

Department's Property/Casualty Insurer Security Fund ("Fund"), the New York State Liquidation Bureau ("NYLB"), and the Commissioner of Taxation and Finance ("Commissioner"), all acting on behalf of Defendant The Home Insurance Company (In Liquidation) ("Home") (collectively "Respondents") to:

i. Appear before this Court for the purpose of reporting on the status of the review, processing and payment of claims by the NYLB for asbestos liabilities of Kentile Floors, Inc. ("Kentile"), which was insured by Home from 1977 through 1981, and, more specifically, to explain: (a) why no payment has been made on behalf of Home on any asbestos bodily injury claim asserted against Kentile involving alleged exposures in New York ("Kentile Asbestos Claim"); (b) which Kentile Asbestos Claims have been submitted by NYLB to the Receivership Court for authorization to be paid and when they were submitted; (c) which Kentile Asbestos Claims have been received by NYLB but have not yet been submitted to the Receivership Court for authorization to be paid; (d) why those Kentile Asbestos Claims have not been submitted for authorization, and when NYLB expects to submit them;

ii. Establish a procedure before Justice York for submission to the Court of requests for approval to pay Kentile Asbestos Claims in a timely manner so that such requests may be approved by the Court for payment by the NYLB;

iii. In accordance with the procedure established before Justice York, to submit all prior and existing Kentile Asbestos Claims for approval by that Court and for payment by the NYLB by a date certain; and

(b) granting such other and further relief as this Court may deem just and proper under the circumstances.

3. This is a declaratory judgment action commenced by certain insurers of Kentile against Kentile, Metex, which purports to be the Reorganized Debtor that emerged from Kentile's Chapter 11 bankruptcy proceedings, and other insurers of Kentile. Kentile has been and continues to be a defendant in the Kentile Asbestos Claims -- thousands of actions alleging bodily injury resulting from exposure to asbestos products manufactured and sold by Kentile.

4. Paul E. Breene, counsel for Metex, has explained in his Affirmation ("Breene Aff.") that five insurance policies provided by Home cover the Kentile Asbestos Claims to the

extent that injury-in-fact occurred during the respective policy periods and the NYLB's role in handling those claims. Breene Aff. at ¶¶5-10. Mr. Breene also has detailed the prior representations of the NYLB to this Court and the parties, both at the hearing on January 14, 2010 and in its January 28, 2010 letter report to this Court, regarding the NYLB's "diligent" efforts to process and pay Home's contribution to past and pending settlements of Kentile Asbestos claims. *See* Breene Aff. at ¶¶11-16.

5. Thereafter, the NYLB's consultant requested and obtained voluminous documentary support for prior settlements of Kentile Asbestos Claims from Kentile's defense counsel. Liberty Mutual facilitated the effort to provide the requested documents and was informed that the NYLB had received the requested documentation for the past claims.

6. Notwithstanding the representations that the NYLB had made to the parties and to this Court, upon which Liberty Mutual had relied in coordinating the defense of Kentile and the settlement of Kentile Asbestos Claims, the NYLB then reversed course and took the position that it will not pay on the settled Kentile Asbestos Claims submitted by Kentile. Specifically, the NYLB stated that "we have concluded that the security fund statute will not allow payment on the closed files," because the statute purportedly "requires a claim to be 'unpaid,' which is not the case here with the closed claims." *See* Letter dated March 10, 2011 from Ellen M. Russell to Paul E. Breene, annexed as Exhibit 7 to Breene Aff. Thus, even though it had represented to the Court and to the parties that it would contribute to settled claims, the NYLB apparently refuses to do so.

7. In view of Ms. Russell's March 10, 2011 letter, Liberty Mutual sought to avoid any future funding issue by informing the NYLB of its expected contributions to settlements of Kentile Asbestos Claims early in the process so that the NYLB could obtain any necessary Court

approval of its payments. In April 2011, Liberty Mutual submitted information to the NYLB concerning approximately 50 negotiated but unpaid settlements concluded with the law firm of Weitz & Luxenberg P.C. from that firm's 2011 Spring group of *in extremis* Kentile Asbestos Claims. See Letter, dated April 29, 2011, from Joseph G. Kallimanis, Director of Coverage for Liberty Mutual, to James Tighe of the NYLB and accompanying spreadsheet, annexed as Exhibit 1.¹ Mr. Kallimanis stated that NYLB already had received "the available documentation, including complaints and pre-trial reports, for each of the settled claims" and specifically identified those claims for which NYLB had not disclaimed coverage. Finally, Mr. Kallimanis informed NYLB that "[t]hese settlements will have to be funded in the very near future" and requested NYLB to confirm that it would contribute to the settlements on behalf of the Home. *Id.* Mr. Kallimanis' letter set forth the contribution sought from the NYLB for each settlement and the bases for calculating such contribution.

8. In response, NYLB's claims representative acknowledged that he "receive[s] Pre-Trial reports, etc in which to set up the named feature [claim]." However, he stated that NYLB had received a final request for funding of settlement from Kentile's defense counsel for only one of the 50 Kentile Asbestos Claims identified in Mr. Kallimanis' letter and the claim "has been put on a list for authorization to be paid along with 75 other features [claims] unrelated to your current list. " See E-Mail, dated May 2, 2011, from James Tighe to Martin Boston of Liberty Mutual, annexed as Exhibit 2.

