

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

GRAMMER, et al., : CONSOLIDATED UNDER
 : MDL 875
 Plaintiffs, :
 : Transferred from the Central
 : District of California
 v. : (Case No. 09-07599)
 :
 :
 ADVOCATE MINES, LTD., :
 et al., : E.D. PA CIVIL ACTION NO.
 : 2:09-92425
 Defendants. :

O R D E R

AND NOW, this **1st** day of **December, 2011**, it is hereby
ORDERED that the Motion for Summary Judgment of Defendant Warren
Pumps (doc. no. 179) is **GRANTED**.¹

¹ This case was transferred to from the United States District Court for the Central District of California in December 2009 to the Eastern District of Pennsylvania as part of MDL 875. Plaintiffs allege that their Decedent, Kenneth H. Grammer, was diagnosed with, and has since died from, mesothelioma as a result of his exposure to Defendant's asbestos-containing products during his service in the United States Navy from 1956 to 1963.

I. Legal Standard

1. Applicable Law

This Court has held that maritime law governs "claims involving plaintiffs who were sea-based Navy workers so long as the allegedly defective product was produced for use on a vessel." Conner v. Alfa Laval, Inc., 2011 WL 3101810 at *8 (E.D. Pa. 2011) (Robreno, J.). Such claims meet the locality and connection tests necessary for maritime law to apply. Even if a service member in the Navy performed some work at shipyards or docks, "the locality test is satisfied as long as some portion of the asbestos exposure occurred on a vessel on navigable waters." Id. When the worker was primarily sea-based, his claims will meet the connection test necessary for the application of maritime law. Id. at 9-10.

Plaintiffs argue that California law should apply to this case. Even if California law applied, the outcome would be the same, as discussed infra.

2. Product Identification under Maritime Law

Maritime law applies to "claims involving plaintiffs who were sea-based Navy workers where the allegedly defective product was produced for use on a vessel." Prange v. A.W. Chesterton Co., 09-91848 (E.D. Pa. July 22, 2011) (Robreno, J.). Maritime law is made up of an amalgam of federal and state law. E. River S.S. Corp., 476 U.S. at 864. Substantive admiralty law applies to products liability claims. Id. In order to establish causation for an asbestos claim under maritime law, a plaintiff must show, for each defendant, that "(1) he was exposed to the defendant's product, and (2) the product was a substantial factor in causing the injury he suffered." Lindstrom v. A-C Prod. Liab. Trust, 424 F.3d 488, 492 (6th Cir. 2005); citing Stark v. Armstrong World Indus., Inc., 21 Fed. App'x 371, 375 (6th Cir. 2001). Substantial factor causation is determined with respect to each defendant separately. Stark, 21 Fed. Appx. at 375.

Accordingly, a mere "minimal exposure" to a defendant's product is insufficient to establish causation. Lindstrom, 424 F.3d at 492. "Likewise, a mere showing that defendant's product was present somewhere at plaintiff's place of work is insufficient." Id. Rather, the plaintiff must show "a high enough level of exposure that an inference that the asbestos was a substantial factor in the injury is more than conjectural.'" Id. (quoting Harbour v. Armstrong World Indus., Inc., No. 90-1414, 1991 WL 65201, at *4 (6th Cir. April 25, 1991)). The exposure must have been "actual" or "real", but the question of "substantiality" is one of degree normally best left to the fact-finder. Redland Soccer Club, Inc. v. Dep't of Army of U.S., 55 F.3d 827, 851 (3d Cir. 1995). "Total failure to show that the defect caused or contributed to the accident will foreclose as a matter of law a finding of strict products liability." Stark, 21 F. App'x at 376 (citing Matthews v. Hyster Co., Inc., 854 F.2d 1166, 1168 (9th Cir. 1988) (citing Restatement (Second) of Torts, § 402A (1965))).

3. Product Identification under California Law

Under California law, a plaintiff need only show (1) some threshold exposure and (2) that the exposure "in reasonable medical probability was a substantial factor in contributing to

the aggregate dose of asbestos the plaintiff or decedent inhaled or ingested, and hence to the risk of developing asbestos-related cancer." McGonnell v. Kaiser Gypsum Co., Inc., 98 Cal. App. 4th 1098, 1103 (Cal. Ct. App. 2002); see also, Rutherford v. Owens-Illinois, 16 Cal. 4th 953, 977 n.11, 982-83 (Cal. Ct. App. 1997) ("proof of causation through expert medical evidence" is required). The plaintiff's evidence must indicate that the defendant's product contributed to his disease in a way that is "more than negligible or theoretical," but courts ought not to place "undue burden" on the term "substantial." Jones v. John Crane, Inc., 132 Cal. App. 4th 990, 998-999 (Cal. Ct. App. 2005).

II. Motion for Summary Judgment of Defendant Warren Pumps, LLC

Decedent was not deposed in this matter. Plaintiffs' only product identification evidence with regard to Warren Pumps is the testimony of Decedent's brother, Robert Grammer, who worked with his brother for approximately ten months aboard the USS Ashtabula. The witness testified that he personally recalled the Decedent working with pumps on several occasions aboard that ship, and recalled him working on a number of pumps by function, including steam reciprocating auxiliary feed pumps and bilge pumps, among others. (Pl.'s Ex. 1, Robert Grammer Depo. at 54-56). However, although the witness further testified as to the Decedent removing external insulation, removing gaskets, and removing packing from the pumps (see id. at 56-62), the witness never identified Defendant as a manufacturer of any product with which Decedent worked. Thus, Plaintiffs have not succeeded in showing that Decedent had any exposure to Defendant's products. This failure to identify Defendant or Defendant's products is fatal under either maritime or California law.

Summary judgment therefore is granted on product identification grounds.

III. Conclusion

Summary judgment is granted for Defendant in this case because Plaintiffs have presented no evidence of product identification. Plaintiffs' only product identification witness did not succeed in identifying Defendant at all.

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AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.