

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

BONNIE L. WILSON,	:	CONSOLIDATED UNDER
	:	MDL 875
Plaintiff,	:	
	:	Transferred from the
	:	Northern District of
v.	:	Indiana
	:	(Case No. 98-00095)
	:	
AC AND S, INC.	:	E.D. PA CIVIL ACTION NO.
et al.,	:	2:08-90732-ER
	:	
Defendants.	:	

FILED

MAR 13 2013

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

ORDER

AND NOW, this **12th** day of **March, 2013**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Georgia Pacific Corporation (Doc. No. 125) is **DENIED**.¹

¹ This case was transferred in November of 2008 from the United States District Court for the Northern District of Indiana to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Plaintiff Bonnie Wilson alleges that Harold Wilson, ("Decedent" or "Mr. Wilson") was exposed to asbestos during his work at Acme Steel in Riverdale, Illinois. Mr. Robinson developed lung cancer and died from that illness.

Plaintiffs have brought claims against various defendants. Defendant Georgia-Pacific Corporation ("Georgia Pacific") has moved for summary judgment arguing that Plaintiff's claims are barred by the Indiana statute of repose. While Defendant asserts that Indiana law applies, Plaintiff contends that it is Illinois law that 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

Defendant Georgia Pacific contends that Indiana law applies because Plaintiff lives in Indiana, the case was filed in Indiana, and some of the alleged exposure took place in Indiana, where Decedent worked. Plaintiff contends that Indiana law is not applicable and that Illinois law applies because she is only pursuing claims arising from exposure that occurred in Illinois.

In deciding what substantive law governs a claim based in state law, a federal transferee court applies the choice of law rules of the state in which the action was initiated. Van Dusen v. Barrack, 376 U.S. 612, 637-40 (1964) (applying the *Erie* doctrine rationale to case held in diversity jurisdiction and transferred from one federal district court to another as a result of defendant's initiation of transfer); Commissioner v. Estate of Bosch, 387 U.S. 456, 474-77 (1967) (confirming applicability of *Erie* doctrine rationale to cases held in federal question jurisdiction). Therefore, because this case was initiated in Indiana, Indiana choice of law rules must be applied in determining what substantive law to apply to this case. For

the sake of clarity, the Court notes further that, for purposes of a choice of law analysis, a statute of repose is substantive in nature. Kissel v. Rosenbaum, 579 N.E.2d 1322, 1326 (Ct. App. Ind. 1st Dist. 1991); Stytle v. Angola Die Casting Co., 806 N.E.2d 339, 343 (Ind. App. 2004); see also Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co., - U.S. - , 130 S. Ct. 1431, 1471 (2010) (citing Guaranty Trust Co. v. York, 326 U.S. 99, 109 (1945) (holding that statutes of limitations are matters of substantive law in diversity suits)).

Indiana courts do not engage in depechage - the choice-of-law process of analyzing different issues within the same case or claim separately under the laws of different states. Simon v. U.S., 805 N.E.2d 798, 801 (Ind. 2004). The Indiana Supreme Court set forth its choice of law analysis for a torts case in Simon, where it wrote:

[I]n tort cases, Indiana choice-of-law analysis now involves multiple inquiries. As a preliminary matter, the court must determine whether the differences between the laws of the states are "important enough to affect the outcome of the litigation." Hubbard [Manufacturing Co. v. Greeson], 515 N.E.2d [1071 ,] 1073 [(Ind. 1987)]. If such a conflict exists, the presumption is that the traditional *lex loci delicti* rule (the place of the wrong) will apply. Id. Under this rule, the court applies the substantive laws of the "the state where the last event necessary to make an actor liable for the alleged wrong takes place." Id.

This presumption is not conclusive, however. It may be overcome if the court is persuaded that "the place of the tort 'bears little connection' to this legal action." Id. at 1074.

If the location of the tort is insignificant to the action, the court should consider other contacts that may be more relevant, "such as: 1) the place where the conduct causing the injury occurred; 2) the residence or place of business of the parties; and 3) the place where the relationship is centered." Id. at 1073-74 (citing Restatement (Second) of Conflict of Laws § 145(2) (1971)). These factors are not an exclusive list nor are they

necessarily relevant in every case. All contacts "should be evaluated according to their relative importance to the particular issues being litigated." Id. at 1074. This evaluation ought to focus on the essential elements of the whole cause of action, rather than on the issues one party or the other forecasts will be the most hotly contested given the anticipated proofs.

805 N.E.2d at 804-05.

II. Defendant Georgia Pacific's Motion for Summary Judgment

A. Defendant's Arguments

Defendant Georgia Pacific argues that Indiana law applies and that Plaintiffs' claims are barred by Indiana's statute of repose, appearing at Ind. Code § 34-20-3-1(b)(2).

B. Plaintiff's Arguments

In response to Defendant's argument, Plaintiff argues that her claims are not barred by the Indiana statute of repose because Illinois law (not Indiana law) is applicable, given that she is only pursuing claims arising from exposure occurring in Illinois.

C. Analysis

In order to determine what law governs Plaintiff's claims against Defendant Georgia Pacific, the Court will apply the choice of law rules set forth in Simon, 805 N.E.2d at 804-05. In this case, the Court need not determine whether there is a conflict of laws with respect to Indiana and Illinois law because the parties agree that there would be a conflict such that application of Indiana law would result in a complete dismissal of the claims against Defendant, while Illinois law would permit the claims to proceed toward trial. Under Simon, the *lex loci delicti* presumption applies such that the law of Illinois (the place where the sole exposure at issue in this case - and therefore the sole event making Defendant potentially liable - occurred) applies, unless Defendant can rebut the presumption by convincing the Court that this "place of the tort" bears little connection to this action. Id.

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AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

Defendant contends the presumption for Illinois law is overcome and that Illinois bears little relation to the action because Plaintiff lives in Indiana, Plaintiff filed suit in Indiana, and Decedent (while alive) live in Indiana and worked the majority of the time in Indiana. However, countering these factors, the only alleged asbestos exposure at issue in this action occurred in Illinois and nowhere else. Moreover, because Defendant was not Decedent's employer, the only interaction between Decedent and Defendant occurred in Illinois. Given these factors, the Court cannot conclude that "the place of the tort [(Illinois)] bears little connection to this legal action." Id. Therefore, the Court will apply Illinois law in deciding Defendant's motion.

Having determined that Illinois law governs Plaintiff's claims against Defendant Georgia Pacific, the Indiana statute of repose is inapplicable and, as the parties concede, Defendant is not entitled to summary judgment. See Anderson, 477 U.S. at 248. Accordingly, Defendant's motion for summary judgment is denied.