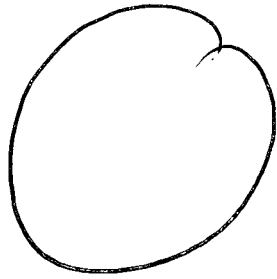


ER



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

WILLIAM J. ROBINSON AND	:	CONSOLIDATED UNDER
GAIL A. ROBINSON,	:	MDL 875
	:	
Plaintiffs,	FILED	:
	:	Transferred from the
v.	FEB 19 2013	District of New Jersey
	MICHAEL E. KUNZ, Clerk	(Case No. 11-04078)
	By: [Signature]	
AIR AND LIQUID SYSTEMS CORP.	:	E.D. PA CIVIL ACTION NO.
et al.,	:	2:11-67687-ER <i>file</i>
	:	
Defendants.	:	

ORDER

AND NOW, this **14th** day of **February, 2013**, it is hereby **ORDERED** that the Motion for Summary Judgment of Honeywell International, Inc. (Doc. No. 121) is **GRANTED**.¹

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

Plaintiff Gail Robinson alleges that William Robinson, ("Decedent" or "Mr. Robinson") was exposed to asbestos during his work at (1) a chemical company ("General Chemical") in New Jersey, during the period 1968 to 1999, and (2) the Green River, Wyoming soda ash plant. Mr. Robinson developed mesothelioma and died from that illness.

Plaintiffs have brought claims against various defendants. Defendant Honeywell International, Inc. ("Honeywell") has moved for summary judgment arguing that (1) there is insufficient evidence to support a finding that it breached any duty owed to Decedent, and (2) it is entitled to summary judgment because Plaintiffs' claims are barred by the Wyoming workers' compensation statute.

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 agree that New Jersey substantive law applies to Plaintiffs' claims, and that any causation analysis should be performed under New Jersey law. However, Defendant Honeywell also suggests, simultaneously, that Plaintiffs' claims are barred by the Wyoming workers' compensation statute because the alleged exposure occurred at a plant in Wyoming. Plaintiffs have not argued that Wyoming law is inapplicable, per se, and instead simply argue that the Wyoming workers' compensation statute does not bar their claims (for other reasons). Therefore, this Court will apply New Jersey law in deciding Defendant's motion regarding breach of duty/causation, but will also consider Defendant's argument regarding the Wyoming workers' compensation statute. 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).

II. Defendant Honeywell's Motion for Summary Judgment

A. Defendant's Arguments

Duty / Causation

Honeywell argues that there is insufficient evidence to support a finding that it breached any duty owed to Decedent.

Wyoming Workers' Compensation Statute

Defendants argue that the Wyoming workers' compensation statute (Wyo. Stat. § 27-14-104) provides Plaintiffs' exclusive remedy and that they are therefore entitled to summary judgment in this action. In support of this argument, Defendant Honeywell cites to: (1) Anderson v. Sovay Minerals, Inc., 3 P.3d 236 (Wyo. 2000); (2) Wessel v. MAPCO, Inc., 752 P.2d 1363, 1367 (Wyo. 1988); (3) Baker v. Wendy's of Montana, Inc., 687 P.2d 885 (Wyo. 1984); (4) Parker v. Energy Development Co., 691 P.2d 981, 985 (Wyo. 1984); and (5) Estate of Gordon McBride v. Dravo Corp., 603 F.2d 156 (Wyo. 1979).

During oral argument, Defendant argued that, because a company could not operate in Wyoming without paying into the workers' compensation fund in accordance with the law, there is a presumption that it paid into the fund on behalf of Decedent. In support of this assertion and only six days prior to the hearing scheduled on this motion, Defendant has sought leave to submit (as evidence supplementing the record in this case) an affidavit of William Cole of Wyoming's Workers' Compensation Division.

B. Plaintiffs' Arguments

Duty / Causation

Plaintiffs contend that Defendant Honeywell has only sought summary judgment on the basis of insufficient product identification evidence and that, because their claims against Honeywell are based on a theory of premises owner liability, Defendant is not entitled to summary judgment in this case.

