

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

DONALD BELL, : CONSOLIDATED UNDER
ET AL., : MDL 875
: :
Plaintiffs, : :
: : Transferred from the
: : Northern District of
v. : California
: (Case No. 12-00131)

FILED

ARVIN MERITOR, INC., : OCT - 4 : 2013 E.D. PA CIVIL ACTION NO.
ET AL., : : 2:12-60143-ER
Defendants. : MICHAEL E. KUNZ, Clerk
By _____ : Dep. Clerk

ORDER

AND NOW, this **4th** day of **October, 2013**, it is hereby
ORDERED that the Motion for Summary Judgment of Defendant Eaton
Corporation (Doc. No. 287) is **GRANTED**.¹

¹ This case was transferred in April of 2012 from the
United States District Court for the Northern District of
California to the United States District Court for the Eastern
District of Pennsylvania as part of MDL-875.

Plaintiffs Donald Bell ("Mr. Bell") and Sumiko Bell
("Mrs. Bell") allege that Mr. Bell was exposed to asbestos, inter
alia, while working as an automobile mechanic. Defendant Eaton
Corporation ("Eaton") manufactured automobile brakes. The alleged
exposure pertinent to Defendant Eaton occurred at Fremont Grand
Auto and Newark Grand Auto during the time period 1978 to 1985.

Plaintiffs assert that Mr. Bell developed lung cancer
as a result of his asbestos exposure. Mr. and Mrs. Bell were
deposed in July of 2012.

Plaintiffs brought claims against various defendants.
Defendant Eaton has moved for summary judgment, arguing that (1)
there is insufficient product identification evidence to support
a finding of causation with respect to any product(s) for which
it is responsible, (2) as a result, Plaintiffs cannot establish a
claim for fraud/intentional tort or loss of consortium, and (3)
there is no evidence to support a punitive damages claim.

The parties agree that California law applies.

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

When the parties to a case involving land-based exposure agree to application of a particular state's law, this Court has routinely applied that state's law. See, e.g., Brindowski v. Alco Valves, Inc., No. 10-64684, 2012 WL 975083, *1 n.1 (E.D. Pa. Jan. 19, 2012) (Robreno, J.). The parties have agreed that California substantive law applies. Therefore, this Court will apply California law in deciding Defendant's Motion for Summary Judgment. See Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938); see also Guaranty Trust Co. v. York, 326 U.S. 99, 108 (1945).

C. Product Identification/Causation Under California Law

Under California law, a plaintiff need only show (1) some threshold exposure to the defendant's asbestos-containing product 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).

The standard is a broad one, and was "formulated to aid plaintiffs as a broader rule of causality than the 'but for' test." Accordingly, California courts have warned against misuse of the rule to preclude claims where a particular exposure is a "but for" cause, but defendants argue it is "nevertheless. . . an insubstantial contribution to the injury." Lineaweaver v. Plant Insulation Co., 31 Cal. App. 4th 1409, 1415 (Cal. Ct. App. 1995). Such use "undermines the principles of comparative negligence, under which a party is responsible for his or her share of negligence and the harm caused thereby." Mitchell v. Gonzales, 54 Cal. 3d 1041, 1053 (Cal. 1991).

In Lineaweaver, the California Court of Appeals for the First District concluded that "[a] possible cause only becomes 'probable' when, in the absence of other reasonable causal explanations, it becomes more likely than not that the injury was a result of its action. This is the outer limit of inference upon which an issue may be submitted to the jury." 31 Cal. App. 4th at 1416. Additionally, "[f]requency of exposure, regularity of exposure, and proximity of the asbestos product to plaintiff are certainly relevant, although these considerations should not be determinative in every case." Id.

