

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

HOWARD & VALERIE MOULTRIE, : Consolidated Under
 : MDL DOCKET NO. 875
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 Plaintiffs, :
 :
 :
 v. : CIVIL ACTION NO.
 : 04-4145
 :
 GENERAL ELECTRIC CO., :
 :
 :
 Defendant. :
 :
 :

O R D E R

AND NOW, this 19th day of **November, 2009**, it is hereby **ORDERED** that Plaintiffs' motion for a protective order and motion for sanctions (doc. no. 25) is **DENIED** without prejudice.¹

It is further **ORDERED** that General Electric's motion for summary judgment (doc. no. 32) is **DENIED**.²

¹ This motion asked the Court to issue a protective order preventing General Electric from deposing the corporate representative of the Philadelphia Energy Company ("PECO"). At the hearing on November 18, 2009, counsel for General Electric advised the Court that General Electric no longer sought the deposition of the PECO representative.

² General Electric argues that Plaintiff has not submitted sufficient evidence to create a genuine issue of material fact as to the existence of asbestos in the wire with which Plaintiff Howard Moultrie worked. See Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). General Electric also argues that the Plaintiffs' opposition is premised on inadmissible hearsay evidence.

This is a products liability claim under Pennsylvania law. To recover, a Plaintiff must prove that he was exposed to a specific defendant's asbestos containing product and that he worked in the vicinity of that product. Eckenrod v. GAF Corp., 544 A.2d 50, 52 (Pa. Super. 1988). Specifically, to satisfy the Eckenrod standard, a plaintiff must present evidence to show: (1) that the defendant's product was frequently used; (2) that the plaintiff worked in proximity to this product; and (3) that

plaintiff's contact with the product was of such a nature as to raise a reasonable inference that they inhaled asbestos fibers emanating from it. Chicano v. General Electric Co., 2004 WL 2250990 at *3 (E.D. Pa. Oct. 5, 2004) (citing Coward v. Owens-Corning Fiberglass Corp., 729 A.2d. 614, 622 (Pa.Super. 1999)).

Summary judgment is proper when "the pleadings, the discovery and disclosure materials on file, and any affidavits, show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue of fact is "genuine" when there is sufficient evidence from which a reasonable jury could find in favor of the non-moving party regarding the existence of that fact. Id. at 248-49. "In considering the evidence, the court should draw all reasonable inferences against the moving party." El v. Se. Pa. Transp. Auth., 479 F.3d 232, 238 (3d Cir. 2007).

In evaluating the motion for summary judgment, the Court may not consider statements that include inadmissible hearsay evidence. Botkin v. Metropolitan Life Ins. Co., 907 A.2d. 641, 649 (Pa.Super. 2006). After reviewing the record, the Court finds that there is sufficient admissible evidence to raise a genuine issue of material fact which precludes summary judgment.


Specifically, Mr. Conley, General Electric's expert, testified that "[t]he only combination I can remember we used [as insulation was] with varnish cloth or varnish cambric, asbestos varnish cloth in combination." (Conley Dep. at 93-94: 23-4; 1-2.) Further, Mr. Conley testified that the wires on which this asbestos was used "varied in size. They varied in voltage levels. Never higher than 5,000 volts." (Conley Dep. at 94:3-6.) Mr. Conley also testified that any wires that contained asbestos would be copper wire, surrounded by an insulating material that could contain asbestos, surrounded by a rubber-like jacket. (Conley Dep. at 28-30.)

Mr. Moultrie and his co-workers, Mr. King and Mr. Scranton, each testified to the identical structure of the wire: a copper interior, surrounded by a layer of cloth-like insulation, surrounded by a black, rubberized exterior. Each worker also testified that the overhead wire used was between 3,000 and 5,000 volts.

Applying the Eckenrod standard, and viewing the evidence in the light most favorable to the Plaintiffs, the Court concludes that Plaintiffs have produced sufficient evidence that Mr. Moultrie worked frequently with General Electric wire, in

It is further **ORDERED** that General Electric's motion in limine to preclude Plaintiffs from offering certain lay witness testimony and to preclude inadmissible hearsay testimony (doc. no. 35) is **DENIED** without prejudice.³

AND IT IS SO ORDERED.


EDUARDO C. ROBRENO, J.

close proximity to the wire, and that there is a genuine issue of material fact as to whether Mr. Moultrie inhaled breathable asbestos fibers emanating from the wire, ultimately causing Mr. Moultrie's demise. Therefore, General Electric's motion for summary judgment is denied.

³ This motion may be renewed in front of the trial judge in connection with the trial on this matter.