

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY CHARLENE HAYS, ET AL., : CONSOLIDATED UNDER
: MDL 875
: :
Plaintiffs, **FILED** :
: : Transferred from the Southern
: : District of Florida
v. NOV - 7 2011 : (Case No. 09-81881)
: :
MICHAEL KONIZ, Clerk
By : Dep. Clerk
A.W. CHESTERTON, INC., ET AL., :
: E.D. PA CIVIL ACTION NO.
: 2:09-93728-ER
Defendants. :

ORDER

AND NOW, this **4th** day of **November, 2011**, it is hereby
ORDERED that the Motion for Summary Judgment of Honeywell (doc.
no. 157) is **DENIED**.¹

¹ Plaintiff, the personal representative of decedent William Hays, filed this case on October 5, 2009 in state court in Florida, alleging that Mr. Hays developed mesothelioma as a result of exposure to asbestos-containing materials during his career in the Navy and at non-Navy locations in Florida from 1959 until approximately 1998, and asserting, *inter alia*, failure to warn and strict liability claims. In November of 2009, this case was removed to the United States District Court for the Southern District of Florida. This case was subsequently transferred to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875. Federal jurisdiction in this case arises from federal officer removal of a federal question, pursuant to 28 U.S.C. §§ 1331 and 1442. Honeywell has moved for summary judgment, arguing that Plaintiff has failed to provide product identification evidence sufficient to establish causation.

I. LEGAL STANDARD

A. Summary Judgment Standard

Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "A motion for

summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." Am. Eagle Outfitters v. Lyle & Scott Ltd., 584 F.3d 575, 581 (3d Cir. 2009) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986)). A fact is "material" if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

In undertaking this analysis, the court views the facts in the light most favorable to the non-moving party. "After making all reasonable inferences in the nonmoving party's favor, there is a genuine issue of material fact if a reasonable jury could find for the nonmoving party." Pignataro v. Port Auth. of N.Y. & N.J., 593 F.3d 265, 268 (3d Cir. 2010) (citing Reliance Ins. Co. v. Moessner, 121 F.3d 895, 900 (3d Cir. 1997)). While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the non-moving party who must "set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 250.

B. The Applicable Law

As a threshold matter, this Court will apply Florida law for purposes of deciding Honeywell's motion regarding the adequacy of evidence in this case identifying Honeywell's products as possible causes of Mr. Hays's mesothelioma. In deciding what law governs a claim based in state law, a federal transferee court applies the choice of law rules of the state in which the action was initiated. Van Dusen v. Barrack, 376 U.S. 612, 637-40 (1964) (applying the *Erie* doctrine rationale to case held in diversity jurisdiction and transferred from one federal district court to another as a result of defendant's initiation of transfer); Commissioner v. Estate of Bosch, 387 U.S. 456, 474-77 (1967) (confirming applicability of *Erie* doctrine rationale to cases held in federal question jurisdiction). Therefore, because this case was initiated in Florida and transferred from another district court, Florida choice of law rules must be applied in determining what substantive law to apply to this case. Under Florida choice of law rules, where no "true conflict" exists between Florida law and another potentially applicable law, Florida law is applicable. See Faddish v. General Electric Co., No. 09-70626, 2010 WL 4146108 at *3 (E.D. Pa. Oct. 20, 2010) (Robreno, J.).

Both Plaintiff and Defendant Honeywell agree that Florida substantive law is applicable. While another defendant in this case has argued that maritime law should be applied, no party to this action has disputed that, with respect to the issue of causation, Florida law and maritime law will yield the same outcome. This Court has previously reached this same determination. See Faddish, 2010 WL 4146108 at *3. Accordingly, this Court will apply Florida substantive law regarding causation in deciding Honeywell's motion.

C. Product Identification/Causation Under Florida Law

The Florida Supreme Court has not articulated a standard of causation necessary to survive summary judgment in asbestos cases, and lower Florida courts have rejected the "frequency, regularity, and proximity" test, which has been adopted in many courts throughout the nation. As clarified by this Court in Faddish, 2010 WL 4146108 at *3, to bring a claim under Florida law, a plaintiff must simply show that a defendant's product was a "substantial contributing factor" to the injury that occurred. (Asbestos and Silica Compensation Fairness Act, FLA. STAT. § 774.205.) When a defendant's products are identified in a given case, "traditional" methods of finding causation apply. Celotex Corp. v. Copeland, 471 So. 2d 533, 536 (Fla. 1985).

