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9 UNITED STATES BANKRUPTCY COURT

10 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

12 In re

Chapter 11 Case No. 02-46284

13 WESTERN ASBESTOS COMPANY;
14 WESTERN MACARTHUR COMPANY; and
15 MACARTHUR COMPANY,

Adversary Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

15 Debtors.

16 MARVIE DARDEN, individually and as
17 successor in interest to EDDIE DARDEN;
18 CHRISTOPHER DARDEN;
19 DEBORA DARDEN;
LAWRENCE DARDEN;
20 ROSALIND DARDEN KEETON;
ANITA GARDYNE; and
ANGELA NEWSOME,

21 Plaintiffs,

22 vs.

23 WESTERN ASBESTOS SETTLEMENT
24 TRUST,

25 Defendant.

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I.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this proceeding under 28 U.S.C. § 157(a); 28 U.S.C. § 1334; and the January 27, 2004 Order Confirming Second Amended Joint Plan of Reorganization and Granting Related Relief entered by the United States Bankruptcy Court for the Northern District of California. [Ch. 11 Case No. 02-46284, Docket No. 1205, pp. 9, 33-34.] This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue is proper pursuant to 28 U.S.C. § 1409; Section 5.9 of the Western Asbestos Settlement Trust Distribution Procedures; and Section I of the Western Asbestos Settlement Trust Alternative Dispute Resolution Procedures.

2. This matter is an adversary proceeding governed by Part VII of the Federal Rules of Bankruptcy Procedure, Rule 7001(9).

3. The statutory basis for the relief requested herein is 11 U.S.C. § 105(a); and 28 U.S.C. § 2201.

II.

IDENTITIES OF PARTIES; AND NATURE OF ACTION

4. Defendant Western Asbestos Settlement Trust (Defendant) is a trust organized under 11 U.S.C. § 524(g) to satisfy all asbestos-related personal injury and wrongful death claims caused by conduct of, and/or exposure to asbestos-containing products for which Western Asbestos Company; Western MacArthur Company; and/or MacArthur Company have legal responsibility.

5. Decedent Eddie Darden (Eddie) developed asbestos-related malignant mesothelioma in 2016; and he died from the cancer in 2017. His surviving spouse is Plaintiff Marvie Darden (Marvie). Marvie is the successor-in-interest to Eddie’s survivorship personal injury claim pursuant to Cal. Code Civ. Proc. § 377.11, *et seq.* Additionally, as Eddie’s surviving spouse, Marvie has her own wrongful death claim pursuant to Cal. Code Civ. Proc. § 377.60, *et seq.* The remaining Plaintiffs are all of Eddie’s surviving children, and they likewise have their own wrongful death claims pursuant to Cal. Code Civ. Proc. § 377.60, *et seq.*

1 addressed to ‘Western Asbestos’ were filled by Western MacArthur. Western MacArthur
2 capitalized on Western’s reputation. Prior to the formation of Western MacArthur, people referred
3 to ‘Western Asbestos’ as ‘Western’; the verbal shortform continued to be used in reference to
4 ‘Western MacArthur.’” [Kaminski, 175 Cal.App.3d at 453.] Western MacArthur Company
5 continued to distribute and install asbestos-containing insulation products at Bay Area shipyards
6 from May 1967 through the mid-1970’s.

7 9. The 1985 *Kaminski* decision held that Western MacArthur Company was the
8 successor-in-interest to Western Asbestos Company – but *only* for purposes of *strict products*
9 *liability* under the product-line successor theory. [Kaminski, 175 Cal.App.3d at 456-459.] As a
10 matter of law, the product-line successor theory does not apply to “ordinary negligence” liability.
11 [Franklin v. USX Corp., 87 Cal.App.4th 615, 628-629 (2001).] Moreover, as of the date of the
12 1986 release that is at-issue here, no court held on any other basis that Western MacArthur
13 Company was the successor-in-interest to the negligence liability of Western Asbestos Company.

14 10. Decedent Eddie Darden was a welder who worked at several Bay Area shipyards
15 throughout the 1960’s and 1970’s. Before May 1967, Eddie was exposed to asbestos because of
16 Western Asbestos Company’s negligent distribution and installation of asbestos-containing
17 insulation products. Likewise, after May 1967, Eddie was exposed to asbestos because of Western
18 MacArthur Company’s similar conduct.

19 11. In 1983, Eddie filed a personal injury lawsuit for non-malignant asbestosis. Eddie
20 did not sue Western Asbestos Company. Eddie *did* sue Western MacArthur Company. But he did
21 not allege that Western MacArthur Company held any successor liability for Western Asbestos
22 Company.

23 12. In 1986, Eddie settled his asbestosis lawsuit against Western MacArthur Company.
24 In exchange for \$1,300.00, Eddie signed a release of liability in favor of Western MacArthur
25 Company as well as its unspecified “predecessors”-in-interest. As previously explained, the 1985
26 *Kaminski* decision held that Western MacArthur Company was the successor-in-interest to
27 Western Asbestos Company, but *only* for strict products liability, *not* for negligence liability. Nor
28 had any other court otherwise held that Western MacArthur Company was the successor-in-

1 interest to Western Asbestos Company for purposes of negligence liability. Thus, the 1986 release
2 neither expressly nor impliedly released the pre-May 1967 negligence liability of Western
3 Asbestos Company.

