

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

April 27, 2010

RE: Constantinides v. Alfa Laval, Inc., et al  
CA No. 09-70613

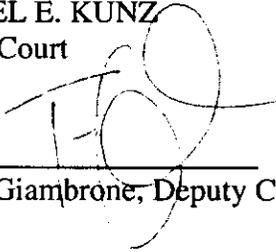
**NOTICE**

Enclosed herewith please find a copy of the Report and Recommendation filed by United States Magistrate Judge Hey, United States Magistrate Judge Rueter, and United States Magistrate Judge Strawbridge on this date in the above captioned matter. You are hereby notified that within fourteen (14) days from the date of service of this Notice of the filing of the Report and Recommendation of the United States Magistrate Judge, any party may file (in duplicate) with the clerk and serve upon all other parties written objections thereto (See Local Civil Rule 72.1 IV (b)). **Failure of a party to file timely objections to the Report & Recommendation shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court Judge.**

In accordance with 28 U.S.C. §636(b)(1)(B), the judge to whom the case is assigned will make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The judge may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge, receive further evidence or recommit the matter to the magistrate judge with instructions.

Where the magistrate judge has been appointed as special master under F.R.Civ.P 53, the procedure under that rule shall be followed.

MICHAEL E. KUNZ  
Clerk of Court

By:   
Thomas Giambrone, Deputy Clerk

cc: Judge Hey  
Judge Rueter  
Judge Strawbridge  
Judge Robreno  
E-mailed to counsel  
nailed to counsel

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

IN RE: ASBESTOS PRODUCTS	:	
LIABILITY LITIGATION (No. VI)	:	MDL DOCKET NO. 875
	:	
	:	
	:	
PETER CONSTANTINIDES and ELPIS	:	EDPA No. 09-70613
CONSTANTINIDES, h/w	:	
	:	<i>Transferred from:</i>
v.	:	
	:	<i>U.S. District Court for the</i>
ALFA LAVAL, INC., et al.	:	<i>So. Distr. of Florida, Miami Div.,</i>
	:	<i>Civ. Action No. 08-22522</i>

**REPORT AND RECOMMENDATION**  
**ON DEFENDANT CRANE CO.'s**  
**MOTION FOR SUMMARY JUDGMENT**

BEFORE:  
THOMAS J. RUETER, CHIEF UNITED STATES MAGISTRATE JUDGE  
DAVID R. STRAWBRIDGE, UNITED STATES MAGISTRATE JUDGE  
ELIZABETH T. HEY, UNITED STATES MAGISTRATE JUDGE

BY: HEY, M.J.

April 26, 2010

Plaintiffs Peter Constantinides and his wife, Elpis Constantinides (“Plaintiffs”), filed the present asbestos action on August 11, 2008, alleging negligence and strict liability claims against several defendants based on their failure to warn of the dangers associated with exposure to asbestos incorporated into their products and to which Mr. Constantinides was exposed while serving in the United States Navy aboard the USS Iowa (BB-61) from 1954 until 1956.<sup>1</sup> Presently before the court is a summary judgment

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<sup>1</sup>The matter was originally filed in the Southern District of Florida, Miami Division, but was transferred to the Eastern District of Pennsylvania as part of MDL 875

motion filed by Defendant Crane Co. (“Crane”) (Doc. 102), Plaintiffs’ response thereto (Doc. 127), and Crane’s reply (Doc. 135).<sup>2</sup> We recommend that the motion be denied.

**I. FACTUAL BACKGROUND**

Mr. Constantinides was diagnosed with asbestos-attributable mesothelioma in 2007. His only lifetime exposure to asbestos occurred during fifteen months he served on the USS Iowa from 1954 until 1956. Mr. Constantinides worked as a fireman’s apprentice and then fireman on the Iowa, and his main assignment was to one of the boiler rooms. The boiler room contained numerous pipes and machinery encased in external asbestos insulation and/or containing gaskets and other internal parts which were encased in asbestos. Although the precise dimensions of the boiler room are unknown, there is no question that the room was significant in size, that it was densely packed with asbestos-insulated equipment and pipes, and that it was hot and dusty.

Mr. Constantinides performed daily work in the boiler room such as cleaning and maintenance of the pumps, valves and other machinery. This activity created airborne dust, which Mr. Constantinides inhaled without the benefit of a mask or respirator to protect himself. Pl. Video Dep. Vol. I at 20-26. He identified the pipes and lines in the boiler room as a source of the dust. Id. at 21. Mr. Constantinides occasionally repaired

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and docketed on June 17, 2009, in accordance with the terms of this court’s Administrative Order No. 11. See Doc. 1.

