

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

DANIEL HOLMES,	:	CONSOLIDATED UNDER
	:	MDL 875
Plaintiff,	:	
	:	
	:	Transferred from the
v.	:	District of Oregon
	:	(Case No. 09-00678)
	:	
A.W. CHESTERTON COMPANY,	:	
ET AL.,	:	E.D. PA CIVIL ACTION NO.
	:	2:09-93729-ER
Defendants.	:	

O R D E R

AND NOW, this **23rd** day of **May, 2012**, it is hereby
ORDERED that the Motion for Summary Judgment of Defendant **General
Electric Company** (Doc. No. 25) is **GRANTED**.¹

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

Plaintiff Daniel Holmes is the executor of the estate of Gerald Holmes ("Decedent" or "Mr. Holmes"). Mr. Holmes was employed as a shipyard worker, working as a "painter's helper" (and in various capacities) from July of 1942 until March of 1945. Defendant General Electric Company ("GE") manufactured turbines. Plaintiff has alleged that Decedent was exposed to asbestos from turbines installed aboard various Navy ships, including, in particular, at least twenty-four (24) VC2-S-AP3 class cargo vessels ("Victory ships") built at Oregon Ship Building between October of 1944 and March of 1945.

Mr. Holmes was diagnosed with mesothelioma in 2008. Plaintiff brought claims against various defendants. Defendant GE has moved for summary judgment, arguing that, under maritime law, (1) it is entitled to the bare metal defense, (2) there is insufficient product identification evidence to establish causation with respect to its product(s), and (3) it is immune from liability by way of the government contractor defense.

A hearing on GE's motion was scheduled for May 22, 2012 at 10:00 a.m. (See Doc. No. 13.) Counsel for GE appeared at the hearing. Counsel for Plaintiff did not appear at the hearing. Notwithstanding counsel's failure to appear, the Court has reviewed the evidence presented to it 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 alleged that Mr. Holmes was exposed to asbestos from insulation, gaskets, and packing used in connection with GE turbines. In support of his claims, Plaintiff identified the following evidence:

- Deposition Testimony of Mr. Holmes
Mr. Holmes testified that he worked for Oregon Ship Building as a "painter's helper" at the shipyard and "down in the double bottoms" of the ships. He worked on various ships in the shipyard (and probably every ship in the shipyard) and had to walk past workers of various other trades in order to get down to the "double bottoms" of the ships. He testified that workers were installing various types of equipment while he was working on the ships and that there were dusty conditions created by the work, which the laborers there had to clean up.

(Pl. Ex. 2, Dep. of Gerald Holmes, December 4, 2008 at pp. 10-22, 30-31.)
- Ship-related documents
Plaintiff points to (1) a document entitled "Record Breakers," which identifies various ships built at the Kaiser Oregon Shipyard between November 1943 and April 1945, as well as (2) a Lloyds Registry of Ships for 1945 to 1946, which indicates that there were GE turbines on ships at the Kaiser Oregon Shipyard.

(Pl. Exs. 3A and 3B.)
- E.J. Bartells Insulation Contract
Plaintiff points to a contract dated January 6, 1945 and January 20, 1945 between the E.J. Bartells Company and the Oregon Shipbuilding

Corporation, in which E.J. Bartell is the subcontractor to furnish and install insulation and lagging on thirty-three (33) of the "Victory ships." The document indicates that (a) insulation for the turbines on the ship was the responsibility of the turbine manufacturers, and (b) GE was one of three (3) turbine vendors for these ships.

(Pl. Ex. 5.)

- Discovery Responses of Defendant
Plaintiff points to discovery responses of Defendant from another case, which Plaintiff contends indicate that marine steam turbines would have been used with one or more products containing asbestos.

(Pl. Ex. 6, at 63 (Resp. to Interrog. 31) and 68.)

There is evidence that Mr. Holmes worked aboard various Navy ships under construction during the period July of 1942 until March of 1945, including many "Victory ships." There is evidence that GE turbines were installed aboard some of these ships in or around 1945. There is evidence that, in or around January of 1945, GE turbines were installed on some of these ships and that GE was "responsible" for insulation on any turbines it supplied for these ships. There is evidence that Mr. Holmes worked around others installing various equipment aboard the ships. There is evidence that this work generated dust and that the dust required sweeping up by the workers. However, there is no evidence that Mr. Holmes was working on any ship at the time that dust from a GE turbine (or any other GE product) was present on that ship, much less that he was present during the time its installation was generating airborne dust. Furthermore, there is no evidence that any dust that may have been generated from a GE turbine contained asbestos.

Although Defendant's interrogatory responses indicate that its turbines would have contained some asbestos components, there is no evidence that these were disturbed in a way that generated dust. Although the contract indicates that GE was "responsible" for insulation used with its turbines, there is no evidence that this insulation would have contained asbestos, and there is no evidence that Mr. Holmes was exposed to this insulation. Moreover, there is no evidence that any insulation for which GE was "responsible" was installed during Mr. Holmes's

period of work for the shipyard; the contract is dated January of 1945 and Mr. Holmes's work aboard the ships ended in March of 1945, and there is nothing to indicate that the insulation work contracted for was actually carried out during that short intervening period. Therefore, under maritime law, no reasonable jury could conclude from the evidence that Mr. Holmes was exposed to asbestos from any product (including insulation, gaskets, and packing) that was manufactured or supplied by GE such that it was a "substantial factor" in the development of his illness. See Lindstrom v. A-C Prod. Liab. Trust, 424 F.3d 488, 492 (6th Cir. 2005); Stark v. Armstrong World Indus., Inc., 21 F. App'x 371, 375-76 (6th Cir. 2001); Abbay v. Armstrong Int'l., Inc., No. 10-83248, 2012 WL 975837, at *1 n.1 (E.D. Pa. Feb 29, 2012) (Robreno, J.). With respect to asbestos-containing products used in connection with GE turbines but not manufactured or supplied by GE, the Court has held that, under maritime law, GE cannot be liable. Conner v. Alfa Laval, Inc., No. 09-67099, - F. Supp. 2d -, 2012 WL 288364 (E.D. Pa. Feb. 1, 2012) (Robreno, J.). Accordingly, summary judgment in favor of Defendant GE is warranted. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986).

Under separate order, the Court will consider whether sanctions upon Plaintiff's counsel are appropriate for failure to appear at the hearing.