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1996 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

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6-27-1996

## Georgine v. Amchem Prod Inc

Precedential or Non-Precedential:

Docket 94-1925,94-1927,94-1928,94-1929

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Justice

U. S. Department of

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J

Office

Consolidated Administrative

Washington, D.C. 20530

UNITED STATES

COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NOS. 94-1925, 94-1927, 94-1928, 94-1929, 94-1930, 94-1931,  
94-1932, 94-1960, 94-1968, 94-2009, 94-2010, 94-2011,  
94-2012, 94-2013, 94-2066, 94-2067, 94-2068, 94-2085, 95-1705

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ROBERT A. GEORGINE; LAVERNE WINBUN, EXECUTRIX OF THE ESTATE  
OF JOSEPH E. WINBUN, DECEASED, AND IN HER OWN RIGHT; AMBROSE  
VOGT, JR.; JOANNE VOGT, HIS WIFE; CARLOS RAVER; DOROTHY M.  
RAVER, HIS WIFE; TIMOTHY MURPHY; GAY MURPHY, HIS WIFE; TY T.  
ANNAS; ANNA MARIE BAUMGARTNER, EXECUTRIX OF THE ESTATE OF  
JOHN A. BAUMGARTNER, DECEASED; NAFSSICA KEKRIDES,  
INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF PAVLOS  
KEKRIDES, DECEASED; WILLIAM H. SYLVESTER, EXECUTOR AND  
PERSONAL REPRESENTATIVE OF THE ESTATE OF  
FRED A. SYLVESTER, DECEASED

v.

AMCHEM PRODUCTS, INC.; A.P. GREEN INDUSTRIES, INC.;  
ARMSTRONG WORLD INDUSTRIES, INC.; CERTAINTEED CORPORATION;  
C.E. THURSTON & SONS, INC.; DANA CORPORATION; FERODO  
AMERICA, INC.; FLEXITALLIC, INC.; GAF BUILDING MATERIALS,  
INC.; I.U. NORTH AMERICA, INC.; MAREMONT CORPORATION;  
\*\*ASBESTOS CLAIMS MANAGEMENT CORP; NATIONAL SERVICES INDUSTRIES,  
INC.; NOSROC CORPORATION; PFIZER, INC.; QUIGLEY COMPANY, INC.;  
SHOOK & FLETCHER INSULATION COMPANY; T&N, PLC;  
\*\*UNION CARBIDE CORPORATION; UNITED STATES GYPSUM COMPANY

v.

ADMIRAL INSURANCE COMPANY; AFFILIATED FM INSURANCE COMPANY;  
AIU INSURANCE COMPANY; ALLIANZ INSURANCE COMPANY; ALLIANZ  
UNDERWRITERS INSURANCE COMPANY, INDIVIDUALLY AND AS

