

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **Charles Edward Ramos**

PART 59

Index Number : 600604/2004

UNION CARBIDE

vs

AFFILIATED FM INSURANCE

Sequence Number : 048

PARTIAL SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_



The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED


Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**  
SEP 16 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

is decided in accordance with  
accompanying memorandum decision and order.

Dated: 9/9/2010

  
**CHARLES E. RAMOS**  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

-----x  
UNION CARBIDE CORPORATION,

Index No. 600804/04

Plaintiff,

-against-

AFFILIATED FM INSURANCE COMPANY, AIU INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY (SUCCESSOR IN INTEREST TO NORTHBROOK EXCESS & SURPLUS INSURANCE COMPANY, F/K/A NORTHBROOK INSURANCE COMPANY), AMERICAN HOME ASSURANCE COMPANY, AMERICAN MOTORISTS INSURANCE COMPANY, AMERICAN RE-INSURANCE CORPORATION, APPALACHIAN INSURANCE COMPANY, ARGONAUT INSURANCE COMPANY, ATLANTA INTERNATIONAL INSURANCE COMPANY (SUCCESSOR IN INTEREST TO DRAKE INSURANCE COMPANY OF NEW YORK), ASSURANCE GROUPE JOSI S.A. - N.V, COMPAGNE BELGE D'ASSURANCES GENERALES, COMPAGNIE EUROPEENNE D'ASSURANCES INDUSTRIELLES S.A., HAENECOUR & CO. S.A., ROYALE BELGE S.A., L'UNION ATLANTIQUE DE REASSURANCES, ZURICH COMPAGNIE D'ASSURANCES S.A.-N.V., BIRMINGHAM DIRE INSURANCE COMPANY OF PA, CENTENNIAL INSURANCE COMPANY, CENTRAL NATIONAL INSURANCE COMPANY OF OMAHA, COLUMBIA CASUALTY COMPANY, COMMERCIAL UNION INSURANCE COMPANY (AS SUCCESSOR TO EMPLOYERS' COMMERCIAL UNION INSURANCE COMPANY, THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD. AND EMPLOYERS' SURPLUS LINES INSURANCE COMPANY), CONTINENTAL CASUALTY COMPANY, EMPLOYERS MUTUAL CASUALTY COMPANY, EVEREST REINSURANCE COMPANY (F/K/A PRUDENTIAL REINSURANCE COMPANY), FEDERAL INSURANCE COMPANY, GENERAL REINSURANCE CORPORATION, GRANITE STATE INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY, ALLIANZ INTERNATIONAL INSURANCE COMPANY LTD., ALLIANZ VERSICHERUNGS AKTIENGESELLSCHAFT A.G., AMERICAN HOME ASSURANCE COMPANY, ANCON INSURANCE COMPANY (UK) LTD., BRITTANY INSURANCE COMPANY LTD., CHEMICAL INSURANCE COMPANY, COMPAGNIE D'ASSURANCES MARITIMES AERINNES ET TERRESTRES, EISEN UND STAHL RUCKVERSICHERUNGS, HEDDINGTON INSURANCE (UK) LTD., INSCO LIMITED, ITALIA ASSICURAZIONI, LA PRESERVATRICE, LEXINGTON INSURANCE COMPANY, MITSUI SUMITOMO INSURANCE COMPANY (EUROPE), LTD., (K/K/A TAISHO MARINE & FIRE INSURANCE COMPANY (UK) LTD.), NEWFOUNDLAND AMERICAN INSURANCE COMPANY, LTD., NEW INDIA ASSURANCE COMPANY, LTD., NISSHIN FIRE & MARINE INSURANCE COMPANY LTD., REASEGURADORA NACIONAL SA, STOREBRAND INSURANCE COMPANY (UK) LTD.,

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NEW YORK  
COUNTY CLERK'S OFFICE

