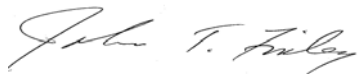


**Granted**



Dated: : Aug 28, 2008

ELECTRONICALLY FILED  
RAMSEY COUNTY DISTRICT COURT  
E-Filed Aug 28, 2008  
TransactionID21271033

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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Argonaut Great Central Insurance Company,  
Harleysville Insurance Company, and  
United States Fire Insurance Company  
(as insurers of General Pipe Covering, Inc.,  
successor-in-interest by merger to John B.  
Plut Company),

File No. CX-07-50640

Plaintiffs,

vs.

**ORDER**

Crown Cork & Seal Company, Inc.,  
(A Pennsylvania Corporation)  
(Individually and as successor-in-interest  
to Mundet Cork Corporation),

and

Order of St. Benedict, d/b/a St. John's  
University, (A Minnesota Non-Profit Corporation),

Defendants.

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The above-entitled matter came on for hearing before the Honorable John T. Finley on the 9<sup>th</sup> Day of November, 2007, pursuant to defendant Crown Cork & Seal Company's Motion for Summary Judgment. On November 29<sup>th</sup>, 2007, this Court ordered that Defendant Crown Cork Corporation provide full answers to interrogatories and request for admissions within 20 days of the date of the Order. Plaintiffs were ordered to file a supplemental memorandum in opposition to Defendant's Summary Judgment Motion within 10 days from the receipt of the answers to interrogatories. The Court reserved its ruling until the supplemental memorandum had been filed. The answers

were received on January 7, 2008 and the supplemental memorandum was filed on January 8, 2008. This Order follows.

**Kent Gravelle, Esq.**, appeared on behalf of the plaintiff; **Thomas Klosowski, Esq.**, appeared on behalf of defendant Crown Cork & Seal Company, Inc.; and **Edward Q. Cassidy, Esq.** appeared on behalf of the Order of St. Benedict.

Based upon all the files, records and proceedings herein,

**IT IS HEREBY ORDERED:**

1. Defendant Crown Cork & Seal Company, Inc.'s Motion for Summary Judgment is hereby **DENIED**.
2. The attached Memorandum is made a part of this Order pursuant to Minnesota Rules of Civil Procedure 52.01.

Dated: August \_\_\_\_, 2008.

**BY THE COURT:**

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**John T. Finley**  
**Judge of District Court**

**MEMORANDUM**

This contribution action arises out of a verdict against John B. Plut Company ("Plut") in a lawsuit entitled *Gloria Jellum, as Trustee for the Heirs and next-of-Kin of Orland Jellum v. John B. Plut Company, Inc.* Mr. Jellum was a maintenance worker at St. John's University. Plut, an insulation distributor, allegedly supplied and installed asbestos insulation on steam heating pipes during construction of St. John's Prep school in 1962. Mr. Jellum worked on a dormitory renovation project at the Prep School during

the 1970's. Mr. Jellum was allegedly exposed to asbestos from Plut insulation products during the 1970's renovation. Mr. Jellum contracted mesothelioma from this exposure to Plut asbestos-containing products which ultimately caused Mr. Jellum's death. The jury allocated fault against Plut at 15%. Judgment was entered against Plut for \$225,000.00.

Plut seeks contribution against Crown Cork & Seal Company, Inc. (successor-in-interest to Mundet Cork Corporation, herein referred to as "Mundet") in the amount of \$225,000.00 alleging that Mundet manufactured the asbestos-containing insulation products that Plut installed at St. John's Prep School that caused Mr. Jellum's mesothelioma. Mundet argues that Mr. Jellum never came into contact with Mundet insulation.

### **SUMMARY JUDGMENT LAW**

Summary Judgment is appropriate if there are no genuine issues of fact that are in dispute between the parties. A Summary Judgment shall be granted if the facts are so clear that either party is entitled to Summary Judgment. When a moving party sets forth sufficient facts alleging that the essential elements of the proof are not in dispute, then the non-moving party must come forward and prove that there are essential elements of proof that are disputed. The non-moving party may not rest upon its mere averments.

However, the Court in determining whether or not facts are in dispute must weigh all reasonable inferences in favor of the non-moving party. If the record reflects a complete lack of proof of an essential element of the Plaintiff's claim, then Summary Judgment is mandated in favor of the Defendant. The nonmoving party must present sufficient evidence to permit reasonable persons to draw different conclusions.

Minnesota Rules of Civil Procedure 56.01 and 56.02, *Celotex v. Catrett*, 477 U.S. 317 (1981), *DHL, Inc. v. Russ*, 566 N.W.2d 60 (1997), *Ruud v. Great Plains Supply*, 56 N.W.2d 369 (1995), *Lubbers v. Anderson*, 539 N.W.2d 398 (1995), *Nicollet Restoration, Inc. v. City of Saint Paul*, 533 N.W.2d 845 (1995), *Borum v. Saint Paul*, 184 N.W.2d 595 (1971). *Gradjelick v. Hance*, 646 N.W. 2d 225 (2002).

### **ANALYSIS**

Plaintiff has put forth evidence that Plut was a distributor of Mundet products, including pipe insulation, by 1962, the year that St. John's Prep School was constructed. Plaintiff also offers evidence that Plut was not only a Mundet distributor, but Plut bought non-Mundet products only in emergency situations. Only rarely were non-Mundet products found in the Plut warehouse. Finally, Walter Latweic, a former Plut employee testified that Mundet insulation products were used at St. John's University.

Plaintiff has put forth sufficient facts for a reasonable person to conclude that Mr. Jellum was exposed to Mundet insulation products at St. John's University. Therefore, pursuant to the case law cited above, Crown Cork & Seal Company, Inc.'s Motion for Summary Judgment is hereby **DENIED**.

**J.T.F.**