

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

CHRISTINE P. PACE, : CONSOLIDATED UNDER
 : MDL 875
Plaintiff, :
 :
v. : Transferred from the
 : District of South Carolina
 : (Case No. 11-02688)
3M COMPANY, ET AL., :
Defendants. : E.D. PA CIVIL ACTION NO.
 : 2:11-67744-ER

FILED

APR 11 2013

MICHAEL E. KUNZ, Clerk
By ~~OR~~ ~~Dep. Clerk~~

AND NOW, this 11th day of April, 2013, it is hereby
ORDERED that the Motion for Summary Judgment of Defendant
Grinnell LLC (Doc. No. 110) is GRANTED.¹

¹ This case was transferred in October of 2011 from the
United States District Court for the District of South Carolina
to the United States District Court for the Eastern District of
Pennsylvania as part of MDL-875.

Plaintiff Christine Pace alleges that William Pace
("Decedent" or "Mr. Pace") was exposed to asbestos while working
as a marine machinist (and apprentice marine machinist) at the
Charleston Naval Shipyard from 1971 to 1995. Plaintiff alleges
that Defendant Grinnell LLC ("Grinnell") manufactured valves with
which gaskets, packing, and insulation were used. The alleged
exposure pertinent to Defendant Grinnell occurred aboard various
Navy ships and on land in two different machine shops.

Plaintiff asserts that Decedent developed mesothelioma
as a result of his exposure to asbestos. Decedent was deposed in
October of 2011.

Plaintiff brought claims against various defendants.
Defendant Grinnell has moved for summary judgment, arguing that
(1) there is insufficient evidence to establish causation with
respect to its product(s), and (2) it is entitled to summary
judgment on grounds of the bare metal defense. The parties assert
that South Carolina law applies.

I. Legal Standard

A. Summary Judgment Standard

Summary judgment is appropriate if there is no genuine dispute as to any 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 assert that maritime law applies. Where a case sounds in admiralty, application of a state's law (including a choice of law analysis under its choice of law rules) would be inappropriate. Gibbs ex rel. Gibbs v. Carnival Cruise Lines, 314 F.3d 125, 131-32 (3d Cir. 2002). Therefore, if the Court determines that maritime law is applicable, the analysis ends there and the Court is to apply maritime law. See id.

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 Various

Plaintiffs v. Various Defendants ("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., 799 F. Supp. 2d 455 (E.D. Pa. 2011) (Robreno, J.).

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 463-66 (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 v. Ruby, 497 U.S. 358 (1990). This Court has previously clarified that this includes work aboard a ship that is in "dry dock." See Deuber v. Asbestos Corp. Ltd., No. 10-78931, 2011 WL 6415339, at *1 n.1 (E.D. Pa. Dec. 2, 2011) (Robreno, J.) (applying maritime law to ship in "dry dock" for overhaul). 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 includes a ship docked at the shipyard, and includes those in "dry dock"), "the locality test is satisfied as long as some portion of the asbestos exposure occurred on a vessel on navigable waters." Conner, 799 F. Supp. 2d at 466; Deuber, 2011 WL 6415339, at *1 n.1. 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 almost always meet the connection test necessary for the application of maritime law. Conner, 799 F. Supp. 2d at 467-69 (citing Grubart, 513 U.S. at 534). This is particularly true in cases in which the exposure has arisen as a result of work aboard Navy vessels, either by Navy personnel or shipyard workers. See id. 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., No. 10-64625, 2011 WL 5881184, at *1 n.1 (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).

i) Exposure Arising Aboard Ships

Plaintiff alleges exposure pertinent to Defendant that occurred aboard ships. Therefore, these alleged exposures were during sea-based work. See Conner, 799 F. Supp. 2d 455; Deuber, 2011 WL 6415339, at *1 n.1. Accordingly, maritime law is applicable to Plaintiff's claims against Defendant that arise from this alleged exposure. See id. at 462-63.

ii) Exposure Arising On Land (Machine Shops 31 and 38)

Plaintiff alleges exposure pertinent to Defendant that occurred in two different machine shops on land (Shop No. 31 and Shop No. 38). Therefore, this exposure was during land-based work at the Charleston Naval Shipyard in Charleston, South Carolina. Accordingly, South Carolina state law is applicable to Plaintiff's claims against Defendant Grinnell that arise from this alleged exposure. See Conner, 799 F. Supp. 2d 455.

