

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 02-5096

HORACE GARLAND; MARTHA
GARLAND,

Plaintiffs,

TRIANGLE ENTERPRISES, INC.,
Third-Party

Defendant-Appellant,

v.

TENNESSEE VALLEY
AUTHORITY,

Defendant/Third-Party

Plaintiff-Appellee.

No. 02-5097

J. PAUL CARNEAL; MARY
CARNEAL,

Plaintiffs,

TENNESSEE VALLEY
AUTHORITY,

Third-Party

Defendant-Appellee,

BADHAM INSULATION
COMPANY; BRAUER SUPPLY
COMPANY,

Defendants,

Nos. 02-5096/
5097/5098/5216

2 *Garland, et al. v. Triangle
Enterprises, et al.*

Nos. 02-5096/5097/
5098/5216

v.

TRIANGLE ENTERPRISES, INC.,
Defendant/Third-Party
Plaintiff-Appellant,

OWENS CORNING FIBERGLAS
CORPORATION,

Defendant.

No. 02-5098

FRANCES DEE HALL,
individually and as Executrix
of the Estate of Burl R. Hall,
Plaintiff,

v.

OWENS CORNING FIBERGLAS
CORPORATION, et al.,

Defendants,

TRIANGLE ENTERPRISES, INC.,
Defendant/Third-Party
Plaintiff-Appellant,

v.

TENNESSEE VALLEY
AUTHORITY,

Third-Party

Defendant-Appellee.

No. 02-5216

RONNIE D. BEAN,

Plaintiff,

TRIANGLE ENTERPRISES, INC.,
Defendant/Third-Party

Plaintiff-Appellant,
v.

OWENS CORNING FIBERGLAS
CORPORATION,

Defendant,

TENNESSEE VALLEY
AUTHORITY,

Third-Party
Defendant-Appellee.

Appeal from the United States District Courts
for the Western District of Kentucky
at Paducah and Owensboro.

Nos. 01-00260; 01-00254; 01-00191; 01-00249—
Thomas B. Russell; Joseph H. McKinley, Jr.;
Edward H. Johnstone, District Judges.

Argued: June 10, 2003

Decided and Filed: July 9, 2003

Before: MOORE and GIBBONS, Circuit Judges;
SCHWARZER, Senior District Judge.*

COUNSEL

ARGUED: Kathy P. Holder, FROST, BROWN & TODD,
Louisville, Kentucky, for Appellant. Edwin W. Small,
TENNESSEE VALLEY AUTHORITY, Knoxville,

* The Honorable William W Schwarzer, Senior United States District
Judge for the Northern District of California, sitting by designation.

Tennessee, for Appellee. **ON BRIEF:** Kathy P. Holder,
Joseph B. Myers, Jr., Robert L. Steinmetz, FROST, BROWN
& TODD, Louisville, Kentucky, for Appellant. Edwin W.
Small, Thomas A. Robins, TENNESSEE VALLEY
AUTHORITY, Knoxville, Tennessee, for Appellee.

OPINION

WILLIAM W SCHWARZER, Senior District Judge.
Third-party Triangle Enterprises, Inc. (“Triangle”) appeals
from the dismissal of its third-party complaints for indemnity
against third-party defendant Tennessee Valley Authority
(“TVA”). In the four underlying cases, consolidated on
appeal, the plaintiffs asserted that they were injured as a
result of exposure to asbestos and alleged claims for damages
based on strict liability, negligence, and breach of implied
warranty. Their complaints alleged, in substance, that
Triangle was negligent in removing and installing asbestos-
containing products and failing to protect workers against
asbestos exposure. In addition, the Garland complaint alleged
failure to warn workers and to follow guidelines for safe
handling of asbestos. Triangle filed third-party complaints
against TVA for apportionment of fault based on allegations
that TVA distributed and installed asbestos products at the
work site. In its amended third-party complaints, Triangle
further sought indemnity, alleging that TVA was negligent in
failing to provide a safe place of employment and safeguards
necessary to protect its employees, that any negligence on
Triangle’s part was secondary and passive, and that the active
and primary negligence was TVA’s.

TVA moved to dismiss the third-party complaints pursuant
to Rule12(b)(6) and the district courts granted the motions.
Fed. R. Civ. P. 12(b)(6). They held that if there is proof of
fault on the part of TVA, an apportionment instruction is

