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

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| CHARLES AIKINS,<br><br>Plaintiff,<br><br>v.<br><br>GENERAL ELECTRIC COMPANY, ET AL.,<br><br>Defendants. | : | CONSOLIDATED UNDER MDL 875<br><br>Transferred from the Northern District of California (Case No. 10-00406-SI)<br><br>E.D. PA CIVIL ACTION NO. 2:10-CV-64595-ER |

**O R D E R**

**AND NOW**, this **9th** day of **December, 2011**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Todd Shipyards (Doc. No. 28) is **GRANTED in part; DENIED in part.**[1]

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[1] This case was originally filed on January 28, 2010 in the United States District Court for the Northern District of California. It was thereafter transferred to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875. Federal jurisdiction in this case arises from diversity of citizenship (28 U.S.C. § 1332).

Plaintiff Charles Aikins worked as a ship surveyor for the United States Department of Defense in the Supervisor of Shipbuilding Offices (SUPSHIPS). He also was a certified boiler inspector. He alleges that he was exposed to asbestos-containing products (in particular, thermal pipe and block insulation and refractory boiler materials) aboard two (2) newly-built ships (USS Hollister and USS Hepburn) that were manufactured by Defendant Todd Shipyards Corporation ("Todd Shipyards"), and one ship (USS Mauna Kea) on which Todd Shipyards made repairs. His alleged exposure on these ships occurred during the following time periods:

USS Hollister: one month during 1960 to 1971

USS Hepburn: approximately one year during 1977 or 1978

USS Mauna Kea: between 1975 and 1979

Plaintiff has brought claims of negligence and strict liability (products liability) against various defendants. Defendant Todd Shipyards has moved for summary judgment, arguing that (1) Plaintiff has failed to provide product identification evidence sufficient to establish causation because there is no evidence that any asbestos to which he was exposed was originally installed by (or otherwise creating potential liability for) Todd Shipyard, (2) it is immune from liability by way of the government contractor defense, and (3) it is immune from liability because both Plaintiff and the Navy/Department of Defense were sophisticated users of asbestos products. In its reply memorandum, Todd Shipyards further contends that much of Plaintiff's evidence is inadmissible and should be excluded.

In addition to refuting each of Defendant's arguments, Plaintiff contends (in a set of objections filed with his opposition) that the declarations of Admiral Roger B. Horne, Jr., Stuart Salot, Ph.D., and James Arrol are inadmissible and should not be considered by this Court in connection with Defendant's motion.

## I. Legal Standard

### A. Summary Judgment 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.

B. The Applicable Law

1. Government Contractor Defense (Federal Law)

Defendant's motion for summary judgment on the basis of the government contractor defense is governed by federal law. In matters of federal law, the MDL transferee court applies the law of the circuit where it sits, which in this case is the law of the U.S. Court of Appeals for the Third Circuit. Various Plaintiffs v. Various Defendants ("Oil Field Cases"), 673 F. Supp. 2d 358, 362-63 (E.D. Pa. 2009)(Robreno, J.).

2. State Law Issues (California Law)

With respect to the remainder of the claims and defenses in this case, the parties have agreed that California law applies. Therefore, this Court will apply California law in deciding Todd Shipyards's Motion for Summary Judgment. See Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938); see also Guaranty Trust Co. v. York, 326 U.S. 99, 108 (1945).

C. Government Contractor Defense

To satisfy the government contractor defense, a defendant must show that (1) the United States approved reasonably precise specifications for the product at issue; (2) the equipment conformed to those specifications; and (3) it warned the United States about the dangers in the use of the equipment that were known to it but not to the United States. Boyle v. United Technologies Corp., 487 U.S. 500, 512 (1988). As to the first and second prongs, in a failure to warn context, it is not enough for defendant to show that a certain product design conflicts with state law requiring warnings. In re Joint E. & S.D.N.Y. Asbestos Litig., 897 F.2d 626, 630 (2d Cir. 1990). Rather, the defendant must show that the government "issued reasonably precise specifications covering warnings-specifications that reflect a considered judgment about the warnings at issue." Hagen, 539 F. Supp. 2d at 783 (citing Holdren v. Buffalo Pumps, Inc., 614 F. Supp. 2d 129, 143 (D. Mass. 2009)). Government approval of warnings must "transcend rubber stamping" to allow a defendant to be shielded from state law