4 13. Additionally, the 1986 release purported to discharge all future asbestos-related
5 wrongful death claims of Eddie’s future heirs. But only Eddie signed the release. And under
6 California law, Eddie lacked the power to release his future heirs’ wrongful death claims. [*Hass v.*
7 *RhodyCo Productions*, 26 Cal.App.5th 11, 25 (2018) (“Because a wrongful death claim is not
8 derivative of the decedent’s claims, an agreement by the decedent to release or waive liability for
9 [his or] her death does not necessarily bar a subsequent wrongful death cause of action.”).] The
10 only exception to that rule applies in the limited context of waivers signed before participation in
11 sports or other dangerous recreational activities. [*Id.*]

12 14. Eddie continued to work as a welder at Bay Area jobsites until his retirement in the
13 early 1990’s.

14 15. In 2002, Chapter 11 Case No. 02-46284 was commenced to provide for the uniform
15 resolution of the asbestos-related liabilities of the three separate but related “Western” entities:
16 (1) Western Asbestos Company; (2) Western MacArthur Company; and (3) MacArthur Company.
17 Pursuant to 11 U.S.C. § 524(g), this Court established a trust to receive, evaluate, reject, or accept
18 and pay all Asbestos Personal Injury and Wrongful Death Claims that are related to one or more of
19 the “Western” entities. That trust is Defendant Western Asbestos Settlement Trust.

20 16. In 2016, Eddie developed asbestos-related malignant mesothelioma. Eddie’s
21 mesothelioma was caused by his cumulative lifetime dose of asbestos. That included the asbestos
22 exposures that Western Asbestos Company *negligently* caused *before* May 1967; as well as the
23 asbestos exposures that Western MacArthur Company caused *after* May 1967. Eddie died from
24 the cancer in 2017.

25 17. Before Eddie died in 2017, he submitted a personal injury claim to Defendant
26 seeking compensation for Eddie’s asbestos-related malignant mesothelioma. Eddie’s pre-death
27 claim identified his spouse and all of his children, who would become his heirs. And then shortly
28 after Eddie’s death, Plaintiffs provided Defendant a certified copy of Eddie’s Certificate of Death,

1 thereby adding Plaintiffs’ wrongful death claims to the case.

2 18. Eddie and Plaintiffs showed that Eddie’s asbestos-related malignant mesothelioma
3 resulted from the independent negligent conduct of *both* Western Asbestos Company (before May
4 1967) and Western MacArthur Company (after May 1967).

5 19. As to Western Asbestos Company, Eddie was exposed to asbestos because of that
6 entity’s negligence at two main jobsites: (1) Willamette (AKA Willamette Iron & Steel) shipyard
7 in Richmond, California in 1960 and 1961; and (2) Martinolich (AKA Pacific Dry Dock &
8 Repair) shipyard in Oakland, California in 1966. Defendant, via its valuation “Matrix,” considers
9 both of those shipyards to be “High” exposure sites because “Western has been identified as a
10 primary supplier such that Western was responsible for a large portion of asbestos exposure at the
11 work site.”

12 20. As to Western MacArthur Company, Eddie likewise was exposed to asbestos
13 because of that entity’s negligence at Willamette (AKA Willamette Iron & Steel) shipyard in
14 Richmond, California in 1968, 1969, 1974, and 1975.

15 21. Defendant initially offered to accept and pay Eddie’s personal injury claim and
16 Plaintiffs’ wrongful death claims. But then Defendant revoked its offer, and rejected the claims,
17 because of Eddie’s 1986 release.

18 22. As to Eddie’s personal injury claim, Defendant wrongly determined that Eddie had
19 discharged his claim against Western Asbestos Company when he signed the 1986 release in favor
20 of Western MacArthur Company and its “predecessors”-in-interest. As previously explained,
21 Western MacArthur Company was the successor-in-interest to Western Asbestos Company *only*
22 for purposes of strict products liability – *not* for purposes of Western Asbestos Company’s pre-
23 May 1967 negligence that contributed to Eddie’s asbestos exposures and resulting mesothelioma.

24 23. As to Plaintiffs’ wrongful death claims, Defendant wrongly determined that Eddie
25 had successfully discharged those claims when he signed the 1986 release and purported to
26 eliminate the rights of his future heirs. As previously explained, Eddie lacked the power to release
27 his future heirs’ wrongful death claims.

28 24. On December 3, 2019, Defendant sent an e-mail stating that Eddie’s and Plaintiffs’

1 claims would be rejected. Defendant officially rejected the claims on February 24, 2020.

2 **IV.**

3 **CLAIM FOR RELIEF**

4 25. Pursuant to: (1) governing federal and California law; (2) the bankruptcy trust
5 documents that govern Defendant's operations; (3) all materials submitted in support of decedent
6 Eddie Darden's and Plaintiffs' Asbestos Personal Injury and Wrongful Death Claims; and (4) the
7 1986 release, Plaintiffs seek:

- 8 i. Entry of a declaratory judgment providing that Defendant must evaluate and pay
9 decedent Eddie Darden's and Plaintiffs' Asbestos Personal Injury and Wrongful
10 Death Claims irrespective of the 1986 release;
- 11 ii. Recovery of attorney's fees and other costs of suit incurred in prosecuting this
12 action; and
- 13 iii. Such other relief as is just and proper under the circumstances.

14 DATED: May 26, 2020

KAZAN, McCLAIN, SATTERLEY & GREENWOOD
A Professional Law Corporation

15
16
17 By: 

18 Michael T. Stewart

19 Attorneys for Plaintiffs