The traditional method of establishing causation in negligence (e.g., failure to warn) cases requires the plaintiff to "introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a substantial factor in bringing about the result." Gooding v. University Hospital Bldg, Inc., 445 So. 2d 1015 (Fla. 1984) (quoting Prosser, LAW OF TORTS § 41 (4th Ed. 1971)).

A strict liability claim brought under Florida law also requires a plaintiff to establish, inter alia, the existence of a proximate causal connection between the injury at issue and the defect or unreasonably dangerous condition of the product at issue. See Edward M. Chadbourne, Inc. v. Vaughn, 491 So. 2d 551, 553 (Fla. 1986); Bailey v. Janssen Pharmaceutica, Inc., 288 Fed. Appx. 597, 605 (11th Cir. 2008) (applying Florida law).

II. Defendant Honeywell's Motion for Summary Judgment

Plaintiff's claims pertaining to Honeywell involve alleged exposure to asbestos-containing valves. Honeywell argues that summary judgment is appropriate because there is insufficient product identification evidence to raise a genuine issue as to

whether Honeywell products were a substantial contributing factor to Mr. Hays's asbestos-related injuries. Honeywell cites to an excerpt from the sixth day of Mr. Hays's deposition:

- Q: ...The Honeywell valve, do you associate that valve with any particular ship or application?
- A: No, sir. I don't remember offhand. I think I was asked that the other day and I just - I know the name is familiar. I know I had something to do with it. Just what it is, I just can't.
- Q: So you're not sure what ship it was on or what work you may have done on it?
- A: No.
-
- Q: All right. Do you have a recollection of working on a Honeywell valve?
- A: I have a recollection of the name Honeywell, having done something with one. I don't recall what it was.
- Q: Or how many times you may have worked on it?
- A: That's correct.
- Q: Okay. Or how many different ships you may have seen it on?
- A: That's correct.

(Dep. of William Hays, Vol. VI, Oct.26, 2009, at 604:18-25; 605:1-2, 19-25; 606:1-3, Exhibit A to Honeywell's motion.)

Honeywell also cites to testimony from a co-worker of Mr. Hays's, indicating that he had no recollection of Mr. Hays ever using a Honeywell valve on a Navy ship on which he observed Mr. Hays, and that the Honeywell valves would have been used in an air-conditioning and refrigeration area, which was away from where Mr. Hays would have worked.

However, Plaintiff points out that, in addition to this testimony, there is testimony that Mr. Hays worked with asbestos-containing Honeywell valves throughout the course of his career in the Navy (which spanned approximately twenty (20) years), in which he served primarily as a boiler technician. Mr. Hays specifically testified about exposure to asbestos dust while changing the packing on valves, both in the Navy and in non-Navy jobs:

- Q: . . . You testified earlier that you used packing material when you were in the U.S. Navy; is that correct?
- A: That's correct.
- Q: And you used it at your other jobs as well, or saw it

in use; is that correct?

A: Yep.

Q: First of all, **what is packing material; how is it used?**

A: It can be used in several applications. . . . It can be **used in valves**

Q: And is it fair to say, sir, that you had occasion yourself to handle packing material as part of your job duties in the U.S. Navy between 1960 and 1981 when you retired?

. . . .

Q: When you had an opportunity - when you were **in the Navy** and handled packing material, and we're going to actually use it in a valve, for example, **how would you go about preparing the packing material for installation into a valve?** Walk us through that process.

A: Well, **the first thing to do is remove the old packing.**

. . . .

Q: When you would remove packing when you were in the U.S. Navy, would it always come out in one piece?

A: No. . . .

. . . .

Q: **And when you would remove packing materials, would there be debris associated with removing the old packing?**

A: **Yes, sir.**

Q: And would the debris create dust on occasion?

