

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

|                      |                                 |                          |
|----------------------|---------------------------------|--------------------------|
| BOBBY FLOYD AND      | :                               | CONSOLIDATED UNDER       |
| BARBARA FLOYD,       | :                               | MDL 875                  |
|                      | <b>FILED</b> :                  |                          |
| Plaintiffs,          | :                               |                          |
|                      | <b>FEB - 8 2012</b> :           | Transferred from the     |
|                      | :                               | Northern District of     |
| v.                   | <b>MICHAEL E. KUNZ, Clerk</b> : | California               |
|                      | <b>By _____ Dep. Clerk</b> :    | (Case No. 10-01960)      |
|                      | :                               |                          |
| AIR & LIQUID SYSTEMS | :                               |                          |
| CORPORATION, ET AL., | :                               | E.D. PA CIVIL ACTION NO. |
|                      | :                               | 2:10-CV-69379-ER         |
| Defendants.          | :                               |                          |

**ORDER**

**AND NOW**, this **8th** day of **February, 2012**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Crane Co. (Doc. No. 261) is **GRANTED**.<sup>1</sup>

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<sup>1</sup> This case was originally filed in April of 2010 in California state court. It was thereafter removed to the United States District Court for the Northern District of California, and later transferred to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Decedent Bobby Floyd has alleged exposure to asbestos while working aboard various Navy ships - and, for one assignment, on "shore duty," performing land-based work - throughout his employment with the Navy (January 1953 to August 1972). He has also alleged exposure to asbestos during the course of work for two private entities, in which he performed work on Navy ships and/or at a land-based machine shop, after he left the Navy: (1) RAM Enterprises, and (2) PacOrd. Defendant Crane Co. ("Crane" or "Crane Co.") manufactured valves that were used on Navy ships. The alleged exposure pertinent to Defendant Crane Co. occurred generally during Decedent's years of Navy service aboard various ships (1953 to 1972).

Decedent died of mesothelioma in January of 2011. He was deposed for eight (8) days prior to his death.

Plaintiffs have brought claims against various

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defendants, including, inter alia, strict products liability claims and negligent failure to warn claims. Defendant Crane Co. has moved for summary judgment, arguing that (1) it is entitled to the bare metal defense, (2) there is insufficient product identification to support a finding of causation with respect to its product(s), and (3) it is immune from liability by way of the government contractor defense. Crane Co. asserts that maritime law applies.

Plaintiffs contend that summary judgment is not warranted because (1) the bare metal defense is not available under maritime law or California law, (2) even if the bare metal defense is available, there are genuine issues of material fact regarding Plaintiff's alleged exposure to original asbestos-containing component parts that were incorporated into Defendant's products at the time they were distributed and/or asbestos-containing replacement parts supplied by Crane Co. for later use with its products, and (3) there are genuine issues of material fact regarding the availability to Defendant Crane Co. of the government contractor defense. Plaintiffs assert that California law applies.

## **I. Legal Standard**

### **A. Summary Judgment Standard**

Summary judgment is appropriate if there are no genuine issues of 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

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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 California Law)

Defendant Crane Co. has asserted that maritime law is applicable. 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 In re Asbestos Prods. Liab. Litig. (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., No. 09-67099, - F. Supp. 2d -, 2011 WL 3101810 (E.D. Pa. July 22, 2011) (Robreno, J.). A party seeking application of maritime law must establish that maritime jurisdiction is properly invoked. Id. at \*5.

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 \*5-8 (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, 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

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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, 2011 WL 3101810 at \*9. 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 9-10. 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., 10-64625, doc. no. 81 (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).

The evidence in the record indicates that the alleged exposure to Defendant Crane Co.'s products occurred exclusively during the Decedent's work aboard naval ships. Although Plaintiffs contend that Decedent worked with Crane Co.'s products during his time working for land-based employers RAM Enterprises and PacOrd, there is no evidence in the record to support this assertion. However, in the course of his deposition, Decedent did identify Crane Co. valves as having been aboard ships in general and, specifically, he discussed Crane Co. valves in connection with five particular ships: USS Roosevelt, USS Coral Sea, USS Saratoga, USS Ranger, and USS Constellation. Thus, the Court concludes that Decedent's alleged exposure was during sea-based work. See Sisson, 497 U.S. 358. Therefore, Crane Co. has satisfied its burden in establishing that maritime law is applicable to the claims against it, and thus to its motion. See Conner, 2011 WL 3101810, at \*5.