C. Bare Metal Defense Under Maritime Law

This Court has held that the so-called "bare metal defense" is recognized by maritime law, such 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, at *7 (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). This Court has also noted that, in light of its holding in Conner v. Alfa Laval, Inc., No. 09-67099, - F. Supp. 2d -, 2012 WL 288364 (E.D. Pa. Feb. 1, 2012) (Robreno, J.), there is also a requirement (implicit in the test set forth in Lindstrom and Stark) that a plaintiff show that (3) the defendant manufactured or distributed the asbestos-containing product to which exposure is alleged. Abbay v. Armstrong Int'l., Inc., No. 10-83248, 2012 WL 975837, at *1 n.1 (E.D. Pa. Feb. 29, 2012) (Robreno, J.).

Substantial factor causation is determined with respect to each defendant separately. Stark, 21 F. App'x. at 375. In establishing causation, a plaintiff may rely upon direct evidence (such as testimony of the plaintiff or decedent who experienced the exposure, co-worker testimony, or eye-witness testimony) or circumstantial evidence that will support an inference that there was exposure to the defendant's product for some length of time. Id. at 376 (quoting Harbour v. Armstrong World Indus., Inc., No. 90-1414, 1991 WL 65201, at *4 (6th Cir. April 25, 1991)).

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, 1991 WL 65201, at *4). 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))).

E. Bare Metal Defense Under South Carolina Law

This Court has previously been faced with the issue of whether the so-called "bare metal defense" is recognized by South Carolina law. See Blackmon v. Owens-Illinois, Inc., No. 07-62975, 2011 WL 4790631 (E.D. Pa. Jan. 28, 2011) (Robreno, J.); Campbell v. A.W. Chesterton Co., No. 11-66745, 2012 WL 5392828 (E.D. Pa. Oct. 16, 2012) (Robreno, J.). In each case, it remanded the issue for a court in South Carolina to decide, noting that this issue is a matter of policy, which no appellate court in South Carolina has addressed, and which would be better addressed by a court closer to and more familiar with South Carolina policy.

F. Product Identification/Causation Under South Carolina Law

This Court has previously addressed the standard for product identification under South Carolina law. In Blackmon v. Owens-Illinois, Inc., the Court wrote:

In Henderson v. Allied Signal, Inc., the Supreme Court of South Carolina explicitly adopted the "frequency, regularity, and proximity test." 644 S.E.2d 724, 727 (S.C. 2007) (citing Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156, 1162 (4th Cir. 1986)). The court noted that, "[t]o support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." 644 S.E.2d at 727. The court held that mere presence of "static asbestos" does not equate to asbestos exposure. Id.

In Roehling v. National Gypsum Co., the United States Court of Appeals for the Fourth Circuit decided an appeal from the Eastern District of Virginia. 786 F.2d 1225 (4th Cir. 1986). Plaintiff sued various defendants alleging that he developed mesothelioma due to exposure to their asbestos-containing products. Id. at 1226. The Court held that direct evidence of exposure is

not required in order for plaintiff to survive a motion for summary judgment. Id. at 1228. The evidence need only establish that plaintiff "was in the same vicinity as witnesses who can identify the products causing the asbestos dust and that all people in that area, not just the product handlers, inhaled." Id.

No. 07-62975, 2011 WL 4790631 (E.D. Pa. Jan. 28, 2011).

II. Defendant Grinnell's Motion for Summary Judgment

Product Identification / Causation

Grinnell contends that Plaintiff's evidence is insufficient to establish that any product for which it is responsible caused Decedent's mesothelioma.

Bare Metal Defense

Grinnell argues that it has no duty to warn about and cannot be liable for injury arising from any product or component part that it did not manufacture, supply, or install.

B. Plaintiff's Arguments

Product Identification / Causation / Bare Metal Defense

In support of Plaintiff's assertion that she has identified sufficient evidence of exposure/causation/product identification to survive summary judgment, Plaintiff cites to the following evidence:

- Deposition and Affidavit of Mr. Pace
Mr. Pace testified that he worked as a apprentice marine machinist at Charleston Naval Shipyard from approximately 1971 to 1975. In 1975, he became a journeyman machinist working on the "steam gang." From 1982 until about 1992, he worked in the nuclear power department aboard nuclear submarines. He worked as a machinist at the shipyard until about 1995. The majority of his career at Charleston Naval Shipyard was spent working on land in Machine Shop No. 38.

He also worked for about a year in Machine Shop No. 31 (during his time as an apprentice).

