

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

RONALD L. MADDUX, SR.,	:	CONSOLIDATED UNDER
	:	MDL 875
Plaintiff,	:	
	:	Transferred from the
	:	Southern District of
v.	:	Indiana
	:	(Case No. 98-00164)
OWENS CORNING FIBERGLAS	:	PA CIVIL ACTION NO.
CORPORATION, ET AL.,	:	2:09-64625-ER
	:	
Defendants.	:	

O R D E R

AND NOW, this **26th** day of **July, 2012**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant **John Crane, Inc.** (Doc. No. 13) is **GRANTED**.¹

¹ This case was filed in the United States District Court for the Southern District of Indiana in October of 1998. In April of 2009, it was transferred to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Plaintiff Ronald L. Maddux, Sr., alleges that he was exposed to asbestos from gaskets manufactured by Defendant John Crane, Inc. ("John Crane") during his career as a pipefitter, which lasted from 1967 to 1990.

Plaintiff was diagnosed with asbestosis and asbestos-related lung cancer. He asserts that he developed these diseases as a result of his asbestos exposure from Defendant's product(s). He was never deposed in this action.

Plaintiff brought claims against various defendants. Defendant John Crane has moved for summary judgment, arguing that there is no product identification evidence to establish causation with respect to any product(s) for which it is responsible. Defendant contends that Indiana substantive law applies but that it is irrelevant because its motion should be resolved as a matter of procedure under the Federal Rules of Civil Procedure because Plaintiff (1) failed to disclose

witnesses in this case pursuant to Rule 26 and (2) never submitted medical information (or any other information) as required by the Court's Administrative Order No. 12. Plaintiff does not make clear what law he contends applies and does not submit any reply briefing responding to Defendant's contention that he failed to make the appropriate disclosures.

A hearing on John Crane's motion was scheduled for July 24, 2012 at 10:00 a.m. (See Doc. No. 7.) Counsel for Plaintiff did not appear at the hearing. As provided under local rules, before the Court grants summary judgment, it must determine that the moving party is entitled to judgment as a matter of law. See Loc. R. Civ. P. 7.1(c). Therefore, notwithstanding Plaintiff's counsel's failure to appear, the Court has reviewed the evidence present in the record and finds that there is no genuine dispute of material fact and that Defendant is entitled to judgment as a matter of law. The evidence and analysis are as follows:

Plaintiff alleges that he was exposed to asbestos from an asbestos-containing product(s) for which Defendant John Crane is responsible. Defendant contends (and Plaintiff has not denied) that Plaintiff failed to disclose witnesses pursuant to Federal Rule of Civil Procedure 26.

Plaintiff has identified the following evidence:

- Affidavit of Plaintiff
Plaintiff has submitted an affidavit (executed on May 18, 2012), which states:
 - (1) "I was a pipefitter from 1967 to 1990. Removing and reapplying gaskets was a job routinely performed throughout my career."
 - (2) "I have installed and removed asbestos-containing John Crane gaskets. I used a hammer and chisel during the removal process, which was very dusty. I would inhale the dust emanating from these products."
- Medical Evidence
Plaintiff submits (1) a history and physical taken by Dr. John A. Lloyd (dated February 1, 1977), (2) an office visit record by Dr.

E.D. PA NO. 2:09-64625-ER

AND IT IS SO ORDERED.


EDUARDO C. ROBRENO, J.

Lloyd (dated September 23, 1977), (3) a letter from Dr. Lloyd (dated May 27, 1988), (4) a surgical pathology report by Dr. Mark E. Richardson (dated December 5, 2008), and (5) a supplemental pathology report by Dr. Richardson (dated December 12, 2009).

Because it is undisputed that Plaintiff failed to disclose any witnesses in this case (including himself and Dr. Lloyd), his evidence is excluded and will not be considered by the Court in deciding Defendant's motion. See Fed. R. Civ. P. 37(c). As a result, there is no evidence that Plaintiff was exposed to asbestos from any product for which Defendant John Crane, Inc. is potentially responsible. Accordingly, no reasonable jury could conclude from the evidence that Defendant's product(s) was a cause of Plaintiff's illness. Therefore, summary judgment in favor of Defendant is warranted. See Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-50 (1986).

Under separate order, the Court will consider whether sanctions upon counsel are appropriate for failure to appear at the hearing.