#### C. Bare Metal Defense Under Maritime Law

This Court has recently adopted the so-called "bare

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metal defense" under maritime law, holding that a manufacturer has no liability for harms caused by - and no duty to warn about hazards associated with - a product it did not manufacture or distribute. Conner v. Alfa Laval, Inc., No. 09-67099, - F. Supp. 2d -, 2012 WL 288364 (E.D. Pa. Feb. 1, 2012) (Robreno, J.).

D. 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). Substantial factor causation is determined with respect to each defendant separately. Stark, 21 F.App'x. at 375.

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))).

**II. Defendant Crane Co.'s Motion for Summary Judgment**

**A. Defendant's Arguments**

Bare Metal Defense

Defendant Crane Co. asserts the bare metal defense, arguing that it is immune from liability in this case under the defense as a matter of law and that it is, therefore, entitled to summary judgment.

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Product Identification / Causation

Crane Co. does not dispute that sometimes it supplied valves to the Navy with asbestos-containing gaskets and/or packing already inside. Crane Co. argues, however, that there is no evidence that Decedent worked with or around any such original asbestos-containing component parts.

**B. Plaintiffs' Arguments**

Bare Metal Defense

Plaintiffs assert that the bare metal defense is not available under maritime law. Furthermore, Plaintiffs assert that, even if the bare metal defense is available, Defendant Crane Co. is liable for original asbestos-containing component parts that were incorporated into and/or supplied with its valves and/or asbestos-containing replacement parts supplied by Crane Co. for later use with its valves, and to which Plaintiffs assert Decedent was exposed.

Product Identification / Causation

(i) Insulation

Plaintiffs allege that Decedent was exposed to asbestos-containing insulation associated with Crane Co.'s valves aboard various Navy ships. Plaintiffs do not, however, allege that Crane Co. supplied insulation with its valves; Plaintiffs concede instead that insulation was placed on valves after the valves were supplied by Crane Co. to the Navy. However, Plaintiffs allege that Crane Co. sometimes also supplied asbestos-containing insulation to the Navy (separate from its valves). In support of its allegations pertaining to insulation (or "lagging"), Plaintiffs cite to:

- Deposition Testimony of Decedent - Decedent testified that he was exposed to Crane Co. valves, that he worked with them directly (and around others who worked with them) while changing gaskets and packing, which required cutting the lagging around them. He testified that he was exposed to dust from lagging associated with Crane Co.'s valves.

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- Crane Co. Advertisements and Catalogs - Plaintiff points to Crane Co. advertisements and catalogs which appear to indicate that (1) insulation was used on the surface of Crane Co.'s valves and (2) Crane Co. was a vendor of insulating materials for pipes and valves

(ii) Gaskets and Packing

Plaintiffs allege that Decedent was exposed to original and/or replacement asbestos-containing parts (gaskets and packing) that were distributed by Crane Co. with the valves it supplied to the Navy. In support of this allegation, Plaintiffs cite to:

- Discovery responses of Crane Co. - Crane Co. concedes that some of its valves were supplied with asbestos-containing component parts (e.g., gaskets and packing)
- Deposition Testimony of Crane Co. 30b6 Witness Anthony Pantaleoni - Plaintiffs point to deposition testimony of Mr. Pantaleoni as support for their assertion that there were Crane Co. valves on certain of the ships on which Decedent worked and sometimes these valves were supplied by Crane Co. with original asbestos-containing component parts
- Deposition Testimony of Decedent - Decedent testified that he was exposed to Crane Co. valves, that he worked with them directly (and around others who worked with them) while changing gaskets and packing. He testified that he was exposed to dust from gaskets and packing associated with Crane Co.'s valves. Decedent testified that he knew the Crane Co. valves aboard the USS Saratoga and USS Ranger were original (or "new") valves as supplied by Crane Co. because he worked as part of the first crew assigned to these ships when first built. He also testified that there was packing already inside these "new" valves when he was exposed to them.
- Crane Co. Advertisements and Catalogs - Plaintiffs point to Crane Co. advertisements and catalogs which appear to indicate that Crane Co. was a supplier of asbestos-containing replacement gaskets and that it encouraged the Navy to use its replacement gaskets