liability. 539 F. Supp. 2d at 783. This Court has previously cited to the case of Beaver Valley Power Co. v. Nat'l Engineering & Contracting Co., 883 F.2d 1210, 1216 (3d Cir. 1989), for the proposition that the third prong of the government contractor defense may be established by showing that the government "knew as much or more than the defendant contractor about the hazards" of the product. See, e.g., Willis v. BW IP Int'l, Inc., No. 09-91449 (E.D. Pa. Aug. 29, 2011) (Robreno, J.); Dalton v. 3M Co., No. 10-64604 (E.D. Pa. Aug. 2, 2011) (Robreno, J.). Although this case is persuasive, as it was decided by the Court of Appeals for the Third Circuit, it is not controlling law in this case because it applied Pennsylvania law. Additionally, although it was decided subsequent to Boyle, the Third Circuit neither relied upon, nor cited to, Boyle in its opinion.

D. Government Contractor Defense at the Summary Judgment Stage

This Court has noted that, at the summary judgment stage, a defendant asserting the government contractor defense has the burden of showing the absence of a genuine issue of material fact as to whether it is entitled to the government contractor defense. Compare Willis v. BW IP International Inc., 2011 WL 3818515 at *1 (E.D. Pa. Aug. 26, 2011) (Robreno, J.) (addressing defendant's burden at the summary judgment stage), with Hagen v. Benjamin Foster Co., 739 F. Supp. 2d 770 (E.D. Pa. 2010) (Robreno, J.) (addressing defendant's burden when Plaintiff has moved to remand). In Willis, the MDL Court found that defendants had not proven the absence of a genuine issue of material fact as to prong one of the Boyle test since plaintiff had submitted affidavits controverting defendants' affidavits as to whether the Navy issued reasonably precise specifications as to warnings which were to be placed on defendants' products. The MDL Court distinguished Willis from Faddish v. General Electric Co., No. 09-70626, 2010 WL 4146108 at *8-9 (E.D. Pa. Oct. 20, 2010) (Robreno, J.), where the plaintiffs did not produce any evidence of their own to contradict defendants' proofs. Ordinarily, because of the standard applied at the summary judgment stage, defendants are not entitled to summary judgment pursuant to the government contractor defense.

E. Sophisticated User Defense Under California Law

The California Supreme Court has adopted the sophisticated user defense. Johnson v. American Standard, Inc., 43 Cal.4th 56, 70 (2008). In short, the defense provides that

when a potentially hazardous product is sold to a "sophisticated user," the law does not impose on the manufacturer a duty to warn. Id. at 65. This is because the failure to provide warnings about risks to sophisticated users "usually is not a proximate cause of harm resulting from those risks suffered by the buyer's employees or downstream purchasers." Id. at 65. The defense applies equally to strict liability and negligent failure to warn claims. Id. at 65 and 71.

Under the sophisticated user defense, the inquiry focuses on whether the plaintiff knew, or should have known, of the particular risk of harm from the product giving rise to the injury. Id. at 71. The duty to warn is measured by what is generally known or should have been known to the "class of sophisticated users," rather than by the individual plaintiff's subjective knowledge. Id. at 65-66. The sophisticated user's knowledge of the risk is measured from the time of the plaintiff's injury, rather than from the date the product was manufactured. Id. at 74. Therefore, California's sophisticated user defense precludes liability against a manufacturer's failure to warn if the plaintiff belonged to a class of users who knew or should have known of the dangers at issue.

In Johnson, the Court discussed an asbestos products liability case decided in a federal court under diversity jurisdiction, in which the court predicted that California's Supreme Court would allow the defendant to assert the sophisticated user defense when claims were brought against it by an employee of the Navy and the defendant asserted that the Navy was a sophisticated user with as much awareness of the hazards of asbestos as the defendant-manufacturer. Id. at 69 (citing In re Related Asbestos Cases, 543 F. Supp. 1142 (N.D. Cal. 1982)). The California Supreme Court noted that it found the reasoning of the federal court persuasive. Id.

