

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

PAULINE SANBORN, :
 : CONSOLIDATED UNDER
 : MDL 875
 :
 Plaintiff, **FILED** :
 :
 : MAR 30 2012 : Transferred from the
 : District of Connecticut
 v. : (Case No. 09-01093)
 : MICHAEL E. KUNZ, Clerk :
 By _____ Dep. Clerk :
 :
 :
 BUFFALO PUMPS, INC., :
 ET AL., : E.D. PA CIVIL ACTION NO.
 : 2:09-CV-91452-ER
 :
 Defendants. :

ORDER

AND NOW, this 28th day of **March, 2012**, it is hereby
ORDERED that the Motion for Summary Judgment of Defendant General
Electric Co. (Doc. No. 22) is **GRANTED**.¹

¹ This case was transferred in October of 2009 from the
United States District Court for the District of Connecticut to
the United States District Court for the Eastern District of
Pennsylvania as part of MDL-875.

Plaintiff Pauline Sanborn, wife and executrix of the
estate of James Sanborn ("Decedent" or "Mr. Sanborn"), has
alleged that Mr. Sanborn was exposed to asbestos while working as
a pipe coverer/insulator aboard various vessels during his work
at Electric Boat Shipyard in Groton, Connecticut (from 1969 to
1972 and again from 1974 to 1986). Defendant General Electric
Company ("GE") manufactured, inter alia, turbines and generators.
The alleged exposure pertinent to Defendant GE occurred during
Mr. Sanborn's work aboard various submarines, including but not
limited to:

- USS Cavalla
- USS Narwhal
- USS Triton
- Various Other Unspecified Submarines

Mr. Sanborn was diagnosed with asbestos-related lung
cancer. He died in May of 2009, prior to the filing of this

lawsuit. Although he was never deposed in this action, he was deposed in 1994 in connection with an unrelated worker's compensation claim.

Plaintiff brought claims against various defendants. Defendant GE has moved for summary judgment, arguing that there is insufficient product identification evidence to support a finding of causation with respect to its product(s). GE asserts that Connecticut law applies.

Plaintiff contends that there is sufficient product identification evidence to support a finding of causation with respect to GE turbines, generators, and "other propulsion equipment" (e.g., a condenser and safety injection pump). (Pl. Mem. at 10.) Plaintiff does not specify what law she contends applies and instead cites cases from numerous jurisdictions.

I. Legal Standard

A. Summary Judgment Standard

Summary judgment is appropriate if there is no genuine dispute as to any 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 (Maritime versus State Law)

Because the parties do not agree that a particular state's law applies, and because it is apparent that the alleged exposure occurred at a shipyard, the Court has determined that it is appropriate to undertake an analysis to determine what law (maritime or state) applies to Defendant GE's motion.

Whether maritime law is applicable is a threshold dispute that is a question of federal law, see U.S. Const. Art. III, § 2; 28 U.S.C. § 1333(1), and is therefore governed by the law of the circuit in which this MDL court sits. See Various Plaintiffs v. Various Defendants ("Oil Field Cases"), 673 F. Supp. 2d 358, 362 (E.D. Pa. 2009) (Robreno, J.). This court has previously set forth guidance on this issue. See Conner v. Alfa Laval, Inc., 799 F. Supp. 2d 455 (E.D. Pa. 2011) (Robreno, J.).

In order for maritime law to apply, a plaintiff's exposure underlying a products liability claim must meet both a locality test and a connection test. Id. at 463-66 (discussing Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995)). The locality test requires that the tort occur on navigable waters or, for injuries suffered on land, that the injury be caused by a vessel on navigable waters. Id. In assessing whether work was on "navigable waters" (i.e., was sea-based) it is important to note that work performed aboard a ship that is docked at the shipyard is sea-based work, performed on navigable waters. See Sisson v. Ruby, 497 U.S. 358 (1990). By contrast, work performed in other areas of the shipyard or on a dock, (such as work performed at a machine shop in the shipyard, for example, as was the case with the Willis plaintiff discussed in Conner) is land-based work. The connection test requires that the incident could have "a potentially disruptive impact on maritime commerce," and that "the general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'" Grubart, 513 U.S. at 534 (citing Sisson, 497 U.S. at 364, 365, and n.2).

Locality Test

If a service member in the Navy performed some work at shipyards (on land) or docks (on land) as opposed to onboard a ship on navigable waters (which includes a ship docked at the shipyard), "the locality test is satisfied as long as some portion of the asbestos exposure occurred on a vessel on navigable waters." Conner, 799 F. Supp. 2d at 466. If, however,

the worker never sustained asbestos exposure onboard a vessel on navigable waters, then the locality test is not met and state law applies.

Connection Test

When a worker whose claims meet the locality test was primarily sea-based during the asbestos exposure, those claims will meet the connection test necessary for the application of maritime law. Id. at 467-69. But if the worker's exposure was primarily land-based, then, even if the claims could meet the locality test, they do not meet the connection test and state law (rather than maritime law) applies. Id.

In instances where there are distinct periods of different types (e.g., sea-based versus land-based) of exposure, the Court may apply two different laws to the different types of exposure. See, e.g., Lewis v. Asbestos Corp., Ltd., No. 10-64625, 2011 WL 5881184, at *1 n.1 (E.D. Pa. Aug. 2, 2011) (Robreno, J.) (applying Alabama state law to period of land-based exposure and maritime law to period of sea-based exposure).

It is undisputed that the alleged exposure pertinent to Defendant GE that occurred during Mr. Sanborn's work at Electric Boat was aboard ships. Therefore, this exposure was during sea-based work. See Conner, 799 F. Supp. 2d 455. Accordingly, maritime law is applicable to Plaintiff's claims against Defendant GE. See Conner, 799 F. Supp. 2d at 462-63.