¹ Certain confidential settlement information has been redacted from Exhibit Nos. 1 and 4 as indicated on the exhibits.

9. Upon receiving the NYLB's May 2 response to his request for NYLB's contribution to the pending settlements of Kentile Asbestos Claims, Mr. Kallimanis responded the next day and explained the problem created by NYLB's failure to fund settlements:

Our problem is that the settlements must be timely funded. If you continue to follow your present approach, the settlement must be funded, but NYLB will not have made its contribution. I provided the data with my 4/29 letter so that you would have additional time to participate.

See E-Mail, dated May 3, 2011, from Joseph Kallimanis to James Tighe, annexed as Exhibit 3.

10. On May 4, Mr. Tighe responded on behalf of the NYLB that "[u]nlike Liberty Mutual or any of the other viable carriers, the New York Liquidation Bureau is not subject to the 21 day rule." See E-Mail, dated May 4, 2011, from James Tighe to Joseph Kallimanis of Liberty Mutual, annexed as Exhibit 4. Thus, the NYLB simply refuses to address the settlement of Kentile Asbestos Claims in a timely manner and appears to be pursuing a strategy of refusing to pay any claims. Most of the 75 claims referenced by Mr. Tighe in his E-mail were concluded with the Weitz firm in *May 2010* – over a year ago. NYLB confirmed that it is “seeking the necessary authority in which to have a bulk payment made to the McGivney and Kluger Trust Account” on those 76 claims. *Id.* As to the remainder of the 50 Kentile Asbestos Claims identified in Mr. Kallimanis' letter, NYLB stated that it would await receipt of the final requests for funding the settlements of those claims from Kentile's defense counsel in order to “*set up those features*” for payment authorization, i.e. to begin this long process of preparing to request authorization to contribute to such settlements. *Id.*

11. More recently, in response to a series of Pre-trial Reports on Kentile Asbestos Claims of another law firm, the NYLB reported that “[a]ll other New York cases noted here are being set up for handling.” See E-Mail, dated June 9, 2011, from James Tighe to Kentile defense counsel, annexed as Exhibit 5. Thus, the NYLB continues to engage in the handling process, but

it refuses to disclose what it is willing to contribute to a settlement and never has made any such contribution.

12. Pursuant to CPLR 5003-a, “any settling defendant...shall pay all sums due to any settling plaintiff with twenty-one days of tender...of a duly executed release and a stipulation discontinuing action....” Because the NYLB will not state definitively whether it is contributing to the settlement of any Kentile Asbestos Claim and, if so, the amount that it is contributing, Kentile and/or its insurers must pay the entire settlement during the interim, effectively fronting the share attributable to the Home insurances policies and payable by the NYLB.

13. The NYLB's positions as disclosed in the subsequent correspondence summarized above, which is directly contrary to the NYLB's prior representations to the Court and the parties, puts Metex and Liberty Mutual in an untenable position. Settlements of Kentile Asbestos Claims are negotiated and concluded. Under CPLR 5003-a, those settlements must be paid in a timely manner. However, the NYLB will not commit to a settlement or disclose its contribution apparently until years later. Consequently, Kentile's insurers must front Home's share of the settlement. Now, the NYLB claims that it will not contribute to the settlements because other insurers have fully funded them. The NYLB's conduct is disingenuous at best.

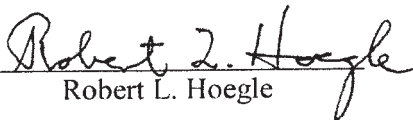
14. It has been more than 17 months since NYLB first represented to the Court that it was “taking all diligent steps to resolve the remaining issues and begin making eligible payments” on the 964 settled and paid Kentile Asbestos Claims that had been submitted by Kentile in 2009. Still the NYLB has not paid one dollar on any Kentile Asbestos Claim or even committed to pay a single dollar. Moreover, the NYLB has taken several different and inconsistent positions concerning the Kentile Asbestos Claims that it will pay and has suggested that it may not pay claims otherwise covered by the Home insurance policies – a position directly

contrary to its representations in open Court on January 14, 2010 and in the January 28, 2010 Letter Report to this Court.

15. At the very least, this Court should order the NYLB to appear and explain: (a) why no payment has been made on behalf of Home on any Kentile Asbestos Claim; (b) which Kentile Asbestos Claims have been submitted by NYLB to the Receivership Court for authorization to be paid and when they were submitted; (c) which Kentile Asbestos Claims have been received by NYLB but have not yet been submitted to the Receivership Court for authorization to be paid; (d) why those Claims have not been submitted for authorization, and when NYLB expects to submit them. The Court also should direct the NYLB to establish a procedure before Justice York for processing and paying Home's contribution to the settlements of Kentile Asbestos Claims in a timely manner and require the NYLB to process and pay all past and pending claims by a date certain.

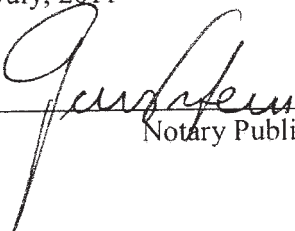
16. No prior application for the relief sought herein has been made by Liberty Mutual to this or any other court.

WHEREFORE, Liberty Mutual respectfully requests that the Court enter the Order to Show Cause jointly submitted by Metex and Liberty Mutual.


Robert L. Hoegle

Sworn to before me this 7th day

of July, 2011


Notary Public

GENET TEFERI
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 31, 2011