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### C. Analysis

To the extent that Decedent's alleged exposure pertains to asbestos-containing component parts used in connection with Crane Co.'s products but not manufactured or supplied by Crane Co., summary judgment is warranted. However, to the extent that the alleged exposure pertains to original asbestos-containing component parts or asbestos-containing replacement parts supplied by Crane Co., summary judgment in favor of defendant is not warranted on grounds of the bare metal defense. This is the holding of the so-called bare metal defense adopted by this Court under maritime law. See Conner, 2012 WL 288364.

As this Court noted in Conner, the bare metal defense is more properly understood as a challenge to a plaintiff's prima facie case to prove the duty or causation element of its cause of action. Plaintiffs have alleged exposure to asbestos in connection with Crane Co.'s product from three (3) different types of products: insulation (a.k.a. "lagging"), gaskets, and packing. The Court will address each alleged source of exposure in turn, examining the duty and/or causation element of Plaintiffs' claims with respect to each source.

#### (i) Insulation

Plaintiffs have alleged exposure to asbestos-containing insulation used on the exterior of Crane Co.'s valves. To the extent that this exposure was to insulation that was not manufactured or supplied by Crane Co. with its valves, Crane Co. has no liability for - or duty to warn about - harms that may arise from this insulation. See Conner, 2012 WL 288364. Accordingly, summary judgment is warranted as to all claims arising from any such alleged exposure (whether sounding in negligence or strict liability). See id. Although Plaintiffs contend that some of this alleged exposure was to insulation that was in fact supplied by Crane Co. (separately from its supplying of valves), Plaintiffs have failed to provide any evidence that any such insulation was ever aboard a ship on which Decedent worked, much less that he was exposed to it. Therefore, no reasonable jury could conclude from the evidence that Decedent's injury was caused by insulation manufactured or supplied by Crane Co. Accordingly, summary judgment in favor of Crane Co. is warranted with respect to this alleged exposure.

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(ii) Gaskets

Plaintiffs have alleged exposure to both original asbestos-containing gaskets incorporated into the valves supplied by Crane Co. and asbestos-containing replacement valves supplied by Crane Co. for later use with its valves. Therefore, it cannot be said that liability for alleged harm arising from these products is precluded on grounds of the bare metal defense. See Conner, 2012 WL 288364. The Court now examines the evidence pertinent to each category of gaskets in turn.

a. Original asbestos-containing gaskets

Plaintiffs have alleged exposure to original asbestos-containing gaskets incorporated into the valves supplied by Crane Co. Plaintiffs have provided evidence that Crane Co. sometimes supplied valves to the Navy with original asbestos-containing gaskets (when such provision was specified by the Navy). They have also provided evidence that Decedent was exposed to gaskets associated with Crane Co. valves. However, there is no evidence that the gaskets Decedent was exposed to in connection with Crane Co. valves (whether "new" or otherwise) contained asbestos. Although Decedent testified that he was exposed to Crane Co. valves aboard various ships, he could not recall seeing a valve aboard a particular ship at a particular time period, such that it would perhaps be possible to link the valves at issue with drawings or Navy specifications that might identify the gaskets as having been asbestos-containing gaskets. Although Plaintiffs contend that the Crane Co. valves aboard the USS Saratoga and USS Ranger had to have been Crane Co. valves as originally supplied (since he was aboard each of these ships as part of its first crew), there is no evidence that the valves aboard these ships were among those valves which were supplied by Crane Co. with original asbestos-containing component parts. Furthermore, Decedent testified that he believed that all gaskets used with Crane Co. valves were supplied by companies other than Crane Co. Therefore, no reasonable jury could conclude from the evidence that Decedent was exposed to original asbestos-containing gaskets manufactured and/or supplied by Crane Co. Accordingly, summary judgment in favor of Crane Co. is warranted with respect to this alleged exposure.