F. Product Identification/Causation Under California Law

Under California law, a plaintiff need only show (1) *some* threshold exposure to the defendant's asbestos-containing product and (2) that the exposure "in reasonable medical probability was a substantial factor in contributing to the aggregate dose of asbestos the plaintiff or decedent inhaled or ingested, and hence to the risk of developing asbestos-related cancer." McGonnell v. Kaiser Gypsum Co., Inc., 98 Cal. App. 4th 1098, 1103 (Cal. Ct. App. 2002); see also, Rutherford v. Owens-Illinois, 16 Cal. 4th 953, 977 n.11, 982-83 (Cal. Ct. App. 1997)

("proof of causation through expert medical evidence" is required). The plaintiff's evidence must indicate that the defendant's product contributed to his disease in a way that is "more than negligible or theoretical," but courts ought not to place "undue burden" on the term "substantial." Jones v. John Crane, Inc., 132 Cal. App. 4th 990, 998-999 (Cal. Ct. App. 2005).

The standard is a broad one, and was "formulated to aid plaintiffs as a broader rule of causality than the 'but for' test." Accordingly, California courts have warned against misuse of the rule to preclude claims where a particular exposure is a "but for" cause, but defendants argue it is "nevertheless. . . an insubstantial contribution to the injury." Lineaweaver v. Plant Insulation Co., 31 Cal. App.4th 1409, 1415 (Cal. Ct. App. 1995). Such use "undermines the principles of comparative negligence, under which a party is responsible for his or her share of negligence and the harm caused thereby." Mitchell v. Gonzales, 54 Cal. 3d 1041, 1053 (Cal. 1991).

## II. Defendant Todd Shipyards's Motion for Summary Judgment

As a preliminary matter, the Court has considered each party's objections to the admissibility of the opposing party's evidence and concludes that all of the contested evidence may be relied upon by the parties in connection with the present motion for summary judgment.

Government Contractor Defense

Todd Shipyards asserts the government contractor defense, arguing that it is immune from liability in this case, and therefore entitled to summary judgment, because the Navy exercised discretion and approved reasonably precise specifications for the products at issue, Defendants provided warnings that conformed to the Navy's approved warnings, and the Navy knew about the hazards of asbestos. In asserting this defense, Todd Shipyards relies upon the declarations of Admiral Roger B. Horne, Jr. and Stuart Salot, Ph.D.

In response, Plaintiff argues that summary judgment in favor of Defendant on grounds of the government contractor defense is not warranted because Todd Shipyards has failed to establish three threshold issues prerequisite to application of the Boyle test: Todd Shipyards has (1) not produced its contract with the government or otherwise proven that it was a government contractor, (2) not produced any evidence that the ships at issue

were "military equipment" within the definition set forth in Boyle, and (3) not demonstrated a genuine significant conflict between state tort law and fulfilling its contractual federal obligations (i.e., that it was specifically told by the Navy not to warn about asbestos) and, furthermore, cannot demonstrate such without providing the Court with a copy of its contract with the government. Furthermore, Plaintiff asserts that the government contractor defense is not warranted because (4) SEANAV Instruction 6260.005 makes clear that the Navy encouraged Defendant to warn, (5) military specifications merely "rubber stamped" whatever warnings Todd Shipyards elected to use (or not use) and do not reflect a considered judgment by the Navy, (5) there is no military specification that precluded warning about asbestos hazards, and (6) Todd Shipyards cannot demonstrate what the Navy knew about the hazards of asbestos relative to the knowledge of Todd Shipyards, nor that it knew that the Navy knew more than it did at the time of the alleged exposure.

During oral argument, counsel for Plaintiff focused largely on the initial argument, asserting that Defendant may not satisfy its burden in establishing the affirmative government contractor defense without producing a copy of the Defendant's contract with the United States Government. The Court notes that, in establishing the availability to the Defendant of the government contractor defense, the terms and conditions of the contract are irrelevant and, instead, it is the existence of a contractual relationship with the Government which the Defendant must show. This is so because the Defendant is not seeking to prove the content of the contract but, rather, the existence of a contractual relationship between the parties. The Court concludes that, given the magnitude of the task at hand - construction of naval vessels, even in the absence of a copy of the contract itself, no reasonable jury could conclude that Defendant built the ships at issue for the United States Government without having had a contractual relationship with the Government. Accordingly, the Court rejects the argument that the absence of the contract itself in the Defendant's proofs is fatal to the government contractor defense.

