP-06-105
ASBESTOSIS CASES.)

O R D E R

This matter is before the Court on the defendant, North American Asbestos Corporation's, Motion to Dismiss for lack of in personam jurisdiction. In support of this Motion, North American Asbestos filed Affidavits of Mr. C. G. Morgan, President of North American Asbestos, and Gabriel Ferrucci, Vice President of Raybestos-Manhattan, Inc., a co-defendant. In these Affidavits it appears that North American Asbestos did make sales to Raybestos-Manhattan f.o.b. Philadelphia and that these products were then shipped to South Carolina, the total amount of that invoice being $6,516.85. In opposition to this Motion, plaintiffs filed Affidavit of plaintiffs' counsel which incorporated references to various discovery documents on file in Federal Court and in State Court including Answers to Interrogatories by numerous of the co-defendants. It appears that North American Asbestos Corporation was the sole supplier of raw asbestos fiber of a type called Amosite in this country. It further appears that Amosite was used by numerous of the co-defendants as a constituent of their thermal insulation products which plaintiffs contend they were exposed to. In particular, plaintiffs point to the depositions of numerous asbestos diseased plaintiffs in which exposure to the product Unibestos manufactured by Pittsburgh Corning and previously by Unarco occurred in the State of South Carolina. North American Asbestos does not contest the fact that the product Unibestos and other products containing Amosite were used by various of the plaintiffs in these cases. Accordingly, I find that a substantial amount of Amosite

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D.A.P.

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asbestos was shipped into this State and used by numerous of the plaintiffs in these actions. North American Asbestos also contends, however, that their last direct sale to South Carolina occurred in 1971 and that there is no proof that they were doing business in the State of South Carolina at the time these lawsuits were instituted. They further contend that whatever sales occurred in South Carolina occurred fortuitously or through intermediary parties whose sales North American Asbestos had no control over.

The South Carolina Long-Arm Statute, S. C. Code Ann. Section 36-2-803, specifically permits the exercise of personal jurisdiction over a foreign corporation when the cause of action arises from that corporation's:

1. Transacting any business in this State.

2. Commission of a tortious act in whole or in part in this State.

3. Production, manufacture, or distribution of goods with reasonable expectation that those goods are to be used or consumed in this State and are so used and consumed.

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In construing this Statute, our Supreme Court has held that the Long-Arm Statute permits extension of jurisdiction to the outer limits allowed by the due process clause. Triplett v. R. M. Wade Co., 261 S.C. 419, 200 S.E.2d 675 (1973).

The clear trend in assessing constitutional arguments such as is posed by North American Asbestos in this case with respect to fortuitous introduction into the stream of commerce is to find that jurisdiction is valid if the foreign party had reason to know or expect that its product would be brought into the state where the injury occurred. Eyerly Aircraft Co. v. Killian, 414 F.2d 591, 596 (5th Cir. 1969). Thus, Courts have held that where a defendant corporation voluntarily chooses to sell its product nationally in a way and manner in which it will be resold from dealer to dealer, it cannot either reasonably claim that it is surprised at being held

to answer in a foreign state for damages to product causes in that state. See Keckler v. Brookwood Country Club, 248 F. Supp. 645 (N.D. Ill. 1965) and Connelly v. Uniroyal, Inc., _____ N.E.2d _____ (Ill. 1979).

Accordingly, I find that a conscious pattern of product distribution nationally which results in the product being incorporated in another product which was used in this state such as occurred here is a sufficient constitutional basis upon which to attach in personam jurisdiction.

With respect to North American Asbestos' "f.o.b." argument, such has been met by other courts and rejected. See Vencedor Mfg. Co., Inc. v. Gougler Industries, Inc., 557 F.2d 886 (1st Cir. 1977) and more than one court has held that where the defective product has been shipped into the state by one other than the offending manufacturer or distributor, jurisdiction will still attach. See e.g., Gardner v. QHS, Inc., 304 F. Supp. 1247 (D.S.C. 1969). Thus, where there is a reasonable expectation of a product being brought into a state where an injury occurs, jurisdiction is valid. Hardy v. Pioneer Parachute Co., Inc., 531 F.2d 193 (4th Cir. 1976).

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North American Asbestos' final contention that the jurisdictional prerequisites of the Long-Arm Statute must be met at the time suit is instituted is without support in the decisions. See Boney v. Trans-State Dredging Co., 237 S.C. 54, 59, 115 S.E.2d 508, 510 (1960) and Gardner v. QHS, Inc., supra, and Bass v. Harbor Light & Marina, Inc., 372 F. Supp. 786 (D.S.C. 1974) and Triplett v. R. M. Wade Co., 261 S.C. 419, 200 S.E.2d 375 (1973). All of the defendant's other contentions have been reviewed and are rejected. Accordingly,

I find as a fact that North American Asbestos has had sufficient contacts so as to justify exercising in personam jurisdiction by this Court, and,

IT IS SO ORDERED.

Rodney A. Peeples

Rodney A. Peeples
Resident Judge, Second Judicial Circuit

Barnwell, S. C.

April 7, 1980

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