TOKIO MARINE & FIRE INSURANCE COMPANY (UK) LTD., ZURICH INTERNATIONAL, LTD, LUMBERMENS MUTUAL CASUALTY COMPANY, MT. MCKINLEY INSURANCE (F/K/A GIBRALTAR CASUALTY CO.), NATIONAL CASUALTY COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, NEW HAMPSHIRE INSURANCE COMPANY, NORTH STAR REINSURANCE CORPORATION, OLD REPUBLIC INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, RIUNIONE ADRIATICE DI SICURTA S.P.A., SEATON INSURANCE COMPANY (F/K/A UNIGARD MUTUAL INSURANCE COMPANY (F/K/A UNIGARD MUTUAL INSURANCE COMPANY)), ST. PAUL FIRE AND MARINE INSURANCE COMPANY, SENTRY INSURANCE COMPANY (AS ASSUMPTIVE REINSURER OF GREAT SOUTHWEST FIRE INSURANCE COMPANY), TRAVELERS INDEMNITY COMPANY, WESTPORT INSURANCE CORPORATION (F/K/A MANHATTAN FIRE & MARINE INSURANCE COMPANY, F/K/A PURITAN INSURANCE COMPANY),

Defendants.

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**Charles Edward Ramos, J.S.C.:**

Motion sequence numbers 48 and 49 are consolidated herein for disposition.

The dispute at issue in this motion concerns the validity of a refusal of insurance coverage on the basis of a lack of fortuity of insured occurrences.

In motion sequence number 048, plaintiff Union Carbide Corporation (Union), moves for partial summary judgment striking the defense of the above-named defendants (together, Insurers), that there should be no coverage because Union expected or intended the damage for which they seek insurance.

In motion sequence number 049, the Insurers seek summary judgment based upon that same, aforementioned, defense.

#### **Background**

According to the parties, Union began mining and milling short-fiber chrysotile asbestos near King City, California, in

August 1963. It continued the operation until 1985, when it sold the business, including the mine, to a third party. Union sold its raw asbestos under the trade name "Calidria." Union never sold raw Calidria to consumers, but rather, to various manufacturers, who used it in finished products, such as joint compound, for resale to their own customers.

The insurance coverage that Union seeks from the Insurers is for bodily injury to individual claimants alleging injuries from exposure to processed forms of, or bulk use of, the Calidria asbestos that Union sold.

Insurers herein, from 1973 and through 1984, agreed to insure Union Carbide for "all sums" it became obligated to pay as a result of claims for "personal injury" during their respective policy periods. The policies issued by the Insurers (the Policies) are almost identical in their operative language, insuring Union for "ultimate net loss" paid as a result of an "Occurrence" during the period of the Policies. The Policies define the term "Occurrence" as follows:

The term "Occurrence" shall mean (a) an accident, or (b) an event, or continuous or repeated exposure to conditions, which unexpectedly results in personal injury, property damage or advertising liability (either alone or in any combination) during the policy period.

The Policies exclude coverage for intentional acts, stating:

This policy does not apply ... to bodily injury, sickness, disease or death resulting therefrom, or property damage, caused intentionally by or at the direction of the insured.

Union, through this litigation, seeks the benefit of the

insurance coverage under the Policies for bodily injuries due to asbestos exposure. The Insurers argue that coverage is not available to Union because it knew that asbestos caused disease, and that people were making claims as a result of the adverse affects of asbestos exposure.

Moreover, the Insurers maintain that Union is collaterally estopped from denying that knowledge and expectation of such bodily injuries as the result of a punitive damages judgment rendered against Union.

### **Discussion**

A party moving for summary judgment under CPLR 3212 (b) must show that "there is no defense to the cause of action or that the cause of action or defense has no merit." Thus, a movant should normally make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985).

Only once this prima facie showing has been made does the burden shift to the non-movant to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. *Zuckerman*, 49 NY2d at 562. Further, on a motion for summary judgment, the non-movant is entitled to the benefit of every favorable inference that may be drawn from the pleadings, affidavits, and competing contentions of the parties. *Myers v Fir Cab Corp.*, 64 NY2d 806 (1985).