In light of the Court's determination that the existence of a contractual relationship between the United States Government and Todd Shipyards is apparent and beyond dispute, the Court deems Plaintiff's argument that the Navy ships procured by the Government have not been established to be "military equipment" unavailing. The Court concludes that, in light of the nature of the ships at issue as Navy ships, there is no genuine

issue of material fact regarding the nature of these ships as "military equipment" such that summary judgment should be precluded based on this argument.

With respect to Plaintiff's third argument, this Court has previously held that a Defendant need not establish that the Navy specifically prohibited it from warning about asbestos. See, e.g., Faddish v. General Electric Co., No. 09-70626, 2010 WL 4146108, at *9 (E.D. Pa. Oct. 20, 2010)(Robreno, J.). Accordingly, this argument is rejected.

In arguing that there is a genuine issue of material fact that precludes summary judgment on grounds of this defense, Plaintiff cites to MIL-M-15071D and SEANAV Instruction 6260.005, each of which Plaintiff contends indicates that the Navy not only permitted warnings but encouraged warnings and, in some cases (such as the case of hazardous asbestos), expressly required warnings. Construing the evidence in the light most favorable to the Plaintiff, as this Court is required to do in deciding this motion, it appears that the evidence pointed to by Plaintiff is (or at least may be) in direct contradiction of the evidence presented by Defendant Todd Shipyards in the declaration of Admiral Horne and Dr. Salot and relied upon by it in asserting the government contractor defense. The Court concludes that Plaintiff has identified a genuine issue of material fact regarding whether Todd Shipyards is entitled to immunity under the government contractor defense. Accordingly, summary judgment is not warranted on this point.

Sophisticated User Defense

Todd Shipyards asserts that it is entitled to summary judgment on the basis of the sophisticated user defense because (1) Plaintiff was a sophisticated user of asbestos products, and/or (2) the Navy/Department of Defense was a sophisticated user of asbestos products. In asserting this defense, it cites to Johnson, 43 Cal.4th 56.

First, Todd Shipyards argues that Plaintiff can be deemed a sophisticated user based on his own testimony that, by 1960 (the time of the earliest alleged exposure at issue), he considered himself an expert in boiler repair such that Todd Shipyards would have taken his advice on how to deal with such repairs.

Second, Todd Shipyards cites to Dr. Salot's declaration, which states that the Navy had begun implementing asbestos safety controls by 1971 (such as mandating the use of respirators) and that OSHA had enacted regulations about controlling asbestos that were in effect by 1973. Todd Shipyards argues that, because these legal requirements were enacted and would have been applicable to the Department of Defense as an employer, it presumably knew about asbestos at that time such that it was a sophisticated user. In addition, Todd Shipyards has provided a declaration of Admiral Roger B. Horne, Jr., who states that, during all time periods, the Navy had state-of-the-art knowledge regarding asbestos hazards such that a private company such at Todd Shipyards would not have had more knowledge about asbestos hazards than did the Navy. Admiral Horne states that it was not until some time during the late 1960s that the Navy became fully aware of the asbestos hazards pertinent to Plaintiff's alleged exposure aboard one of the ships at issue (USS Hollister). He notes that, by 1972, the Navy began the process of phasing out asbestos-containing products.

In response, Plaintiff asserts that Todd Shipyards is not entitled to summary judgment on grounds of the sophisticated user defense because (1) Todd Shipyards has not adduced evidence that Plaintiff was a sophisticated user, (2) Todd Shipyards is really arguing for a "sophisticated intermediary defense" (which is not recognized by California law), since Plaintiff merely worked on Navy ships as a (presumably) unsophisticated worker, and (3) any policy determination to expand California law to provide a defense under the facts and circumstances (i) is not properly carried out by an MDL court and (ii) involves a fact-specific determination properly handled by a jury and, thus, precluding summary judgment. Plaintiff attempts to distinguish Johnson by noting that the plaintiff in Johnson was a certified technician clearly shown to be a sophisticated user, whereas Defendant Todd Shipyards has provided no evidence that Plaintiff was sophisticated but instead argues that the Navy was sophisticated.