His duties at all of these locations included maintaining and repairing pumps and valves, including packing and repacking valves, and changing gaskets. He also worked on turbines and boilers. He did work with equipment used aboard at least twenty-five different Naval vessels.

Mr. Pace's affidavit states that he worked with and around asbestos-containing products for more than 5 years prior to 1982, and that the cutting, handling and application of these products created visible dust, which he inhaled.

(Doc. No. 122, Exs. A, C-D.)

- Deposition Testimony of Raymond Lee

Mr. Lee testified that Decedent working in Shop 31 for about a year doing mainly pump and valve assembly. He testified that Decedent had to scrape residual gasket material off pumps and valves in the shop. Mr. Lee testified that it was not uncommon for valve manufacturers to provide "a couple of the flange gaskets in the box with the valve." He also testified that some of the gasket material at the shipyard contained asbestos.

(Doc. No. 122, Ex. F.)

- Deposition Testimony of Theron Morgan, Jr.

Mr. Morgan testified that the residual gasket material Decedent removed in Shop 31 was from gaskets that were original to the pump. When asked if he saw Decedent do any work at Shop 31 that exposed him to asbestos, Mr. Morgan explained that Decedent's work removing external insulation from pumps and valves would have exposed him to asbestos. He

explained that removing the insulation was a dusty process.

(Doc. No. 122, Ex. L.)

- Deposition Testimony of David Fanchette
Mr. Fanchette worked with Decedent at the shipyard from 1972 to 1974. He testified that he and Decedent worked together disassembling and repacking over 100 valves on two occasions. He testified that they cleaned the components on the valves, including the valve bodies and packing glands, and that they often had to grind or scrape the gasket off. He testified that they also worked on various steam valves, including removing old packing, repacking the valves, and cutting gaskets for the valves.

(Doc. No. 122, Ex. G.)

- Deposition Testimony of Guy Lookabill, Sr.
Mr. Lookabill testified that he worked with Decedent from 1972 to 1974 in Shop 38. He testified that Decedent worked on and around valves there. He testified that packing and gasket material used in connection with this equipment was obtained from the shops in the shipyard. He testified that removal of gaskets from valves was part of Decedent's job. He testified that they removed and replaced asbestos-containing packing from valves and that it would sometimes be a dusty process. He testified that they did not wear a mask or respiratory protection.

(Doc. No. 122, Ex. E.)

- Deposition Testimony of John Blackmon
Mr. Blackmon worked at the shipyard from approximately 1961 until the late 1970s. He testified in another case that Grinnell valves were aboard nearly all vessels at the shipyard and that he specifically recalled marine machinists repairing Grinnell valves on at least four different ships.

Mr. Blackmon testified that the machinists worked on old Grinnell valves and also installed new ones. He also testified that working on and around asbestos-containing packing in these valves produced respirable asbestos-containing dust.

(Doc. No. 122, Ex. I.)

- Deposition Testimony of Thomas Dandridge, Jr.
Mr. Dandridge worked at the shipyard as a pipe fitter/steam fitter from 1965 to 1979. He testified in another case that workers at the shipyard worked with Grinnell valves aboard various ships.

(Doc. No. 122, Ex. H.)

- Deposition Testimony of Grinnell Corporate Representative (Jerry Fritz)
Mr. Fritz testified in another case that Grinnell marketed and sold valves with asbestos-containing gaskets and packing through the mid 1980s, and would specify the type of replacement parts to be used with its valves.

(Doc. No. 122, Ex. J.)

C. Analysis

Product Identification / Causation / Bare Metal Defense

Plaintiff alleges that Decedent was exposed to asbestos from gaskets, packing and insulation that were used in connection with Grinnell valves. She alleges that this exposure occurred both aboard ships and in machine shops (on land). The Court examines the sufficiency of Plaintiff's evidence regarding each alleged source of exposure separately.

i) Exposure Arising Aboard Ships (Maritime Law)

There is evidence that Decedent worked with valves aboard Navy ships and that this work involved removal and

replacement of gaskets and packing. There is evidence that most of the ships at the shipyard had Grinnell valves aboard them. Importantly, however, there is no evidence that Decedent worked with any valve, gasket, or packing manufactured or supplied by Grinnell, much less that there was any asbestos associated with any such valve. Therefore, no reasonable jury could conclude from the evidence that Decedent was exposed during his work aboard ships to asbestos from a product manufactured or supplied by Grinnell such that it was a substantial factor in the development of his mesothelioma, because any such finding would be impermissibly conjectural. See Lindstrom, 424 F.3d at 492.

