

IN RE: : COURT OF COMMON PLEAS  
ASBESTOS LITIGATION : PHILADELPHIA COUNTY  
: SPECIAL ASBESTOS DOCKET  
: OCTOBER TERM, 1986, No. 0001

ASBESTOS DEFENDANTS' AMENDED  
MASTER NEW MATTER

The following affirmative defenses are asserted by all asbestos defendants pursuant to Pa.R.C.P. 1030 and the court ordered provisions for pleadings in asbestos cases filed in the Philadelphia Court of Common Pleas. These affirmative defenses are deemed incorporated as a response by all asbestos defendants to all Short Form Complaints filed in asbestos cases in this Court.

The term plaintiff or plaintiff's applies to multiple plaintiffs and decedents where appropriate. The term defendants applies to any asbestos defendant or additional defendant named in any suit to which this Master New Matter applies.

1. Any claims by plaintiff are barred by the applicable Statute of Limitations, laches and failure to give prompt notice on the warranty claim.

2. If it is proven at time of trial that any products attributable to defendants were furnished to plaintiff's employers and plaintiff was exposed to said products, all of which is expressly denied, then any products attributable to defendants which may have been furnished to plaintiff's employers and to which plaintiff may have been exposed, were provided in strict conformity to the specifications required by the United States Government and/or plaintiff's employers.

3. Defendants deny that plaintiff has suffered an asbestos-related injury, but should plaintiff prove that he has suffered an asbestos-related injury, such asbestos-related injury resulted from his exposure to asbestos-containing products produced, distributed, supplied or sold by those defendants or other present and former producers, suppliers or distributors of asbestos containing products who have filed for protection from creditors under the bankruptcy law of the United States of America.

4. The plaintiff's claims are barred by the doctrines of estoppel and waiver.

5. Plaintiff's claims are barred or limited by the applicable state Comparative Negligence Act.

6. Plaintiff's claims are barred by the plaintiff's assumption of the risk.

7. All claims based on alleged breaches of warranty are barred by the failure to give prompt notice to defendants as is required by the applicable state Uniform Commercial Code.

8. The claims set forth in plaintiff's Complaint do not entitle plaintiff to recovery for punitive damages against defendants, and therefore, defendants are not liable in contribution or indemnity for such damages.

9. The Complaint fails to allege a cause of action upon which punitive damages may be based or allowed and the Complaint fails to comply with Pa. R. Civ. P. 1019(b) in failing to set forth with particularity the fraud alleged. Inasmuch as these allegations of fraud and

conspiracy have not been pled with specificity, they constitute scandalous and impertinent matter and must be considered stricken from the Complaint and the record in this case.

10. Plaintiff's receipt of benefits or entitlement to benefits under the Federal Employees Compensation Act, 39 Stat. 742, entitles defendants to a reduction by one-half of any judgment in this action.

11. The liability of defendants, if any, is barred or limited by the provisions of the applicable state Workmen's Compensation Act or the Occupational Disease Act.

12. At all times material hereto, the state of the medical and industrial art was such that there was no generally accepted or recognized knowledge of any unavoidably unsafe, inherently dangerous, or hazardous character or nature of asbestos containing products when used in the manner and for the purpose described by plaintiff. Therefore, defendants were under no duty to know of such character or nature or to warn plaintiff or others similarly situated.

13. The injuries and illnesses, if any, sustained by the plaintiff were caused or contributed to by the neglect, fault, and want of due care of plaintiff or by others for whose actions or omissions or breach of legal duty defendants are not liable.

14. Plaintiff was not exposed to or did not come in contact with any asbestos products of defendants, and, therefore, is barred from recovery against defendants for the claims asserted in the Complaint.

15. Even if plaintiff was exposed to or came into contact with any product of defendants, the level of such contact or exposure was not a cause of plaintiff's illness or was not sufficiently significant to have been a cause of plaintiff's illness, and thus defendants are not liable for indemnity or contribution to any defendant or additional defendant in this matter.

16. If plaintiff sustained any injuries as a result of the use of any asbestos-containing product manufactured or sold by defendants, such injuries were proximately caused by the acts or omissions of plaintiff's employers in failing to take adequate precautions; failing to provide plaintiff with a safe work place; and failing to warn plaintiff of any health hazards that may have been associated with exposure to or contact with any asbestos-containing product of defendants.

17. Plaintiff's employers knew or should have known of any health hazard associated with any asbestos-containing products at the time such products were purchased by plaintiff's employers. The failure of plaintiff's employers to act in a prudent fashion constitutes negligence which proximately caused, substantially or solely contributed to plaintiff's alleged injuries and plaintiff's former employers are solely liable to plaintiff for any injuries plaintiff may have sustained.

18. If it be proven that any of defendants' products were furnished to plaintiff's employers and if plaintiff was exposed to said products, then any of said products attributable to defendants were furnished in strict conformity to the specifications furnished through plaintiff's employers.

19. To the extent plaintiff or any party ever attempts to apply the provisions of Pa. R.C.P. No. 238 against defendants, it is averred that said rule is unconstitutional under the Federal and state Constitutions.

20. Plaintiff's claims are barred and/or limited by the application of the provisions of the Pennsylvania No-Fault Motor Vehicle Insurance Act, 40 P.S. 1009.101 et seq. and/or the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. 1701 et seq.

21. In the event that plaintiff has already or in the future enters into any settlement with, or executes any release of any present or future defendant or additional defendant or any non party, plaintiff's claims against all other defendants are reduced by the greater of (a) the amount of consideration or payment received or to be received by plaintiff, or (b) the proportionate or pro-rata share of liability of the settled or released party or non party, or (c) the share of liability of the settled or released party or non party as determined pursuant to the applicable comparative negligence statute.

22. Plaintiff's claims, if any, are preempted by the regulations of the Occupational Health and Safety Administration and other applicable federal laws.

23. Some or all of plaintiff's claims are barred by plaintiff's lack of privity with these answering defendants.

24. If the plaintiff used any of defendants' products, which is denied, on information and belief such products were used for a purpose, in a manner or in an activity contrary to express adequate instructions or warnings appearing on or attached to the products or on their original containers or wrappings. Alternatively, the absence of warnings or any of defendants' products did not lead to reliance by the plaintiff on the safety of any such products.

25. To the extent that answering defendants were involved at all with the transactions alleged, such involvement being specifically denied, answering defendants acted only as brokers or agents and not as suppliers or manufacturers of asbestos containing products.

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