C. Product Identification/Causation Under Maritime Law

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 F.App'x 371, 375 (6th Cir. 2001). This Court has also noted that, in light of its holding in Conner v. Alfa Laval, Inc., No. 09-67099, - F. Supp. 2d -, 2012 WL 288364 (E.D. Pa. Feb. 1, 2012) (Robreno, J.), there is also a requirement (implicit in the test set forth in Lindstrom and Stark) that a plaintiff show that (3) the defendant manufactured or distributed the asbestos-containing product to which exposure is alleged. Abbay v. Armstrong Int'l., Inc., No. 10-83248, 2012 WL 975837, at *1 n.1 (E.D. Pa. Feb 29, 2012) (Robreno, J.).

Substantial factor causation is determined with respect to each defendant separately. Stark, 21 F.App'x. at 375. In establishing causation, a plaintiff may rely upon direct evidence (such as testimony of the plaintiff or Decedent who experienced the exposure, co-worker testimony, or eye-witness testimony) or circumstantial evidence that will support an inference that there was exposure to the defendant's product for some length of time. Id. at 376 (quoting Harbour v. Armstrong World Indus., Inc., No. 90-1414, 1991 WL 65201, at *4 (6th Cir. April 25, 1991)).

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, 1991 WL 65201, at *4). 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))).

II. Defendant GE's Motion for Summary Judgment

A. Defendant's Arguments

GE argues that there is no evidence that Mr. Sanborn was exposed to any asbestos-containing product it manufactured or supplied.

In its reply brief, GE challenges the deposition testimony submitted by Plaintiff, arguing that it is inadmissible primarily because GE was neither present at that deposition nor a party to that worker's compensation action, and because there was no other party to that action who had a motive to develop the testimony that is similar to GE's current motive.

B. Plaintiff's Arguments

Plaintiff contends that there is sufficient product identification evidence with respect to asbestos-containing

products that it alleges were manufactured or supplied by GE. In support of this assertion, Plaintiff points to:

- Deposition testimony of Mr. Sanborn - Mr. Sanborn testified in connection with his worker's compensation action that he worked at Electric Boat (for employer General Dynamics) during various parts of 1969 to 1973 and then again beginning in 1974. He testified that his work there involved "cover[ing] pipes, STG's and turbines, mostly engine room in the submarines or the reactor." (Dep. of James Robert Sanborn, Oct. 13, 1994, at 12:17-13:20.)
- Naval Records - Plaintiff has identified Naval records for the USS Cavalla, USS Triton, and USS Narwhal, which she contends demonstrate that GE equipment was aboard each of these ships, and that the USS Triton underwent an overhaul during the time Decedent was working aboard it.
- Defendant's Motion - Plaintiff has noted that GE's motion concedes that GE supplied marine steam turbines and other propulsion equipment to the Navy for installation aboard the USS Triton and the USS Narwhal. (Def. Mem. at 2.)

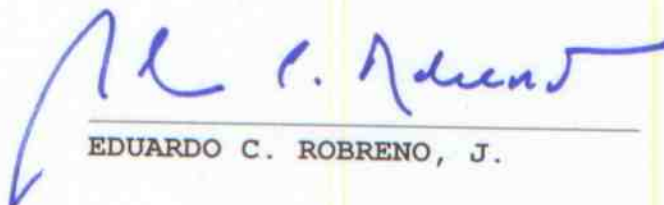
Plaintiff also contends generally that asbestos cases are complex cases for which summary judgment is not appropriate because of the numerous factual issues that are involved.

C. Analysis

As a preliminary matter, the Court notes that, at oral argument, Plaintiff presented an affidavit of Mr. Sanborn that was executed on May 1, 2009, seeking to supplement the evidence in the record. The Court denied Plaintiff's request, taking note of the fact that, although the affidavit had been available to Plaintiff for over two (2) years prior to the filing of GE's motion, it had not been submitted in connection with Plaintiff's opposition or at any time prior to the day of the hearing on GE's motion. Therefore, the Court did not consider it in deciding GE's motion.

Plaintiff alleges that Mr. Sanborn was exposed to asbestos from GE turbines, generators, and "other propulsion equipment" (e.g., a condenser and safety injection pump). (Pl.

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

Mem. at 10.) There is evidence that GE supplied equipment (including turbines, generators, and other equipment) for installation aboard the USS Cavalla, USS Triton, and USS Narwhal. There is evidence that Mr. Sanborn worked with pipes, steam turbine generators, and turbines aboard vessels, "mostly [in the] engine room in the submarines or the reactor." However, there is no evidence that Mr. Sanborn worked aboard the USS Cavalla, USS Triton, or USS Narwhal. There is no evidence that he was exposed to any GE equipment aboard any vessel. Furthermore, even if it were assumed that the equipment with which he testified he worked was GE equipment aboard the USS Cavalla, USS Triton, or USS Narwhal, there is no evidence that his work with this equipment involved asbestos to which he may have been exposed, or that GE manufactured or supplied any asbestos-containing product (or component part) to which he may have been exposed. Therefore, no reasonable jury could conclude from the evidence that Mr. Sanborn was exposed to asbestos from a product manufactured or supplied by GE such that it was a substantial factor in causing his lung cancer. See Lindstrom, 21 F.App'x at 376; Abbay, 2012 WL 975837, at *1 n.1. Accordingly, summary judgment in favor of Defendant GE is warranted.

In light of this determination, the Court need not reach Defendant's objections to Plaintiff's reliance upon the deposition testimony of Mr. Sanborn from his earlier worker's compensation action.