Defendant's argument that Plaintiff can be deemed a sophisticated user based on his own testimony that, by 1960, he considered himself an expert in boiler repair fails because Defendant cites to no evidence or reason to believe that an "expert in boiler repair" would have been sophisticated as to asbestos hazards at any point in time, much less at the time of Plaintiff's earliest alleged exposure (as early as 1960). Accordingly, there is no basis from which the Court could

conclude that asbestos hazards were generally known or should have been known to the "class of" "experts in boiler repair" at any time pertinent to Plaintiff's alleged exposure. See Johnson, 43 Cal.4th at 65-66.

The Court next considers Todd Shipyards's argument that it is entitled to summary judgment because the Navy/Department of Defense (as opposed to the Plaintiff) was a sophisticated user of asbestos at the pertinent time(s). Plaintiff's alleged exposures occurred during the time periods of (1) 1960 to 1971 (the exposure alleged aboard the earliest of the three ships at issue) and (2) 1975 to 1979 (the exposures alleged aboard the two later ships at issue). The declaration of Admiral Horne indicates that, at all times, the Navy had state-of-the-art knowledge regarding asbestos hazards that was equal or superior to that of Todd Shipyards's, that it was aware of the hazards of asbestos by 1972, and that it had at least some knowledge of the hazards of asbestos by the late 1960s. The declaration of Dr. Salot indicates that the Navy knew of and had begun taking steps against the hazards of asbestos by 1971.

Plaintiff has submitted no evidence to contradict these assertions of experts Admiral Horne and Dr. Salot. Instead, Plaintiff asserts that Defendant has adduced no evidence that Plaintiff was a sophisticated user and that the Navy's sophistication is irrelevant because the Navy was an "intermediary" and California does not recognize a "sophisticated intermediary user" defense. Plaintiff's argument fails because of the Johnson court's explicit approval of the reasoning of the court in In re Related Asbestos Cases. 43 Cal.4th at 69-70.

In In re Related Asbestos Cases, the plaintiff was an insulator and shipyard worker employed by the Navy. The court allowed the manufacturer defendant's assertion of the sophisticated user defense on grounds of the Navy's having knowledge of asbestos-related hazards, without even considering the level of sophistication of the individual plaintiff. 543 F. Supp. at 1150-52. In Johnson, the court affirmed the trial court's grant of summary judgment in favor of the defendant manufacturer because it presented undisputed evidence that the plaintiff/sophisticated user "could reasonably be expected to know of the hazard" at issue. 43 Cal.4th at 74. The case at hand is indistinguishable with respect to the facts of In re Related Asbestos Cases and Johnson, when taken together. Accordingly, in the instant case, summary judgment in favor of Defendant Todd shipyards is warranted with respect to the exposure alleged

aboard the two later ships because Plaintiff has not disputed evidence presented by Todd Shipyards that the Navy had knowledge of the hazards of asbestos prior to the time of this alleged exposure (beginning in approximately 1975) and that the Navy had state-of-the-art knowledge of the hazards of asbestos superior to that of Todd Shipyards. Johnson, 43 Cal.4th at 74. However, with respect to the exposure Plaintiff alleges aboard the earlier ship (during the time period 1960 to 1971), Defendant Todd Shipyards is not entitled to summary judgment because it has not presented any evidence that the Navy was aware of asbestos hazards such that it could be deemed a sophisticated user of asbestos during the full duration of this earlier time period of alleged exposure (beginning in 1960). Id. at 65-66. Accordingly, summary judgment is granted in part (as to the alleged exposures in 1975 to 1979) and denied in part (as to the alleged exposure in 1960 to 1971).

Product Identification/Causation

In light of the Court's determination regarding the sophisticated user defense, it is only necessary to address the sufficiency of Plaintiff's product identification evidence pertaining to the earliest incident of alleged exposure, aboard the USS Hollister (during the time period 1960 to 1971).