Crucially, the test on a motion for summary judgment is whether the pleadings raise a triable issue of fact. *Hartford Acc. & Indem. Co. v Wesolowski*, 33 NY2d 169 (1973). The function of the court is one of issue finding not issue determination. *Sillman*, 3 NY2d at 404. The credibility of the parties is not a proper consideration for the court (*S.J. Capelin Assocs. v Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]), and statements made in opposition to the motion should be accepted as true (*Patrolmen's Benevolent Assn. Of City of N.Y. v City of New York*, 27 NY2d 410, 415 [1971]).

Here, there is no dispute that there was coverage during the alleged period, and that if the Occurrences for which Union seeks coverage were "fortuitous,"<sup>1</sup> there would be coverage under the Policies.

Consequently, it is the Insurers' burden to demonstrate the positive intention of Union with regard to the Occurrences for which it seeks coverage, or that an exclusion for lack of fortuity applies. *Consolidated Edison Co. of New York, Inc.*, 98 NY2d at 220.

#### I. Expected, Intended, or Non-Fortuitous Events

The Insurers' core argument is that there can be no insurance coverage for injuries or liabilities a policyholder expects to occur. As the initial burden of Union to establish

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<sup>1</sup>Insurance policies generally require "fortuity," and are deemed to generally and implicitly exclude coverage for intended or expected harms. See *Consolidated Edison Co. of New York, Inc. v Allstate Ins. Co.*, 98 NY2d 208, 220 (2002); see also Insurance Law § 1101 (a) (1) & (2).

coverage for the events and policy period has been satisfied, Insurers, as the parties relying on an exclusion (*Viuker v Allstate Ins. Co.*, 70 AD2d 295, 299 [2<sup>nd</sup> Dept 1979]), bear the burden of proving that injuries expected or intended are excluded, and that such exclusion applies to Union (*Consolidated Edison Co. of New York*, 98 NY2d at 218-220).

Based upon definitions contained in Insurance Law § 1101, the Court of Appeals has established that "the requirement of a fortuitous loss is a necessary element of insurance policies based on either an 'accident' or 'occurrence.'" *Id.* at 220. This is a natural extension of the centuries-ripe (see *Watson v Delafield*, 2 Cai R 224 [Sup Ct 1804]) New York public policy called the "known-loss doctrine."

The known-loss doctrine is "based on the insurance law principle that an insured may not obtain insurance to cover a loss that is known before the policy takes effect. ... However, to be applicable, the 'known loss' defense requires consideration of whether, at the time the insured bought the policy (or the policy incepted), the loss, as opposed to the [mere] risk of loss, was known." *National Union Fire Ins. Co. of Pittsburgh, Pa. v Xerox Corp.*, 6 Misc 3d 763, 778-779 (Sup Ct, NY County 2004), *affd* 25 AD3d 309 (1<sup>st</sup> Dept), *lv dismissed* (2006); see also *Henry Modell and Co. v General Ins. Co. of Trieste & Venice*, 193 AD2d 412, 412 (1<sup>st</sup> Dept 1993).

This limitation to the doctrine obtains because "knowledge of a risk is the very purpose of acquiring insurance" (*National*

*Union Fire Ins. Co. of Pittsburgh, Pa.*, 6 Misc 3d at 779); it can hardly also be the very basis of an implied exclusion.

The Insurers, relying on a slightly different doctrine, make the identical arguments. A disclaimer of coverage based on "expected or intended" injury requires inquiry into whether, "at the time of the acts causing the injury, the insured expected or intended the injury, an inquiry that generally asks merely whether the injury was accidental." *Stonewall Ins. Co. v Asbestos Claims Mgt. Corp.*, 73 F3d 1178, 1215 (2<sup>nd</sup> Cir 1995); see also *Barry v Romanosky*, 147 AD2d 605 (2<sup>nd</sup> Dept 1989).