Wyoming Workers' Compensation Statute

In response to Defendants' assertion that Plaintiffs' claims are barred by the Wyoming workers' compensation statute,

Plaintiffs state that the statute only applies to employers who have contributed to the fund - and that, as successor corporations to Decedent's employer(s), Honeywell was neither an employer, nor a contributor to the fund. Therefore, according to Plaintiffs, Defendant Honeywell is not entitled to the protections of the statute. Plaintiffs also contend that the Wyoming Supreme Court has consistently held that the immunity provisions of the workers' compensation statute should be narrowly construed. In support of these assertions, Plaintiffs cite: (1) Article 10, Section 4 of the Wyoming Constitution; (2) Fiscus v. Atlantic Richfield Co., 742 P.2d 189 (Wyo. 1987); (3) Lankford v. True Ranches, Inc., 822 P.2d 868, 870 (Wyo. 1991); (4) Stratman v. Admiral Beverage Corp., 760 P.2d 974, 979 (Wyo. 1988); and (5) Barnette v. Doyle, 622 P.2d 1349 (Wyo. 1981).

Moreover, Plaintiffs assert that, even if a successor entity were permitted to inherit the immunity afforded to its predecessor(s) by the statute, summary judgment is still not warranted because there are genuine disputes of material fact as to whether Defendant's predecessor made payments into the fund on behalf of Decedent. Specifically, Plaintiffs contend that Defendant has failed to provide any evidence that its predecessor paid into the fund on behalf of Decedent and that Defendant has therefore failed to satisfy its burden for obtaining summary judgment on this basis (because the defense is an affirmative defense).

C. Analysis

Plaintiffs contend that Defendant Honeywell has only sought summary judgment on the basis of insufficient product identification evidence and that, because their claims against Honeywell are based on a theory of premises owner liability, Defendant is not entitled to summary judgment in this case. However, the Court has reviewed and construed the motion submitted by Defendant Honeywell and has determined that Honeywell sought summary judgment on grounds that Plaintiffs have failed to identify any evidence that Honeywell breached a duty owed to it. Specifically, Defendant's motion contains the following language:

D. Plaintiffs' Failure to Identify Facts Implicating Honeywell Warrants Summary Judgment on All of Plaintiffs' Claims

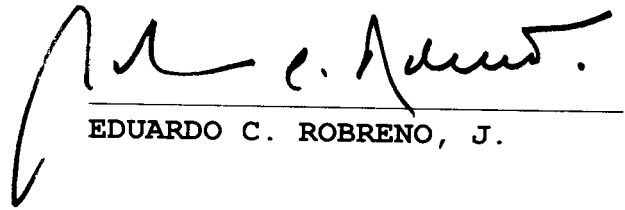
. . . [I]n order for Plaintiffs to obtain a verdict in their favor, they must provide sufficient facts that Mr. Robinson was exposed to "friable asbestos" that was either manufactured, sold, or distributed on the premises of Honeywell. In addition, Plaintiffs must provide sufficient facts that Mr. Robinson was in close proximity to friable asbestos at Honeywell's facility "frequently and on a regular basis." Id. at 31. (Count V [labeled "Premises Liability" in the Second Amended Complaint].)

In the present matter, the discovery period is closed and neither Plaintiffs nor their experts have identified any facts that demonstrate that Honeywell manufactured, sold or distributed asbestos containing products. Instead, Mr. Robinson testified during his deposition that his only contact with Honeywell was as an employee of its predecessor and that the facility at which he worked did not manufacture any asbestos-containing products. . . . Nor can Plaintiffs prove fraudulent conduct, malice, or premises liability related to a product where no product has been identified.

Additionally, neither Plaintiffs nor their experts have identified any facts that show that Honeywell violated any standard of care owed to Mr. Robinson or that Mr. Robinson's time working at the Green River facility was a proximate cause of his disease. Plaintiff's failure to provide direct proof or expert testimony implicating Honeywell is fatal to their tort claims of negligence and gross negligence against Honeywell.

(Def. Mot. at 9-11 (emphasis added).) As such, Plaintiffs received fair notice that Defendant was challenging the sufficiency of their evidence regarding premises owner liability.

AND IT IS SO ORDERED.


EDUARDO C. ROBRENO, J.

Although Plaintiffs claim that they are seeking to hold Honeywell liable as a premises owner, they do not present any evidence that Honeywell breached a duty it owed as a premises owner (i.e., that there were asbestos products on its premises, that it failed to warn, etc.). As such, Plaintiffs have failed to identify a genuine dispute of material fact for trial, and no reasonable jury could conclude from the evidence that Honeywell breached a duty owed to Decedent. See Anderson, 477 U.S. at 248-50. Accordingly, summary judgment in favor of Defendant Honeywell is granted.

ENTERED
FEB 19 2013
CLERK OF COURT

In light of this determination, the Court need not reach any of the other issues raised by Defendant.