D. Bare Metal Defense Under California Law

The Supreme Court of California has held that, under California law, a product manufacturer generally is not liable in strict liability or negligence for harm caused by a third party's

products. O'Neil v. Crane Co., 53 Cal. 4th 335, 266 P.3d 987 (Cal. 2012). There, O'Neil, who formerly served on an aircraft carrier, brought products liability claims against Crane Co. and Warren Pumps, which manufactured equipment used in the ship's steam propulsion system. Pursuant to Navy specifications, asbestos insulation, gaskets, and other parts were used with the defendant manufacturer's equipment, some of which was originally supplied by the defendants. O'Neil, however, worked aboard the ship twenty years after the defendants supplied the equipment and original parts. There was no evidence that the defendants made any of the replacement parts to which O'Neil was exposed or, for that matter, that the defendants manufactured or distributed asbestos products to which O'Neil was exposed.

The court firmly held that the defendant manufacturers were not liable for harm caused by asbestos products they did not manufacture or distribute. Id. With regard to the plaintiff's design-defect claim, the court noted that "strict products liability in California has always been premised on harm caused by deficiencies in the defendant's own product." Id. And that the "defective product . . . was the asbestos insulation, not the pumps and valves to which it was applied after defendants' manufacture and delivery." Id.

Similarly, the Court rejected the plaintiff's claim that the defendants are strictly liable for failure to warn of the hazards of the release of asbestos dust surrounding their products. The plaintiff asserted that the defendants were under a duty to warn because it was reasonably foreseeable that their products would be used with asbestos insulation. Nevertheless, the court held, "California law does not impose a duty to warn about dangers arising entirely from another manufacturer's product, even if it is foreseeable that the products will be used together." Id. Accordingly, the Court refused to hold the defendants strictly liable. Id.

And the O'Neil court conducted a similar analysis to the plaintiff's claim based on the defendants' negligent failure to warn. The court concluded that "expansion of the duty of care as urged here would impose an obligation to compensate on those whose products caused the plaintiffs no harm. To do so would exceed the boundaries established over decades of product liability law." Id. Thus, as a matter of law, the court refused to hold the defendants liable on the plaintiff's strict liability or negligence claims.

E. Punitive Damages

The Court has previously determined that the issue of punitive damages must be resolved at a future date with regard to the entire MDL-875 action and, therefore, all claims for punitive or exemplary damages are to be severed from the case and retained by the Court within its jurisdiction over MDL-875 in the Eastern District of Pennsylvania. See, e.g., Ferguson v. Lorillard Tobacco Co., Inc., No. 09-91161, 2011 WL 4915784, at n.2 (E.D. Pa. Mar. 2, 2011) (Robreno, J.) (citing In re Collins, 233 F.3d 809, 810 (3d Cir. 2000) ("It is responsible public policy to give priority to compensatory claims over exemplary punitive damage windfalls; this prudent conservation more than vindicates the Panel's decision to withhold punitive damage claims on remand."); In re Roberts, 178 F.3d 181 (3d Cir. 1999)).

II. Defendant Eaton's Motion for Summary Judgment

A. Defendant's Arguments

Product Identification / Causation / Bare Metal

Eaton contends that Plaintiffs' evidence is insufficient to establish that any product for which it is responsible caused Mr. Bell's illness.

Miscellaneous Claims (Intentional Tort and Loss of Consortium)

Eaton contends that because of Plaintiffs' insufficient product identification evidence, Plaintiffs will not be able to establish the causation necessary to support a claim for fraud/intentional tort or loss of consortium.

Punitive Damages

Defendant contends that it is entitled to summary judgment on Plaintiffs' claim for punitive damages because Plaintiffs have no evidence that Defendant acted with malice, fraud, or oppression.

B. Plaintiffs' Arguments

Product Identification / Causation / Bare Metal

Plaintiffs contend that they have identified sufficient product identification/causation evidence to survive summary

judgment. In support of this assertion, Plaintiffs cite to the following evidence:

- Deposition of Plaintiff Richard Bell
Plaintiff Richard Bell testified that he worked with Eaton brakes in ways that exposed him to respirable dust. He testified that this work included Eaton brakes on International brand trucks.

