

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

IN RE: ASBESTOS PRODUCTS : Consolidated Under
LIABILITY LITIGATION (No. VI) : MDL DOCKET NO. 875

TYLER

FILED

v.

JUL - 5 2011

Case No. 10-67422

VARIOUS DEFENDANTS

By MICHAEL E. KUNZ, Clerk
Dep. Clerk

Transferred from the District
of Columbia

ORDER

AND NOW, this **1st** day of **July, 2011**, it is hereby
ORDERED that Defendant Foster Wheeler Company, Inc.'s Motion for
Summary Judgment (doc. nos. 284, 286) filed on February 7, 2011
is **GRANTED**.¹

¹ Decedent, John Tyler, was diagnosed with mesothelioma in October 2009. (Pl.'s Resp. to Defendant Honeywell's Mot., doc. no. 374, at 2.) He filed the instant action in the Superior Court of the District of Columbia on December 31, 2009, alleging that various defendants' asbestos-containing products caused his injuries. (Id.) He subsequently passed away. The case was removed to federal court on March 3, 2010, and transferred to the Eastern District of Pennsylvania as part of MDL 875 In Re: Asbestos on May 11, 2010.

Plaintiff's claims against Defendant Foster Wheeler LLC ("Foster Wheeler") arise out of Decedent's employment with the United States Navy on the USS Rockbridge from December 1952 to December 1956. (Def.'s Mot., doc. no. 284, at 1.) Foster Wheeler manufactured two (2) distillers that were present on the USS Rockbridge. (Id.)

I. DISCUSSION

The parties are in agreement that maritime law applies to Plaintiff's claims against Foster Wheeler.

A. Legal 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.

1. Product Identification Under Maritime Law

In order to establish causation in 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 Product Liability Trust, 424 F.3d 488, 492 (6th Cir. 2005); citing Stark v. Armstrong World Indus., Inc., 21 Fed. Appx. 371, 375 (6th Cir. 2001). Substantial factor causation is determined with respect to each defendant separately. Stark, 21 Fed. Appx. at 375.

Maritime law incorporates traditional "substantial factor" causation principles, and courts often look to the Restatement of Torts (2nd) for a more helpful definition. The comments to the Restatement indicates that the word "substantial" in this context "denote[s] the fact that the defendant's conduct has such an

effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility." Restatement (Second) of Torts, § 431, Comment "a" (1965).

Accordingly, 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 v. Armstrong World Indus., Inc., No. 90-1414, 1991 WL 65201, at *4 (6th Cir. April 25, 1991)). The exposure must have been "actual" or "real", but the question of "substantiality" is one of degree normally best left to the factfinder. Redland Soccer Club, Inc. v. Dep't of Army of U.S., 55 F.3d 827, 851 (3d Cir. 1995).

B. Foster Wheeler's Motion for Summary Judgment

Foster Wheeler avers that Plaintiff has failed to raise an issue as to whether Decedent's work on the USS Rockbridge was the proximate cause of Decedent's injuries.

Plaintiff responds that the testimony of Captain Burger establishes Decedent's proximity to Foster Wheeler's (2) large distilling units on the U.S.S. Rockbridge. (Pl.s' Resp., doc. no. 394, at 6.)

Captain Burger's expert testimony states that:

As a machinery repairman, Mr. Tyler would have been exposed to asbestos gaskets ("rope") while machining the wearing rings in the pump associated with the distiller. While Mr. Tyler does not specifically describe his work on the distiller or its associated pumps, routine maintenance that was required on this unit would have released asbestos fiber into the atmosphere of the machinery room. (Rep. of Captain Burger, doc. no. 394-5, at 14.)

However, Plaintiff's expert has no firsthand knowledge of the work that Decedent actually performed. The above testimony does not evince "a high enough level of exposure that an inference that the asbestos was a substantial factor

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

in the injury is more than conjectural." Lindstrom, 424 F.3d at 492. A jury would be forced to speculate as to how often the routine maintenance described by Captain Burger was performed, and whether this maintenance was a substantial contributing factor to Decedent's injuries.

II. CONCLUSION

Based on the foregoing, Foster Wheeler is entitled to summary judgment in the instant case.