SUCCESSOR TO ALLIANZ UNDERWRITERS, INC.; ALLSTATE INSURANCE COMPANY, AS SUCCESSOR TO NORTHBROOK EXCESS AND SURPLUS INSURANCE COMPANY; AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA; AMERICAN CENTENNIAL INSURANCE COMPANY; AMERICAN HOME ASSURANCE COMPANY; AMERICAN MOTORISTS INSURANCE COMPANY; AMERICAN RE-INSURANCE COMPANY; APPALACHIAN INSURANCE COMPANY OF PROVIDENCE; ARGONAUT INSURANCE COMPANY; ATLANTA INTERNATIONAL INSURANCE COMPANY; CAISSE INDUSTRIELLE D'ASSURANCE MUTUELLE; C.E. HEATH COMPENSATION AND LIABILITY INSURANCE COMPANY AS SUCCESSOR TO EMPLOYERS' SURPLUS LINE INSURANCE COMPANY; CENTENNIAL INSURANCE COMPANY; CENTRAL NATIONAL INSURANCE COMPANY OF OMAHA; CHICAGO INSURANCE COMPANY; CITY INSURANCE COMPANY; COLONIA VERSICHERUNG AKTIENGESELLSCHAFT; COLUMBIA CASUALTY COMPANY; COMMERCIAL UNION INSURANCE COMPANY, AS SUCCESSOR TO COLUMBIA CASUALTY COMPANY, EMPLOYERS COMMERCIAL UNION INSURANCE COMPANY, EMPLOYERS COMMERCIAL UNION INSURANCE COMPANY OF AMERICA, AND EMPLOYERS' LIABILITY ASSURANCE CORPORATION LIMITED; COMPAGNIE EUROPEENNE DE REASSURANCES; THE CONSTITUTION STATE INSURANCE COMPANY; CONTINENTAL CASUALTY COMPANY; EMPLOYERS MUTUAL CASUALTY COMPANY; EVANSTON INSURANCE COMPANY; EXECUTIVE RE INDEMNITY INC., AS SUCCESSOR TO AMERICAN EXCESS INSURANCE COMPANY; FEDERAL INSURANCE COMPANY; GENERAL REINSURANCE CORPORATION; GIBRALTAR CASUALTY COMPANY; GOVERNMENT EMPLOYEES INSURANCE COMPANY; GRANITE STATE INSURANCE COMPANY; HIGHLANDS INSURANCE COMPANY; THE HOME INDEMNITY COMPANY; THE HOME INSURANCE COMPANY; HOUSTON GENERAL INSURANCE COMPANY; HUDSON INSURANCE COMPANY; INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA; INTERSTATE FIRE & CASUALTY COMPANY; JEFFERSON INSURANCE COMPANY OF NEW YORK; LANDMARK INSURANCE COMPANY; LA PRESERVATRICE FONCIERE TIARD, INDIVIDUALLY AND AS SUCCESSOR TO LA FONCIERE ASSURANCES TRANSPORTS ACCIDENTS AND LA PRESERVATRICE; LE SECOURS; LEXINGTON INSURANCE COMPANY; LILLOISE D'ASSURANCES, AS SUCESSOR TO LILLOISE D'ASSURANCES ET DE REASSURANCES; LUMBERMENS MUTUAL CASUALTY COMPANY; MARYLAND CASUALTY COMPANY; MICHIGAN MUTUAL INSURANCE COMPANY; MUTUELLE GENERALE FRANCAISE; NATIONAL AMERICAN INSURANCE COMPANY OF CALIFORNIA, AS SUCCESSOR TO THE STUYVESANT INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA; NORTHBROOK INDEMNITY COMPANY; NORTH STAR REINSURANCE CORPORATION; OLD REPUBLIC INSURANCE COMPANY; PENNSYLVANIA MANUFACTURERS' ASSOCIATION INSURANCE COMPANY; THE PROTECTIVE NATIONAL INSURANCE COMPANY OF OMAHA; PRUDENTIAL REINSURANCE COMPANY; PURITAN INSURANCE COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO THE MANHATTAN FIRE AND MARINE INSURANCE COMPANY; RANGER INSURANCE COMPANY; REPUBLIC INSURANCE COMPANY; SAFECO INSURANCE COMPANY OF AMERICA; SAFETY NATIONAL CASUALTY CORPORATION, AS SUCCESSOR TO SAFETY MUTUAL CASUALTY CORPORATION; ST. PAUL FIRE AND MARINE INSURANCE COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO BIRMINGHAM FIRE INSURANCE COMPANY; ST. PAUL GUARDIAN