(Doc. No. 324-2, Pls. Ex. B)

- Interrogatory Responses of Defendant Eaton
Interrogatory responses of Defendant Eaton state that it purchased asbestos-containing brake linings from other manufacturers and incorporated them into brakes that it manufactured. They also state that, to the best of Eaton's knowledge, during the time period in which asbestos brake linings were available, all of the brake linings used in heavy duty trucks contained asbestos.

(Doc. No. 324-1, Pls. Ex. A)

- Declaration of Expert Charles Ay
Mr. Ay opines (without having any personal knowledge of Mr. Bell's exposure to any type of product) that Mr. Bell was more likely than not exposed to hazardous asbestos during his work with Defendant's brake linings.

(Doc. No. 301-1 and 301-3, Pls. Ex. C)

In connection with their opposition, Plaintiffs have submitted objections to some of Defendant's evidence.

Miscellaneous Claims (Intentional Tort and Loss of Consortium)

Plaintiffs contend that Defendant is not entitled to summary judgment on their fraud/intentional tort or loss of consortium claim because Defendant has mischaracterized the case law regarding these claims. Plaintiffs contend that Defendant's knowledge of asbestos hazards and failure to warn about them is sufficient to establish an intentional tort claim.

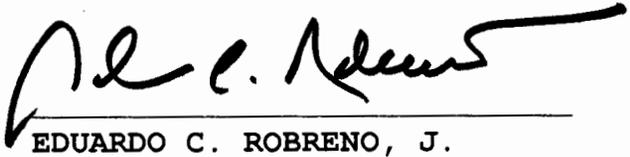
Punitive Damages

Plaintiffs contend that, under California law, there are triable issues of material fact regarding punitive damages.

C. Analysis

Plaintiffs do not dispute that Mr. Ay has no personal knowledge of Mr. Bell's alleged exposure. It is true that an expert need not have personal knowledge provided the expert has a sufficient factual basis for the opinion. See Fed. R. Evid. 702. Here, Mr. Ay's opinion is not based on sufficient facts regarding the products to which Mr. Bell was exposed, or the asbestos content of any product which Mr. Bell was exposed. As such, the Court concludes that Mr. Ay's opinion testimony that Mr. Bell was more likely than not exposed to asbestos as a result of his work with Defendant's brakes is impermissibly speculative and does not meet the requirements of Federal Rule of Evidence 702(b), which requires that expert testimony be based on "sufficient facts or data." Fed. R. Evid. 702(b). Therefore, Mr. Ay's opinion testimony on this point is inadmissible and will not be considered. The Court considers instead the sufficiency of Plaintiff's other evidence.

Plaintiffs allege that Mr. Bell was exposed to asbestos from Eaton brake assemblies and brake linings. Plaintiffs have presented evidence that Mr. Bell worked with Eaton brakes, including Eaton brakes on International brand trucks, and was exposed to respirable dust from these brakes during that work. They have presented evidence that Eaton purchased asbestos-containing brake linings from other manufacturers and incorporated them into some of the brakes that it manufactured. They have also presented evidence that, during the time period in which asbestos brake linings were available, all of the brake linings used in heavy duty trucks contained asbestos. Importantly however, there is no evidence that Mr. Bell was exposed to asbestos dust from any brake assembly or brake lining manufactured or supplied by Eaton (as opposed to asbestos coming from a replacement lining manufactured and supplied by an entity other than Eaton). As such, no reasonable jury could conclude from the evidence that Mr. Bell was exposed to asbestos from a product manufactured or supplied by Defendant because any such



EDUARDO C. ROBRENO, J.

finding would be impermissibly conjectural. McGonnell, 98 Cal. App. 4th at 1103; see also, Rutherford, 16 Cal. 4th at 977 n.11, 982-83; Jones, 132 Cal. App. 4th at 998-999; O'Neil, 53 Cal. 4th 335. Accordingly, summary judgment in favor of Defendant Eaton is warranted. Anderson, 477 U.S. at 248.

In light of this determination, the Court need not reach any other arguments, as Plaintiffs are unable to establish the causation requisite to Plaintiffs' other claims.

D. Conclusion

Summary judgment in favor of Defendant Eaton is warranted on all of Plaintiffs' claims against it.