<sup>2</sup>The Honorable Eduardo C. Robreno referred the motion to this panel for a Report and Recommendation. We heard oral argument on March 24, 2010

pumps and motors by removing and replacing gaskets and bearings, and he was assigned for two to three weeks to learn to operate the ship's generators and breathed in dust from the generators. Pl. Video Disc. Dep. at 56-59, 62-64, 66-68; Pl. Video Dep. Vol I at 29-32. According to a co-worker, Robert Harris, he and Mr. Constantinides also spent about ten days cleaning valves, which involved brushing the external insulation off the valves, cleaning out the existing packing within the valves with a screwdriver, and replacing the packing and gasket within the valves. See Harris Dep. at 11-15, 52, 65. Mr. Harris also testified that this process created a significant amount of dust which both he and Mr. Constantinides breathed in. Id. at 14-15.

Plaintiffs have retained Arnold P. Moore, PE, a retired naval captain and professional engineer with experience in the repair and overhaul of Navy ships. See Moore Report at 1. In his report, Mr. Moore explained that each boiler room on the Iowa "included two boilers, six forced draft blowers, a deaerating feed water tank, numerous steam driven and electric motor driven pumps as well as pump governors, steam traps and valves." Id. at 4, 9. With respect to Crane, the parties agree that the boiler room contained "numerous" Crane valves which were attached to the pipes running throughout the boiler room. See Moore Dep. at 192, 196; N.T. 03/24/10 at 90. Mr. Moore identified two types of valves in the Iowa boiler room, those made by Leslie Controls and a far more numerous variety manufactured by Crane. See Moore Report at 10-14; N.T. 03/24/10 at

90.<sup>3</sup> Specifically, Mr. Moore explained that Crane manufactured “steam relief valves for the main condensate pump turbine drivers and for the main feed booster pump turbine drivers” located in the boiler rooms, see Moore Report at 11, and that the valves were manufactured with asbestos stem packing. Id. at 11-12.

Finally, Plaintiffs rely on medical expert Jerrold L. Abraham, M.D., who opined in a one-page report that asbestos exposure caused Mr. Constantinides’ mesothelioma. See Abraham Report at 1.

## **II. LEGAL STANDARDS**

### **A. Standard for Summary Judgment**

Summary judgment may be granted only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

The moving party has the initial burden of demonstrating that no genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). After the

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<sup>3</sup>Mr. Moore also mentioned valves manufactured by Chapman Valve Manufacturing Company, see Moore Report at 12, but the parties agree that Chapman was a subsidiary of Crane. See N.T. 3/24/10 at 84, 90.

moving party has met its initial burden, the adverse party must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). “Speculation, conclusory allegations, and mere denials are insufficient to raise genuine issues of material fact.” Boykins v. Lucent Techs., Inc., 78 F. Supp.2d 402, 408 (E.D. Pa. 2000). The evidence presented must be viewed in the light most favorable to the non-moving party. Anderson, 477 U.S. at 255; Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

**B. Applicable Florida Law<sup>4</sup>**

The present motion challenges the sufficiency of the evidence on the causation element of Plaintiffs’ cause of action. To establish an asbestos claim under Florida law, a plaintiff must show that asbestos exposure from the defendant’s product at issue was a substantial contributing factor to plaintiff’s physical impairment. See Fla. Stat. § 774.204(1) (2009); Reaves v. Armstrong World Indus., Inc., 569 So. 2d 1307, 1308-09 (Fla. 4th DCA 1990). On an appeal from a directed verdict in the defendants’ favor, the court in Reaves analyzed whether there was sufficient evidence adduced at trial upon which the jury could properly rely in finding a verdict for the plaintiff. After reviewing the evidence presented by plaintiff, the court concluded that the proof of whose asbestos

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<sup>4</sup>Crane cites to both Florida and maritime law in its brief in support of summary judgment. Because the parties agree that the relevant standards under Florida and maritime law are essentially the same, we will not engage in a conflict of law analysis and will apply Florida law.

dust and who manufactured those products was speculative at best. Reaves, 569 So. 2d at 1309. The court instructed that the plaintiff must establish that he was exposed to the asbestos products of each defendant and that this exposure contributed substantially to producing the injury of which plaintiff complained. Id.

Testimony of an expert witness on causation can be sufficient to raise a genuine issue of material fact, defeating a motion for summary judgment. Brown v. Glade and Grove Supply, Inc., 647 So. 2d 1033, 1036 (Fl. 4th DCA 1994); see also Ward v. Celotex Corp., 479 So. 2d 294, 296 (Fla. 1st DCA 1985) (testimony of co-workers that placed plaintiff near activities where asbestos was used and identification of defendant as manufacturer sufficiently raised genuine issue of material fact precluding summary judgment in favor of manufacturer).