INSURANCE COMPANY; STONEWALL INSURANCE COMPANY; STEONEWALL SURPLUS LINES INSURANCE COMPANY; SUN ALLIANCE AND LONDON INSURANCE PLC; TOKIO MARINE & FIRE INSURANCE COMPANY, LIMITED; THE TRAVELERS INDEMNITY COMPANY; THE TRAVELERS INSURANCE COMPANY; UNIGARD SECURITY INSURANCE COMPANY, AS SUCCESSOR TO UNIGARD MUTUAL INSURANCE COMPANY; UNION DES ASSURANCES DE PARIS; YOSEMITE INSURANCE COMPANY; EURINCO ALLEGEMEINE VERSICHERUNGS, A.G.; F&M INSURANCE COMPANY, LTD.; LA CONCORDE; LEXINGTON INSURANCE COMPANY, LTD.; L'UNION ATLANTIQUE S.A. D'ASSURANCES; N.V. ROTTERDAMSE ASSURANTIEKAS PER MEES & ZONEN; NATIONAL CONTINENTAL INSURANCE COMPANY AS SUCCESSOR TO AMERICAN STAR INSURANCE COMPANY; NEWFOUNDLAND AMERICAN INSURANCE CO., LTD.; NEW HAMPSHIRE INSURANCE COMPANY, LTD.; PHOENIX ASSURANCE; RELIANCE INSURANCE COMPANY; SIRIUS (UK) INSURANCE COMPANY, PLC; TRIDENT GENERAL INSURANCE COMPANY; GREAT AMERICAN INSURANCE COMPANY; AMERICAN EMPIRE SURPLUS LINES INSURANCE COMPANY, AS AUTHORIZED AGENT ON BEHALF OF TRANSPORT INDEMNITY COMPANY

\*George Windsor; Constance Windsor, Michael Windsor and Karen Windsor,

Appellants in Nos. 94-1925/2009

\*White Lung Association of New Jersey, National Asbestos Victims Legal Action Organizing Committee, the Oil, Chemical, and Atomic Workers International Union, The Skilled Trades Association, Myles O'Malley, Marta Figueroa, Robert Fiore, Roh Maher, and Lynn Maher, (in her own behalf and as next friend for her minor children, Jessica Marie Maher, Jamie Marion Maher, and Jennifer Megan Maher),

Appellants in Nos. 94-1927/1968

\*Richard R. Preston, Sr. and Louis C. Anderson,

Appellants in Nos. 94-1928/2013

\*Albert and Margaret Hertler,

Appellants in No. 94-1929

\*Richard E. Blanchard, D.D.S., Jack S. Boston, James L. Anderson, Personal Representative of Robert L. Anderson and Harrison O. McLeod,

Appellants in Nos. 94-1930/2066

\*Iona Cunningham, as representative of the estate of Charles Cunningham, and Twila Sneed,

Appellants in Nos. 94-1931/2010

\*Aileen Cargile, Betty Francom, John Wong, John Soteriou, Harold Hans Emmerich and Thomas Corey,

Appellants in Nos. 94-1932/2012

\*William J. Golt, Sr. and Phyllis Golt,  
Appellants in Nos. 94-1960/2011

\*Joe and Lynne Dominguez,  
Appellants in No. 94-2067

\*Kathryn Toy, individually, and as representative  
of the estate of Edward Toy,  
Appellants in Nos. 94-2068

\*John Paul Smith,  
Appellant in No. 94-2085

\*Casimir Balonis, Margaret Balonis and Shepard A. Hoffman,  
Appellants in No. 95-1705

\*(Pursuant to F.R.A.P. Rule 12(a))

\*\* (Pursuant to Clerk's Order dated 11/9/94)

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(D.C. Civ. No. 93-cv-00215)

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**Present:** BECKER, STAPLETON, MANSMANN,  
GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO,  
ROTH, LEWIS, McKEE, SAROKIN, Circuit Judges  
and WELLFORD,<sup>1</sup> District Judge

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**SUR PETITION FOR PANEL REHEARING  
WITH SUGGESTION FOR REHEARING IN BANC**

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The petitions of plaintiffs/appellees Robert A.  
Georgine, et al., on behalf of themselves and all others  
similarly situated, and of defendants/appellees Amchem Products,  
Inc. Ltd. (other than GAF Corporation) for rehearing having been  
submitted to the judges who participated in the decision of this

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<sup>1</sup>As to panel rehearing only.

Court and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is DENIED.

Judge Scirica would grant rehearing.

BY THE COURT:

/s/ Edward R. Becker

Circuit Judge

Dated: June 27, 1996