Union may have been aware that its products risked asbestosis and cancer in users. Indeed, Union may have known, as Insurers allege, that people had begun to make claims, and Union may have projected the extent of future potential claims. It was, however, perfectly acceptable, and one might venture, normal, for Union to "replace the uncertainty of its exposure with the precision of insurance premiums and leave it to the insurers' underwriters to determine the appropriate premiums." *Stonewall Ins. Co.*, 73 F3d at 1215; see also *City of Johnstown*, 877 F2d 1146, 1150 (2d Cir 1989) ("to exclude all losses or damages which might in some way have been expected by the insured, could expand the field of exclusion until virtually no recovery could be had on insurance" [emphasis original]). Moreover, the cases that the Insurers alternatively rely upon have are factually distinguishable and inapplicable to the issues

raised herein.<sup>2</sup>

Insurers are not vulnerable to abuse or misconduct as a result of this position, as Insurers are always free to inquire as to current and prior lawsuits, as many insurers do, before issuing policies and coverage. *Chase Manhattan Bank v New Hampshire Ins. Co.*, 193 Misc 2d 580, 592-593 (Sup Ct, NY County 2002), citing *National Union Fire Ins. Co. of Pittsburgh, Pa. v Stroh Cos.*, 265 F3d 97, 106 (2<sup>nd</sup> Cir 2001); *H.B. Singer v Mission Natl. Ins. Co.*, 223 AD2d 372, 372 (1<sup>st</sup> Dept 1996) ("nondisclosure of a fact concerning which the applicant has not been asked does not ordinarily void an insurance policy absent an intent to defraud").

Even assuming that Union kept the subject risks concealed from Insurers, there is no indication that Union did so in bad faith. See *H.B. Singer, Inc.*, 223 AD2d at 372; see also *Stecker v American Home Fire Assur. Co.*, 299 NY 1, rearg denied 299 NY 629 (1949); 69 NY Jur 2d, Insurance, 1194 ("a policy may be avoided for concealment only when the applicant has not only concealed matters material to the risk but has done so in bad

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<sup>2</sup>See *County of Broome v Aetna Cas. & Sur. Co.*, 146 AD2d 337, 340-341 (3<sup>rd</sup> Dept), app denied 74 NY2d 614 (1989) (insured discharge of pollutive waste over 11-year period after Broome County Health Department and County Attorney indicated that remedial action was required to prevent contamination of water courses); *Borg-Warner Corp. v Insurance Co. of North America*, 174 AD2d 24, 25-26 (3<sup>rd</sup> Dept), lv denied 80 NY2d 753 (1992) (long-term, intentional disposal of industrial waste was not covered under the "sudden and accidental" exception to the pollution exclusion clause); see also *Utica Fire Ins. Co. of Oneida County v Shelton*, 226 AD2d 705, 706 (2<sup>nd</sup> Dept 1996) (damages must flow directly and immediately from an intended act to preclude coverage) (emphasis added).

faith with the intent to deceive the insurer").

Nor have the Insurers adduced any misleading statements intended to induce the Insurers to issue any policies. See McKinney's Insurance Law § 3105 (a) & (b) (only material misrepresentations, the knowledge of which would have caused insurer to refrain from offering coverage, may be adduced to avoid coverage).

Quite to the contrary, the extensive documentation in the record indicates that Union was constantly informing customers and clients about the risks of asbestos.

For example, the Insurers have documented that Union had the practice of communicating the hazards of asbestos to customers (see Deposition of Walsh, Nov. 5, 2009, 466:23-467:19). Further, toxicology reports were regularly provided to customers and included in brochures issued by Union (Davis Affidavit, Exh. 18), and the hazards were published in the May 1970 issue of *Asbestos* magazine (see *id.*, at Exh. 21, p. 3). Thus, it is difficult to imagine that the Insurers were wholly unaware of attendant risks of asbestos exposure when they insured Union.