b. Asbestos-containing replacement gaskets

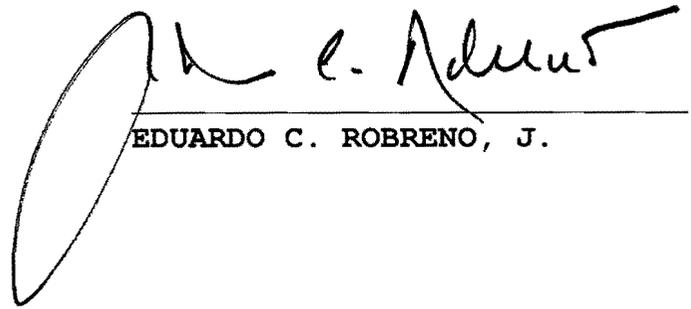
Plaintiffs allege that Crane Co. supplied the Navy with asbestos-containing gaskets for use as replacement gaskets with

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valves. However, there is no evidence that these replacement gaskets were actually supplied to the Navy, that any such gaskets that may have been supplied to the Navy were aboard any ship on which Decedent worked, or that Decedent was exposed to any such gaskets that may have been supplied and used aboard a ship on which he worked. Therefore, no reasonable jury could conclude from the evidence that Decedent's injury was caused by replacement gaskets supplied by Crane Co. Accordingly, summary judgment in favor of Crane Co. is warranted with respect to this alleged exposure.

(iii) Packing

Plaintiffs have alleged exposure to original asbestos-containing packing incorporated into the valves supplied by Crane Co. (They have not alleged that Crane Co. supplied asbestos-containing replacement packing for later use with its valves.) Plaintiffs have provided evidence that Crane Co. sometimes supplied valves to the Navy with original asbestos-containing packing (when such provision was specified by the Navy). They have also provided evidence that all of the "new" Crane Co. valves that Decedent saw already contained packing. However, there is no evidence that the packing Decedent saw in "new" Crane Co. valves contained asbestos. Moreover, although Decedent testified that he was exposed to Crane Co. valves aboard various ships, he could not recall a particular ship at a particular time period, such that it would perhaps be possible to link the valves at issue with drawings or Navy specifications that might identify the packing as having been asbestos-containing packing. Although Plaintiffs contend that the Crane Co. valves aboard the USS Saratoga and USS Ranger had to have been Crane Co. valves as originally supplied (since he was aboard each of these ships as part of its first crew), there is no evidence that the valves aboard these ships were among those valves which were supplied by Crane Co. with original asbestos-containing component parts. Furthermore, Decedent testified that (1) he did not know whether the packing in the "new" Crane Co. valves he saw had been placed before or after the valves were supplied to the Navy, and (2) he believed that all packing used with Crane Co. valves was supplied by companies other than Crane Co. Therefore, no reasonable jury could conclude from the evidence that Decedent was exposed to original asbestos-containing packing manufactured and/or supplied by Crane Co. Accordingly, summary judgment in favor of Crane Co. is warranted with respect to this alleged exposure.



EDUARDO C. ROBRENO, J.

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**D. Conclusion**

Applying maritime law, Defendant Crane Co. is not liable for harms arising from any product that it did not manufacture or supply. Conner, 2012 WL 288364, at \*7. Plaintiffs have failed to provide evidence from which a reasonable jury could conclude that Decedent was exposed to asbestos-containing insulation or component parts for which Defendant Crane Co. could potentially be liable in light of this Court's ruling in Conner, 2012 WL 288364 (i.e., original asbestos-containing insulation or component parts or asbestos-containing replacement parts). Accordingly, summary judgment in favor of Defendant Crane Co. is warranted on all claims.