### **III. DISCUSSION**

Defendant Crane argues that it is entitled to summary judgment because Plaintiffs have failed to establish that exposure to a Crane product caused Mr. Constantinides' injuries. See Doc. 102 at 5-6, Doc. 135 at 2-6. Plaintiffs counter that at they have raised a genuine issue of material fact as to the issue of specific causation. See Doc. 127 at 12-14. We agree with Plaintiffs.

In support of its motion, Crane argues that Mr. Moore's testimony is "conjectural" insofar as neither Mr. Constantinides nor Mr. Harris could state that they specifically worked on valves manufactured by Crane. See Doc. 135 at 4-5. While it is true that

neither former seaman could recall the specific name of the valve manufacturer – a fact Mr. Moore acknowledged in his deposition, see Moore Dep. at 198 – this fact is not determinative. In his report, Mr. Moore identified two types of valves in the Iowa boiler room, those made by Leslie Controls and a far more numerous variety manufactured by Crane. See Moore Report at 10-14; N.T. 03/24/10 at 90. Both Mr. Constantinides and Mr. Harris testified that they worked on various machinery in the boiler room, including valves. See Constantinides Dep., Vol. I at 20-21; Harris Dep. at 10-11, 23. More importantly, Mr. Harris testified that he and Mr. Constantinides spent up to ten days working on at least two valves per day, and that the work involved brushing the external insulation off the valves, cleaning out the existing packing within the valves with a screwdriver, and replacing the packing and gasket within the valves, all of which created dust which the men breathed in. See Harris Dep. at 10-11, 14-15, 23. Mr. Moore stated in his report and deposition that any such valves were covered by external asbestos-containing insulation and contained internal asbestos stem packing. Moore Report at 11-12; Moore Dep. at 196.

It is undisputed there were only two types of valves identified by Mr. Moore as being in the boiler room, and that the more “numerous” of these were manufactured by Crane. It is also undisputed that the valves were connected to overhead piping from which asbestos-containing dust originated, and that Mr. Constantinides performed work on valves that generated breathable asbestos dust. For these reasons, we find that

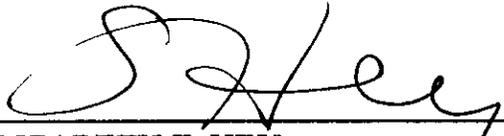
Plaintiffs have raised a genuine issue of material fact regarding the question of whether asbestos exposure from Crane valves was a substantial contributing factor to Mr. Constantinides' illness. See Fla. Stat. § 774.204(1) (2009); Reaves, 569 So. 2d at 1308-09.<sup>5</sup>

Accordingly, we make the following:

**RECOMMENDATION**

AND NOW, this 26th day of April 2010, it is RESPECTFULLY RECOMMENDED that the summary judgment motion of Defendant Crane Co. be DENIED with respect to the issues that are within the scope of Judge Robreno's referral order. The parties may file objections to this Report and Recommendation. See Local Civ. Rule 72.1. Failure to file timely objections may constitute a waiver of any appellate rights.<sup>6</sup>

BY THE COURT:

  
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ELIZABETH T. HEY  
UNITED STATES MAGISTRATE JUDGE

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<sup>5</sup>At oral argument, Crane for the first time raised the "bare iron" defense, that is, that it is entitled to summary judgment because it supplied its equipment to the Navy without external insulation and that any such insulation was not designed, manufactured, supplied or installed by Crane. See N.T. 3/24/10 at 82. As the "bare iron" defense is beyond the scope of Judge Robreno's referral order, it will not be further addressed in this Report and Recommendation.

<sup>6</sup>Chief Magistrate Judge Rueter and Magistrate Judge Strawbridge join in this determination.

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	:	<i>Civ. Action No. 08-22522</i>

**ORDER**

AND NOW, this            day of            , 2010, upon careful and independent consideration of Defendant Crane Co.'s motion for summary judgment (Doc. 102), Plaintiffs' response (Doc. 127), and Defendant's reply (Doc. 135), and after review of the Report and Recommendation authored by Magistrate Judge Elizabeth T. Hey on behalf of herself, Chief Magistrate Judge Thomas J. Rueter, and Magistrate Judge David R. Strawbridge, it is hereby ORDERED that:

1. The Report and Recommendation is approved and adopted; and
2. Defendant Crane Co.'s motion for summary judgment (Doc. 102) is

DENIED as to the issues addressed in the Report and Recommendation.

BY THE COURT:

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EDUARDO C. ROBRENO, J.