The Insurers also indicate that Union was already subject to claims and litigation regarding asbestos usage. Nonetheless, it should be noted that there is, importantly, no exclusion pled - and it is a common exclusion<sup>3</sup> - for issues arising from prior, or

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<sup>3</sup>Various New York state and federal cases address the operation of the "prior or pending litigation" exclusion. See e.g. *Federal Ins. Co. v 1030 Fifth Ave. Corp.*, 262 AD2d 142, 142 (1<sup>st</sup> Dept 1999); *Bensalem Tp. v International Surplus Lines Ins. Co.*, 38 F3d 1303, 1309 (3<sup>rd</sup> Cir 1994); *Pereira v National Union Fire Ins.*

pending, litigation. *Consolidated Edison Co. of New York, Inc.*, 98 NY2d at 220 (it is for the insurer to demonstrate an exclusion in the policy).

"An insurance contract is to be interpreted by the same general rules that govern the construction of any written contract." *Throgs Neck Bagels v GA Ins. Co. of N.Y.*, 241 AD2d 66, 69 (1<sup>st</sup> Dept 1998). Considering that exclusions for prior and pending litigation are common, the absence of that exclusion, despite the inclusion of other tailored exclusions for injuries arising, for example, from use of nuclear energy, implies that there should be coverage.

The insurance coverage will not be altered by this court. This conclusion rests, in part, on weighing the public policy that illegal contracts (i.e. contracts for insurance based upon a known loss) should not be enforced, against the right to establish private contracts.

"[T]he usual and most important function of courts of justice is rather to maintain and enforce contracts, than to enable parties thereto to escape from their obligation on the

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*Co. of Pittsburgh, Pa.*, 2006 WL 1982789, \*3, 2006 US Dist LEXIS 49263 (SD NY, 2006); *Seneca Ins. Co. v Kemper Ins. Co.*, 2004 WL 1145830, \*6, 2004 US Dist LEXIS 9159 (SD NY, 2004), *affd* 133 Fed Appx 770 (2<sup>nd</sup> Cir 2005); *Checkrite Ltd. v Illinois Nat. Ins. Co.*, 95 F Supp 2d 180, 186, 196 (SD NY, 2000); *Home Ins. Co. of Illinois (New Hampshire) v Spectrum Info. Tech.*, 930 F Supp 825, 850 (ED NY, 1996).

pretext of public policy, unless it clearly appears that they contravene public right or the public welfare." *Miller v Continental Ins. Co.*, 40 NY2d 675, 679 (1976). Here, there is no indication that the coverage is illegal, and no public policy aspect militating an exclusion. Consequently, the Court finds that coverage is appropriate.

## II. Collateral Estoppel

Relying upon *Continental Cas. Co. v Rapid-American Corp.* (80 NY2d 640 [1993]), the Insurers argue that Union is collaterally estopped from arguing that it did not expect or intend asbestos bodily injuries and asbestos claims. Specifically, Insurers make reference to the unreported decision in which the jury awarded punitive damages against Union for injuries arising from asbestos exposure.<sup>4</sup>

As noted by the Court of Appeals in *Continental Cas. Co.*, "[c]ollateral estoppel permits the determination of an issue of fact or law raised in a subsequent action by reference to a previous judgment on a different cause of action in which the same issue was necessarily raised and decided." *Continental Cas. Co.*, 80 NY2d at 649.

Nevertheless, the Insurers' argument is unavailing. First, the Insurers have not established that the same issue is raised in this action as the California Action, by unequivocal reference to the judgment. Indeed, a full review of the judgment indicates

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<sup>4</sup> *Stewart v Union Carbide Corp*, No. BC 384224 (Cal Super Ct, Los Angeles County, November 17, 2008) (the California Action).

no specific reference to the issues of expectation or intention that damages would result from asbestos exposure.

Second, California jury instructions on punitive damages are generally stated in the disjunctive. Therefore, it is normally not possible to wholly determine what was actually decided by the jury. See e.g. Cal Jury Instr - Civ 7.94, 14.71, and 14.72.1. Consequently, a punitive damages award could be for any item appearing in the list of factors to be considered in awarding such damages. To be sure, the actual jury instruction given in California litigation reflects this characteristic.<sup>5</sup> This lack of specificity defeats any claim of collateral estoppel. See e.g. *In re McCurdy*, 230 F3d 1367 (Table), 2000 WL 1206003, \*2, 2000 US App LEXIS 21972 (9<sup>th</sup> Cir 2000) (factors for punitive damages listed in the disjunctive cannot satisfy the requirements of collateral estoppel); *In re West*, 339 BR 557, 565 (Bankr ED NY 2006) (matter "actually decided" must be discernable for collateral estoppel to apply); *In re Bogdanovich*, 301 BR 129 (Bankr SD NY 2003) (uncertainty as to matter actually decided precludes imposition of collateral estoppel).

