

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

BOBBY FLOYD AND : CONSOLIDATED UNDER
BARBARA FLOYD, : MDL 875
 :
Plaintiffs, **FILED** :
 :
 : FEB - 8 2012 : Transferred from the
 : Northern District of
v. : California
 : (Case No. 10-01960)
By MICHAEL E. KUNZ, Clerk :
 :
 : Dep. Clerk :
 :
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 Goulds
Pumps, Inc. (Doc. No. 257) is **GRANTED**.¹

¹ 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 Goulds Pumps ("Goulds") manufactured pumps that were used on Navy ships. The alleged exposure pertinent to Defendant Goulds occurred during the follow periods of Decedent's work:

- RAM Enterprises (1975 to September 1976)
- PacOrd (September 1976 to 1998)

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 defendants, including, inter alia, strict products liability claims and negligent failure to warn claims. Defendant Goulds 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) there is no evidence of "oppressive, fraudulent, or malicious" conduct that would warrant punitive damages. Defendant Goulds has also moved for summary judgment on Plaintiffs' claims of false representation, intentional tort (intentional failure to warn), and loss of consortium. Goulds asserts that California law applies.

Plaintiffs contend that summary judgment is not warranted because (1) the bare metal defense is not available under 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 it was distributed. Plaintiffs do not address Defendant Goulds's motion for summary judgment on claims of punitive damages, false representation, intentional tort, or loss of consortium. 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 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

The parties have agreed that California substantive law applies. Therefore, this Court will apply California law in deciding Goulds'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. Bare Metal Defense Under California Law

The Supreme Court of California recently 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., No. S177401, 2012 WL 88533 (Cal. Jan. 12, 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. O'Neil, 2012 WL 88533, at *5. 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. at *7.

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. at *16. Accordingly, the Court refused to hold the defendants strictly liable. Id. at *17.

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. at *19. Thus, as a matter of law, the court refused to hold the defendants liable on the plaintiff's strict liability or negligence claims.

D. 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.

II. Defendant Goulds's Motion for Summary Judgment

A. Defendant's Arguments

Bare Metal Defense

Defendant Goulds 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.

Product Identification / Causation

Defendant Goulds does not dispute that it supplied pumps for use aboard various Navy ships. Goulds argues, however, that there is no evidence that Decedent was exposed to any asbestos-containing product that Goulds manufactured or distributed.

Punitive Damages

Goulds argues that summary judgment on Plaintiffs' claim for punitive damages is appropriate because there is no evidence of "oppressive, fraudulent, or malicious" conduct, as would be necessary to support an award of punitive damages.

Miscellaneous Claims (False Representation, Intentional Tort, and Loss of Consortium)

Goulds argues that summary judgment is warranted with respect to Plaintiffs' false representation and intentional tort claims because there is no evidence to support these claims. Goulds argues that summary judgment is warranted with respect to Plaintiffs' loss of consortium claim because it is a derivative claim that is eliminated by the granting of summary judgment on Plaintiffs' strict liability and negligent failure to warn claims (as it has argued is appropriate on grounds of the bare metal defense and insufficient product identification evidence).

B. Plaintiffs' Arguments

Bare Metal Defense

Plaintiffs assert that the bare metal defense is not available under California law. Furthermore, Plaintiffs assert that, even if the bare metal defense is available, Defendant Goulds is liable for original asbestos-containing component parts that were incorporated into and supplied with its pumps, and to which Plaintiffs assert Decedent was exposed.

Product Identification / Causation

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

- Deposition Testimony of Decedent Mr. Floyd - Mr. Floyd testified to having been exposed to asbestos dust as a result of changing gaskets and packing on Goulds pumps during his post-Navy work (1975 to 1998)
- Drawings, Product Manuals, and Specifications - Various drawings, product manuals, and specifications that appear to indicate that, as late as 1985, Goulds pumps used asbestos-containing gaskets and packing

Punitive Damages

Plaintiffs have failed to respond to Defendant's argument regarding punitive damages.

Miscellaneous Claims (False Representation, Intentional Tort, and Loss of Consortium)

Plaintiffs have failed to respond to Defendant's arguments for summary judgment on Plaintiffs' claims of false representation, intentional tort, and loss of consortium.

C. Analysis

Defendant's Unopposed Motion Regarding Certain Claims

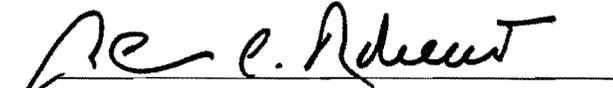
As a preliminary matter, to the extent that Defendant Goulds's motion for summary judgment was unopposed by Plaintiffs as to certain claims, the Court grants Defendant's motion as unopposed. See Local R. Civ. P. 7.1(c); Fed. R. Civ. P. 56(c). Therefore, summary judgment in favor of Defendant Goulds is granted on Plaintiffs' claims for punitive damages, false representation, intentional tort, and loss of consortium.

Strict Liability and Negligence Claims

To the extent that Decedent's alleged exposure pertains to asbestos-containing component parts used in connection with Goulds's products but not manufactured or supplied by Goulds, 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 Goulds, 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 recently recognized and applied by the California Supreme Court. See O'Neil, 2012 WL 88533.

As this Court has noted, 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. See Conner v. Alfa Laval, Inc., No. 09-67099, - F. Supp. 2d -, 2012 WL 288364, at *1 n.2 (E.D. Pa. Feb. 1, 2012) (Robreno, J.) (discussing the bare metal defense under maritime law). Plaintiffs have alleged exposure to asbestos from original gaskets and packing supplied with Goulds's pumps. (They have not alleged that Goulds supplied asbestos-containing replacement gaskets or packing for later use with its pumps.)

Plaintiffs have provided evidence that Goulds supplied pumps to which Decedent was exposed. Plaintiffs have provided


EDUARDO C. ROBRENO, J.

evidence that Decedent was exposed to asbestos as a result of his work on these pumps. However, there is no evidence that Decedent was exposed to asbestos from original asbestos-containing component parts supplied by Goulds with the pumps (as opposed to replacement parts later installed in the pumps after they were supplied to the Navy). Even construing the evidence in the light most favorable to Plaintiffs, the evidence demonstrates only that Decedent was exposed to asbestos-containing gaskets and packing in Goulds pumps. It does not demonstrate that Goulds manufactured or supplied the asbestos-containing gaskets and/or packing to which Decedent was exposed. Therefore, no reasonable jury could conclude from the evidence that Decedent's injury was caused by original gaskets or packing supplied by Goulds with its pumps. Accordingly, summary judgment in favor of Defendant Goulds is warranted with respect to Plaintiffs' claims for strict liability and negligence arising from this alleged exposure.

D. Conclusion

Because Plaintiffs have failed to oppose Defendant Goulds's motion for summary judgment on claims of punitive damages, false representation, intentional tort, and loss of consortium, summary judgment in favor of Goulds is granted on these claims. Applying California law to Plaintiffs' strict liability and negligence claims, Defendant Goulds is not liable for harms arising from any product that it did not manufacture or supply. O'Neil, 2012 WL 88533, at *5. Plaintiffs have failed to provide evidence from which a reasonable jury could conclude that Decedent was exposed to asbestos-containing component parts for which Defendant Goulds could potentially be liable in light of the California Supreme Court's recent ruling in O'Neil, 2012 WL 88533 (i.e., original asbestos-containing component parts). Accordingly, summary judgment in favor of Defendant Goulds is warranted on all claims.