With respect to asbestos-containing products (or component parts) to which Decedent may have been exposed in connection with Grinnell valves, but which were not manufactured or supplied by Defendant Grinnell, the Court has held that, under maritime law, Defendant cannot be liable. Conner, 2012 WL 288364, at *7. Accordingly, summary judgment in favor of Defendant Grinnell is warranted with respect to this alleged exposure. Anderson, 477 U.S. at 248-50.

ii) Exposure Arising On Land (South Carolina Law)

(a) Gaskets

There is evidence that Decedent worked removing and installing gaskets on valves in machine shops (on land). There is evidence that Grinnell sold some asbestos-containing gaskets. Importantly, however, there is no evidence that Decedent ever worked with (or was exposed to) a gasket that was manufactured or supplied by Defendant Grinnell, or used in connection with a Grinnell valve - much less that any such gasket contained asbestos. Therefore, even if South Carolina did not recognize the "bare metal defense" and instead held manufacturers liable for harms arising from gaskets used in connection with its products but not manufactured or supplied by it - an issue this Court need not consider - no reasonable jury could conclude from the evidence that Decedent was exposed to asbestos from gaskets manufactured or supplied by Defendant Grinnell, or used in connection with Grinnell valves, such that it was a substantial cause of the development of his mesothelioma. Accordingly, summary judgment in favor of Defendant Grinnell is warranted with respect to claims arising from land-based exposure to asbestos in connection with gaskets. Anderson, 477 U.S. at 248-50.

(b) Packing

There is evidence that Decedent worked removing and installing packing in valves. There is evidence that Decedent removed and replaced asbestos-containing packing from valves and that it would sometimes be a dusty process. There is evidence that Grinnell valves were present at the shipyard. There is evidence that Grinnell sold some valves with asbestos-containing packing. Importantly, however, there is no evidence that Decedent ever worked with (or was exposed to) packing that was manufactured or supplied by Defendant Grinnell, or used in connection with a Grinnell valve or other product - much less that any such packing contained asbestos. Therefore, even if South Carolina did not recognize the "bare metal defense" and instead held manufacturers liable for harms arising from packing used in connection with its products but not manufactured or supplied by it - an issue this Court need not consider - no reasonable jury could conclude from the evidence that Decedent was exposed to asbestos from packing manufactured or supplied by Defendant Grinnell, or used in connection with Grinnell valves such that it was a substantial cause of the development of his mesothelioma. See Henderson, 644 S.E.2d 724, 727. Accordingly, summary judgment in favor of Defendant Grinnell is warranted with respect to claims arising from land-based exposure to asbestos in connection with packing. Anderson, 477 U.S. at 248-50.

(c) Insulation

There is evidence that Decedent worked with valves. There is evidence that Decedent removed asbestos-containing insulation from valves and that this was a dusty process. There is evidence that Grinnell valves were present at the shipyard. Importantly, however, there is no evidence that Decedent ever worked with (or was exposed to) insulation that was manufactured or supplied by Defendant Grinnell, or used in connection with a Grinnell valve - much less that any such insulation contained asbestos. Therefore, even if South Carolina did not recognize the "bare metal defense" and instead held manufacturers liable for harms arising from insulation used in connection with its products but not manufactured or supplied by it - an issue this Court need not consider - no reasonable jury could conclude from the evidence that Decedent was exposed to asbestos from insulation manufactured or supplied by Defendant Grinnell, or used in connection with Grinnell valves, such that it was a substantial cause of the development of his mesothelioma. See Henderson, 644 S.E.2d 724, 727. Accordingly, summary judgment in


EDUARDO C. ROBRENO, J.

favor of Defendant is warranted with respect to claims arising from land-based asbestos exposure in connection with insulation. Anderson, 477 U.S. at 248-50.

D. Conclusion

Summary judgment in favor of Defendant Grinnell is granted with respect to claims arising from asbestos exposure alleged to have occurred aboard ships because Plaintiff has failed to identify sufficient evidence to support a finding of causation with respect to any product for which Defendant could be liable under maritime law.

Summary judgment in favor of Defendant Grinnell is also granted with respect to claims arising from asbestos exposure alleged to have occurred in machine shops on land because Plaintiff has failed to identify sufficient evidence to support a finding of causation with respect to any product for which Defendant could be liable under South Carolina law.