Moreover, "[i]mpressionistic characterizations of the jury verdict are not substitutes for compliance with the specific conditions required to invoke collateral estoppel as articulated

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<sup>5</sup>Jury Instruction 3946 ([Modified] Punitive Damages)), actually given at the trial, states: "you must decide whether that conduct justifies an award of punitive damages [by determining] whether plaintiffs have proven that Union Carbide Corporation engaged in that conduct with malice, oppression, or fraud." See Jacobus Affidavit, Exh. 24 (emphasis added).

by the Second Circuit." *In re Tobman*, 107 BR 20, 24 (SD NY 1989). Therefore, the Insurers' characterization of the jury verdict in the unreported case *Stewart v Union Carbide Corp.* (No. BC 384224) has no collateral estoppel effect on this litigation.

### III. Conclusion

It is the prerogative of a party exposed to risk to substitute the surety of insurance for that risk. *Stonewall Ins. Co.*, 73 F3d at 1215; *City of Johnstown*, 877 F2d at 1150. To find otherwise "could expand the field of exclusion until virtually no recovery could be had on insurance." *City of Johnstown*, 877 F2d at 1150.

Moreover, private individuals are free to contract for insurance as long as it does not violate public policy. *Miller*, 40 NY2d at 679; *Chase Manhattan Bank*, 193 Misc 2d at 593. Here, the Insurers do not allege that there had been any active concealment, or bad faith. *H.B. Singer, Inc.*, 223 AD2d at 372. In fact, Insurers' submissions delineate a campaign of active disclosure by Union. Finally, while such exclusions are commonplace, the Insurers failed to include any exclusion for injuries arising out of the prior or pending litigation of which they claim Union was aware. *Consolidated Edison Co. of New York, Inc.*, 98 NY2d at 220.

When faced with the issue of an insured that loaned his car to a person under 18, unaccompanied by a person with a driver's license, Judge Cardozo stated:

[i]njuries are accidental or the opposite for the purpose of indemnity according to the quality of the

results rather than the quality of the causes. The field of exclusion would be indefinitely expanded if the defendant's argument were pursued to the limit of its logic. Every act, if we exclude, as we must, gestures or movements that are automatic or instinctive, is willful when viewed in isolation and irrespective of its consequences. An act *ex vi termini* imports the exercise of volition.

*Messersmith v American Fid. Co.*, 232 NY 161, 165-166 (1921).

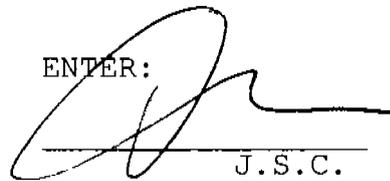
It was not the isolated action of Union in selling products containing asbestos that led to catastrophic consequences, but rather the combined ensuing conduct that led to exposure and injury. "The character of the liability is not to be determined by analyzing the constituent acts which, in combination, make up the transaction, and viewing them distributively. It is determined by the quality and purpose of the transaction as a whole." *Id.*, at 166, as reiterated in *McGroarty v Great Am. Ins. Co.*, 36 NY2d 358, 363-364, *rearg denied* 36 NY2d 358 (1975).

For these reasons, Union's motion to strike the affirmative defense of the Insurers that there should be no coverage because Union expected or intended the damages for which they seek coverage is granted, and the Insurer's cross-motion for summary judgment based upon that defense is denied.

Settle order.

Dated: September 9, 2010

ENTER:



J.S.C.

**CHARLES E. RAMOS**

**FILED**  
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