Todd Shipyards argues that summary judgment is appropriate because there is no evidence that Plaintiff was ever exposed to an asbestos-containing product that was originally installed by Todd Shipyards aboard the USS Hollister. Furthermore, it asserts that a Navy ship is not a "product" and workers or seaman working on the ship should not be considered "consumers" such that products liability law (i.e., strict liability) would apply. In support of this position it cites to an unpublished opinion: Stark v. Armstrong World Industries, Inc., 21 F.App'x 371 (6th Cir. 2001). Todd Shipyards contends that a ship is much more like a custom home (as opposed to a mass-produced commercial product), for which strict liability claims are not applicable.

In response, Plaintiff asserts that there is sufficient product identification evidence with respect to Defendant Todd Shipyards to establish causation based on the testimony of Plaintiff and expert Charles Ay. Plaintiff has also submitted a declaration of Herman Bruch, M.D. Plaintiff cites to California law to argue that a ship is a "product" for purposes of products liability law (i.e., its strict liability claim).

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The Court has considered Plaintiff's evidence pertaining to product identification/causation aboard the USS Hollister, which comes from three sources: (1) Plaintiff's declaration and deposition testimony, (2) the declaration of expert Charles Ay, and (3) the declaration of medical expert Herman Bruch, M.D. A summary of the relevant testimony is as follows:

i. Declaration and Deposition Testimony of Plaintiff

Plaintiff's declaration includes testimony that he was present and in proximity to other workers who tore out pipe and block insulation (which he believes, based on his experience, contained asbestos, given that it was "white-ish in color, [with] a chalky texture and [] a visibly fibrous component") aboard the USS Hollister, and that this work routinely created dust, which he breathed in. Plaintiff specifically notes that he did not wear any protective gear, such as a mask, during this work.

ii. Declaration of Expert Charles Ay

The declaration of expert Charles Ay (a certified asbestos consultant), who worked as an asbestos pipecoverer and insulator in shipyards and other types of work environments for approximately twenty-five (25) years, provides expert opinion testimony that, given the dates of the alleged exposure, and the particular ship and products at issue, Plaintiff's work on the USS Hollister exposed him to respirable asbestos fibers, which were, more likely than not, from products originally installed by Todd Shipyards.

iii. Declaration of Medical Expert Herman Bruch, M.D.

The declaration of Dr. Bruch opines "to a reasonable degree of medical certainty" that each and every one of Plaintiff's exposures to asbestos from materials aboard the USS Hollister was a substantial factor in the development of Plaintiff's mesothelioma, and it specifically identifies Plaintiff's alleged exposure to respirable asbestos fibers from the thermal insulation materials on the USS Hollister as a sufficient type of exposure.

In sum, Plaintiff and expert Ay provide evidence that Plaintiff was exposed to and inhaled respirable asbestos originally installed by Todd Shipyards aboard the USS Hollister, while expert Dr. Bruch provides opinion testimony that the

**AND IT IS SO ORDERED.**

**EDUARDO C. ROBRENO, J.**

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exposure was sufficient to constitute a substantial factor in the development of Plaintiff's disease. Therefore, the evidence submitted by Plaintiff is sufficient evidence from which a jury could reasonably conclude that Plaintiff was exposed to asbestos installed by Todd Shipyards and that this exposure "in reasonable medical probability was a substantial factor in contributing to the aggregate dose of asbestos the plaintiff or decedent inhaled or ingested, and hence to the risk of developing asbestos-related cancer." Accordingly, summary judgment in favor of Defendant Todd Shipyards is not warranted on this point. See McGonnell, 98 Cal. App. 4th 1098.

Plaintiff's claims pertaining to the USS Hollister are of both the negligence and strict liability/products liability variety. Defendant Todd Shipyards contends only that the latter type of claim would be precluded by a determination that a ship is not a "product." Therefore, summary judgment with respect to allegedly insufficient product identification would not be warranted even if the Court were to determine that a ship is not a product, as Plaintiff's claim sounding in negligence would not be eliminated by such a determination. For this reason, the Court need not reach the issue at this time and, therefore, declines to do so.