

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

Defendant has asserted that it is entitled to summary judgment pursuant to the government contractor defense. To satisfy the federal contractor defense, a defendant must show that (1) the United States approved reasonably precise specifications for the product at issue; (2) the equipment conformed to those specifications and; (3) it warned the United States about the dangers in the use of the equipment that were known to it but not to the United States. Boyle v. United Technologies Corp., 487 U.S. 500, 512 (1988). The third prong may also be established by showing that the government "knew as much or more than the defendant contractor about the hazards" of the product. See Beaver Valley Power Co. v. Nat'l Engineering & Contracting Co., 883 F.2d 1210, 1216 (3d Cir. 1989). As to the first and second prongs, in a failure to warn context, it is not enough for defendant to show that a certain product design conflicts with state law requiring warnings. In re Joint E. & S.D.N.Y. Asbestos Litig., 897 F.2d 626, 630 (2d Cir. 1990). Rather, the defendant must show that the government "issued reasonably precise specifications covering warnings-specifications that reflect a considered judgment about the warnings at issue." Hagen v. Benjamin Foster Co., 739 F. Supp. 2d 770, 783 (E.D. Pa. 2010) (Robreno, J.) (citing Holdren v. Buffalo Pumps, Inc., 614 F. Supp. 2d 129, 143 (D. Mass. 2009)).

Government approval of warnings must "transcend rubber stamping" to allow a defendant to be shielded from state law liability. Hagen, 739 F. Supp. 2d at 783.

II. MOTION FOR SUMMARY JUDGMENT OF AM GENERAL, LLC

Defendant has manufactured more than a quarter of a million military vehicles, including the 2½ and 5 ton military trucks at issue in this case, for use by the United States Army. (Def.'s Mot. Summ. J. at 2-3.) Mr. Hoffeditz testified that he looked at government manuals, published by the Army which specified "adjustments and procedure for teardown and preassembly." (Hoffeditz Dep., doc. no. 52-5 at 221.) According to Mr. Camblin, a former Am General employee, Am General trucks were built pursuant to government specifications. (Def.'s Mot. Summ. J. at 4-5.) Am General submitted technical proposals to the government and followed technical data packages from the government when preparing these proposals. (Id. at 5.) "The Technical Data Packages are owned by the Government and require that the manufacturer construct the subject vehicles according to extensive and detailed design and parts specifications set forth therein." (Id.) Am General did not manufacture the transmissions and engines used in these military trucks, they were "source directed assemblies," the manufacturers of which were selected by the government. (Id. at 6.) The government issued stringent requirements for production of the Am General vehicles. (Id.) The government, and not Am General, controlled distribution of the vehicles. (Id. at 7.)

Plaintiff presents evidence to refute Defendant's evidence as to the government contractor defense. Lawrence Rink, Am General's Corporate Representative, testified that while Am General prepared manuals for the vehicles as part of a government directive, warnings relating to asbestos were developed by Am General personnel. (Pl.'s Resp. at 16-17.) Mr. Rink could not say that manuals printed prior to 1980 contained asbestos-related warnings. (Id. at 17.) Am General never took any steps to ensure that the government had the expertise to adequately warn about these issues. (Id. at 18.) Mr. Rink testified that the government provided specifications for how manuals for the military vehicles were to be prepared, but did not know whether the government provided specifications for warnings specifically. (Id. at 18.)

Defendant's Motion for Summary Judgment asserting the government contractor defense is denied as Defendant has failed to establish that it is entitled to judgment as a matter of law under the first prong of the Boyle test. Defendant has presented evidence, including the testimony of Mr. Hoffeditz, that the government issued manuals about Am General military vehicles used at the Letterkenny Army Depot. However, Plaintiff has presented the deposition of Lawrence Rink, Am General's Corporate Representative, to controvert this evidence. Mr. Rink testified that the manuals did not discuss warnings at all. Mr. Rink testified that anything in the manuals about asbestos-related warnings would have been constructed by Am General personnel. Also, Mr. Hoffeditz testified that the manuals provided guidance for preassembly and adjustment, but not as to warnings. While the government issued specifications for the vehicles, there were no specifications as to warnings and the evidence shows that any warnings placed on the vehicles were constructed by Am General personnel. The evidence presented in this case is similar to that presented in McElhone v. Beazer East, Inc., No. 07-63082 (E.D. Pa. Nov. 2, 2010) (Robreno, J.) where this Court denied Beazer East's Motion for Summary Judgment where Beazer East's lease with the government did not mention government discretion as to "warnings." Accordingly, as Defendant has failed to meet the first prong of the government contractor defense, Defendant's Motion for Summary Judgment is denied.

E.D. PA NO. 2:09-70103

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Eduardo C. Robreno", written over a horizontal line.

EDUARDO C. ROBRENO, J.
