

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

THOMAS S. RIDDLE and	:	CONSOLIDATED UNDER
GLORIA F. RIDDLE,	:	MDL 875
	:	
Plaintiffs,	:	
	:	
	:	
v.	:	
	:	
	:	
FOSTER WHEELER, LLC,	:	E.D. PA CIVIL ACTION NO.
	:	2:11-cv-00318-ER
Defendants.	:	

O R D E R

AND NOW, this **24th** day of **May, 2012**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant **Riley Stoker Corp.** (Doc. No. 109) is **GRANTED**.¹

¹ This case originated in Pennsylvania state court. In January of 2011, it was removed to the Eastern District of Pennsylvania as part of MDL-875. In approximately 2009, Plaintiff filed a separate action in Indiana, based upon a diagnosis of asbestosis ("the Indiana Action"), in which it named Riley Stoker Corp. ("Riley Stoker") as a defendant. Summary judgment was granted in favor of Riley Stoker in the Indiana Action on December 20, 2009.

Plaintiff Thomas Riddle was born in Tennessee, grew up in Indiana. He served in the Navy from 1960 to 1969, during which period he spent most of his time aboard ships, but spent a few months living in Pennsylvania. After being discharged from the Navy, he returned to Indiana, where he worked at a General Motors ("GM") plant for approximately 32 years. After retiring from GM in 2005, Plaintiff moved to Arizona, where he now resides. The exposure alleged by Plaintiff occurred in the Navy and also during his work in Indiana for GM.

Plaintiff was diagnosed with lung cancer in 2010. He was deposed for two days in March of 2011.

Plaintiff has brought claims against various defendants. Defendant Riley Stoker has moved for partial summary judgment, arguing that Plaintiff's claims are barred by (1) principles of res judicata, and (2) the statute of repose of Indiana.

Riley Stoker contends that Indiana (or possibly Pennsylvania) substantive law applies to the claims at issue. Plaintiff contends that Arizona substantive law governs the claims at issue, as he contends that Arizona has the greatest interest in the outcome of these claims. However, Plaintiff concedes that, if Indiana substantive law applies, his claims against Riley Stoker are barred (either by principles of res judicata and/or the Indiana statute of repose). Plaintiff also conceded during oral argument that, if Pennsylvania choice of law rules apply (as set forth in Norman v. Johns-Manville Corp., 406 Pa. Super. 103, 108-11 (Pa. Super. Ct. 1991)), then Indiana substantive law applies to the claims at issue. Having established these concessions, the Court next determines what substantive law is applicable to the claims against Defendant Riley Stoker.

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 Pennsylvania, Pennsylvania 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. DePaolo v. Dept. of Public Welfare, 865 A.2d 299 (Pa. Cmwlth. 2009); 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)).

The Superior Court of Pennsylvania has previously set forth the choice of law analysis for an asbestos case, and it did so in Norman. Therefore, Norman governs the choice of law issue

in this case. As noted herein, Plaintiff has conceded that, if Pennsylvania choice of law rules apply (as set forth in Norman), then Indiana substantive law applies to Plaintiff's claims against Defendant Riley Stoker. Therefore, Indiana substantive law applies to these claims. Plaintiff also conceded that if Indiana substantive law applies, the claims against Defendant Riley Stoker are barred. Therefore, Plaintiff's claims against Defendant Riley Stoker are dismissed.