



reasonable inferences against the moving party." El v. SEPTA, 479 F.3d 232, 238 (3d Cir. 2007).

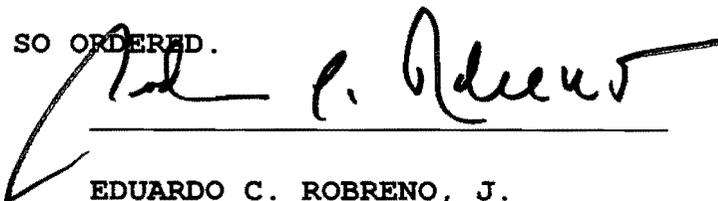
"Although the initial burden is on the summary judgment movant to show the absence of a genuine issue of material fact, 'the burden on the moving party may be discharged by showing - that is, pointing out to the district court - that there is an absence of evidence to support the nonmoving party's case' when the nonmoving party bears the ultimate burden of proof." Conoshenti v. Pub. Serv. Elec. & Gas Co., 364 F.3d 135, 140 (3d Cir. 2004) (quoting Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 192 n.2 (3d Cir. 2001)). Once the moving party has discharged its burden, the nonmoving party "may not rely merely on allegations or denials in its own pleading; rather, its response must - by affidavits or as otherwise provided in [Rule 56] - set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2).

On the affirmative defense of intervening or superseding acts or omissions by other parties or entities, Defendant has raised a genuine issue of material fact based on evidence that Mr. Wagers worked at various job sites where various asbestos-containing products could have caused his mesothelioma. On the affirmative defenses of contributory negligence and assumption of the risk, Defendant has raised a genuine issue of material fact as to whether Mr. Wagers knew of the dangers of asbestos at the time he worked for Siding, Inc. Defendant presented evidence that as a supervisor for Siding, Inc., Mr. Wagers was required to attend training sessions on OSHA regulations about asbestos.

Accordingly, Plaintiff's Motion for Partial Summary Judgment is denied on the defenses of intervening or superseding acts or omissions by other parties or entities, assumption of the risk, and contributory negligence. Plaintiff's Motion for Partial Summary Judgment is granted on the defenses of product misuse, that Mr. Wagers' labor union proximately cause his injury, that Mr. Wagers failed to notify Defendant, that the product was used or installed state of the art, on the issue of workers compensation, on the issue of government contract specifications and regulations, failure to mitigate, and insufficiency of process and service of process since Defendant does not contest Plaintiff's Motion for Summary Judgment as to these defenses.

E.D. PA CIVIL ACTION NO. 2:10-02916

AND IT IS SO ORDERED.



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

EDUARDO C. ROBRENO, J.

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