A: Yes.

Q: And would you see that dust in the air?

A: Sure.

Q: **And did you breathe that air?**

A: **Yes.**

Q: Talking about the **installation of new packing material** you reference cutting, did you ever personally have occasion to cut packing material as part of your job duties?

A: Yes.

Q: **And how often would you be required to cut packing material when you were using packing material?**

A: **If you were packing a valve, when you pack the valve you'd cut the packing.**

Q: **Is it fair to say you'd have to cut it on every occasion that you were installing packing material?**

A: **Yes, sir.**

. . . .

Q: And in regard to the **ships you were assigned to when they were pier side and undergoing any kind of**

maintenance; did you personally ever have to undertake to remove old packing material or install new packing material on the ships you were assigned to?

A: Personally?

Q: Yes, sir.

A: **Yes.**

Q: And **how often** would you be required to do that while you were in the Navy?

A: . . . **I worked with the troops pretty close on it.**

Q: And as far as the actual cutting of packing material that you've described, **did you ever observe dust associated with cutting of the packing material** that you recall?

A: . . . **when you've got the valve disassembled . . .** You would go ahead and take that valve apart, and you would clean that valve body and assembly there. So **you'd have plenty of opportunity for asbestos exposure.**

Q: **Would that process create dust** that you just described?

A: **Yes,** sir.

Q: And **would you breathe that dust?**

A: **Yes.**

. . . .
Q: And based on your training and experience in the Navy, **what parts of a valve would contain asbestos** to your knowledge?

A: Well, of course, **on your high pressure stuff or your steam stuff** you're going to run into your valve packing

. . . .
Q: **And did you personally ever have occasion to work with valves that you understood to contain asbestos insulation parts.**

A: **Yes,** sir.

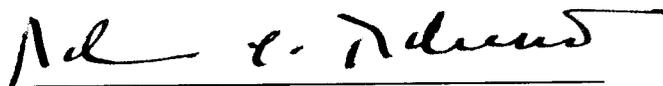
. . . .
Q: And as far as the **brand names of the valves that you personally worked with or around** in the U.S. Navy **that contained asbestos parts,** what were the brand names of those valves that you recall?

A: Crane, Yale, Yates, Ingersoll Rand, Worthington, **Honeywell,** and numerous others.

(Dep. of William Hays, Oct. 16, 2009, at 117:6-133:3, Ex. 2 to Doc. No. 175 (Pl.'s Ex. A) (emphasis added).)

There is also evidence that Mr. Hays was involved in overhauling in-line valves. (See Ex. 2 to Doc. No. 175 (Pl.'s Ex. A).) There is testimony from a co-worker (Commander Weaver) that

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

Mr. Hays was present for the overhaul of at least one ship. (See Ex. 8 to Doc. No. 175 (Pl.'s Ex. G).)

There is expert testimony (from Captain William A. Lowell) that, as part of Mr. Hays's job roles as a boiler tender and a worker at MayPort Florida Fleet Maintenance/SIMA, he would have worked regularly with valves. There is also testimony from this expert that it is likely that the valves with which Mr. Hays worked were originally designed, supplied, and installed with asbestos and, at the time of Plaintiff's work with them, required asbestos-containing packing. There is also expert testimony explaining that Mr. Hays's work for ten years at MayPort Florida Fleet Maintenance/SIMA would have meant that Mr. Hays worked performing maintenance on a large number of ships, as this job was to service whichever ships came through the maintenance facility. (See Ex. 9 to Doc. No. 175 (Pl.'s Ex. H).)

A reasonable juror could conclude from the evidence that, given Mr. Hays's role in the Navy as a boiler tender for approximately twenty (20) years, including approximately three (3) years at a ship maintenance facility servicing large numbers of ships, the frequency with which his job would have required him to change packing on valves, and his ability to specifically recall and identify Honeywell valves as one of a handful of asbestos-containing valves with which he worked (indicating the predominance of Honeywell valves in the supply of valves to Navy ships), that Honeywell valves were a substantial contributing factor to his mesothelioma. Accordingly, summary judgment in favor of Honeywell is not warranted and its motion is therefore denied.