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

STANISLAUS S. FELICIANO	:	CONSOLIDATED UNDER
	:	MDL 875
Plaintiff,	:	
	:	
v.	:	E.D. PA CIVIL ACTION NO.
	:	11-30247
A-C PRODUCT LIABILITY TRUST, et. al,	:	
	:	
Defendants.	:	

O R D E R

And now, this **9th** day of **September, 2017**, upon consideration of the Motion for Summary Judgment filed by Defendant Textron, Inc. (ECF No. 92), as well as the response and reply thereto (ECF Nos. 120 & 122), it is hereby **ORDERED** that the motion is **GRANTED**.[1]

[1] As a result, the Clerk of Court shall terminate Textron on the docket.

This case was transferred from the Northern District of Ohio on January 24, 2011 as part of MDL-875. Plaintiff asserts that during his service as a merchant marine between 1957 and 1968, he was exposed to asbestos aboard the vessels on which he served and, as a result, he contracted asbestosis. Against the owners of these vessels, Plaintiff has brought claims of negligence under the Jones Act, 46 U.S.C. § 30104, and for unseaworthiness under general maritime law.

Regarding Textron, Plaintiff alleges that he served aboard the Leilani (a vessel for which Textron is responsible) from May 4, 1957 to May 15, 1957 as a scullion and from May 28, 1957 to July 27, 1957 as a porter. Plaintiff contends that he was exposed to asbestos thereon, but has not provided any direct evidence of such exposure.

I. STANDARDS

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. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient" to overcome a motion for summary judgment. Id. at 252.

In undertaking this analysis, the court must view all facts in the light most favorable to the non-moving party. Scott v. Harris, 550 U.S. 372, 380 (2007). 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.

The Jones Act authorizes a seaman injured in the course of employment to bring a civil suit against his or her employer. 46 U.S.C. §30104. "Though a plaintiff alleging claims under the Jones Act must prove the traditional elements of negligence – duty, breach, notice, and causation - the standard of proof for causation when asserting negligence under the Jones Act is relaxed, sometimes termed 'featherweight.'" Fasold v. Delaware River & Bay Auth., 117 F. App'x 836, 838 (3d Cir. 2004) (quoting Evans v. United Arab Shipping Co. S.A.G., 4 F.3d 207, 210 (3d Cir. 1993)); see also Sloan v. United States, 603 F. Supp. 2d 798, 805 (E.D. Pa. 2009) (providing that the causation standard in a Jones Act case "allows a seaman to survive summary judgment by presenting even the slightest proof of causation").

II. ANALYSIS

Textron has met its initial burden of proof in that it has established that there is no evidence in the record showing that Plaintiff was exposed to asbestos aboard the Leilani. As a result, Plaintiff must proffer minimal proof showing that he was exposed to asbestos while aboard the vessel.

Instead of attempting to meet this burden, Plaintiff argues, based on Judge White's concurrence in Celotex Corp. v. Catrett, 477 U.S. 317 (1986), that Textron did not actually meet its burden since it was required to show an absence of evidence after affirmatively taking the depositions of Plaintiff and his witnesses, which Textron did not do. See id. at 328 (White, J. concurring) (providing that a plaintiff need not "depose his witnesses or obtain their affidavits to defeat a summary judgment motion asserting only that he has failed to produce any support for his case. It is the defendant's task to negate, if he can, the claimed basis for the suit"). Judge White's concurrence, although of course owed some deference, has not been followed. Plaintiff cites only one 1987 case from the Eastern District of Michigan in which the court adopted Justice White's construction of the burden shifting procedure under Rule 56. Ditkof v. Owens-Illinois, Inc., 114 F.R.D. 104 (E.D. Mich. 1987).

Rather, the generally followed understanding of the summary judgment burden shifting paradigm is in line with the plurality opinion in Celotex:

> the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex, 477 U.S. at 322–23; see also id. at 325 ("[T]he 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.").

Here, Plaintiff has failed to present any evidence that he was exposed to asbestos aboard the Leilani. Other than very general references that all ships used asbestos-containing materials, he has proffered only one signed statement from a witness declaring that asbestos existed on the Leilani. Plaintiff submits no evidence that he was actually exposed thereto, however. The witness statement form was obviously prepared by counsel and includes only checkbox answers and generic statements that the witness served on a number of vessels (including the Leilani) between 1957 and 1991; that asbestos was used throughout the vessels; and that all workers breathed dust from the asbestos daily. (ECF No. 120-3 at 8-9). The statement lacks any specific reference to asbestos use aboard the Leilani or how the witness knew the materials contained asbestos. Plaintiff is not referenced anywhere in the statement, although based on the witness's and Plaintiff's service dates, they served on the Leilani together between May 28, 1957 and July 3, 1957. Nonetheless, there is no indication that the witness knew Plaintiff or saw him working around asbestos-containing materials.

Even under the "featherweight" Jones Act causation standard, Plaintiff must proffer at least slight proof that asbestos exposure aboard the Leilani caused his illness. In this case, given the dearth of evidence proffered by Plaintiff, no reasonable jury could find that he has met his burden of showing even a slight link between his specific service aboard the Leilani and his asbestosis. See Bartel v. A-C Prod. Liab. Tr., No. CIV.A. 2:10-37528, 2014 WL 8392369, at *1 fn.1 (E.D. Pa. Sept. 3, 2014) (J. Robreno) (providing that "even if a reasonable jury could conclude that the vast majority of merchant marines were exposed to respirable asbestos aboard any given vessel, in the absence of any evidence (circumstantial or direct) pertaining specifically to [the decedent's] service on the [the applicable ship], a reasonable jury could not conclude that [he] was exposed to respirable asbestos on the [ship]. Under the ['featherweight' standard], '[j]udicial appraisal of the proofs to determine whether a jury question is presented is narrowly limited to the single inquiry whether, with reason, the conclusion may be drawn that negligence of the employer played any part at all in the injury or death.'" (emphasis original)

AND IT IS SO ORDERED.

/s/ Eduardo Robreno
EDUARDO C. ROBRENO, J.

(quoting Rogers v. Missouri Pac. R. Co., 352 U.S. 500, 506-07 (1957)).

Therefore, Textron is entitled to summary judgment.