

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

MICHAEL GRANT MASON, : CONSOLIDATED UNDER
 : MDL 875
 :
 Plaintiff, :
 : Transferred from the
 : Eastern District of
 v. : Louisiana
 : (Case No. 11-01309)
 :
 FOSTER WHEELER, LLC, : E.D. PA CIVIL ACTION NO.
 ET AL., : 2:11-66772-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 **Owens
Illinois, Inc.** (Doc. No. 21) is **GRANTED**.¹

¹ This case was transferred in July of 2011 from the United States District Court for the Eastern District of Louisiana to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Plaintiff Michael Grant Mason is the wrongful death heir and successor-in-interest to Decedent Milan Arthur Barackman ("Decedent" or "Mr. Barackman"). He alleges that Decedent was exposed to asbestos both during the time he worked for Defendant, as well as during his service in the Navy. Defendant Owens-Illinois, Inc. ("Owens Illinois") manufactured asbestos-containing products, including Kaylo thermal insulation. The alleged exposure pertinent to Defendant Owens Illinois occurred during the following periods of Decedent's work:

- Owens Illinois Glass Co. - Streator, Illinois (February 1956 to September 1956)
- Aboard various Naval vessels (1960s - 1970s)

Decedent was diagnosed with mesothelioma in June of 2010 and passed away that same month. Plaintiff asserts that he developed this disease as a result of asbestos exposure from Defendant's product(s).



EDUARDO C. ROBRENO, J.

Plaintiff brought claims against various defendants. Defendant Owens Illinois has moved for summary judgment, arguing that there is insufficient product identification evidence to establish causation with respect to any product(s) for which it is responsible. Defendant contends that either Louisiana or Illinois law applies. Plaintiff does not identify what substantive law he contends applies and instead argues for denial of the motion as a procedural matter under the Federal Rules of Civil Procedure, requesting additional time to conduct discovery.

A hearing on Owens Illinois's motion was scheduled for July 24, 2012 at 10:00 a.m. (See Doc. No. 15.) Neither counsel for Plaintiff nor counsel for Defendant Owens-Illinois appeared at the hearing. Neither party notified the Court of an out-of-court resolution of Defendant's motion. 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 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 Decedent was exposed to asbestos from Kaylo thermal insulation manufactured by Defendant while he was serving aboard ships in the Navy and, separately, while working at Defendant's facility in Illinois. However, Plaintiff has identified no evidence of exposure to asbestos from any product during his work at either location. Accordingly, no reasonable jury could conclude from the evidence that Defendant's product(s) was a cause of Decedent'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.