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

OLGA PAVLICK, Plaintiff,	:	CONSOLIDATED UNDER MDL 875
v.	:	Transferred from the District of Delaware (Case No. 10-00174)
ADVANCE STORES COMPANY, et al.,	:	E.D. PA CIVIL ACTION NO. 2:10-67147-ER
Defendants.	:	

O R D E R

AND NOW, this **21st** day of **February, 2013**, it is hereby **ORDERED** that the Motion for Summary Judgment of Arvinmeritor, Inc. (Doc. No. 253) is **GRANTED**. [1]

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[1] This case was transferred in May of 2010 from the United States District Court for the District of Delaware to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Plaintiff Olga Pavlick alleges that her husband, John Pavlick ("Decedent" or "Mr. Pavlick"), was exposed to asbestos during his work (1) in the army (in Germany), (2) in an auto parts-related job in New Jersey, and (3) while performing home remodeling. Mr. Pavlick developed mesothelioma and died from that illness.

Plaintiff has brought claims against various defendants. Defendant Arvinmeritor, Inc. ("Arvinmeritor"), a successor-in-interest to Rockwell International Corporation (hereinafter referred to as "Rockwell") has moved for summary judgment arguing that there is insufficient evidence to support a finding of causation with respect to any product for which it is liable.

Defendant Arvinmeritor contends that New Jersey law applies to the claims against it (although the alleged exposure at issue occurred exclusively in Germany). Plaintiff agrees that New Jersey law applies to the claims at issue.

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

The parties agree that New Jersey law applies. Therefore, this Court will apply New Jersey law in deciding Defendant'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. Product Identification / Causation Under New Jersey Law

This Court has previously considered the product identification/causation standard under New Jersey law. In Lewis v. Asbestos Corp, (No. 10-64625), this Court wrote:

> To maintain an asbestos action in New Jersey, a plaintiff must "provide sufficient direct or circumstantial evidence from which a jury could conclude that plaintiff was in close proximity to, and inhaled, defendant's asbestos-containing product on a frequent and regular basis." Kurak v. A.P. Green Refractories Co., 689 A.2d 757, 761 (N.J. Super. Ct. App. Div. 1997) (quoting Sholtis v. American Cyanamid Co., 568 A.2d 1196, 1208 (N.J. Super. Ct. App. Div. 1989)). In order to meet this "frequency, regularity and proximity test," plaintiff must do more than "demonstrate that a defendant's asbestos product was present in the workplace or that he had 'casual or minimal exposure' to it." Kurak, 689 A.2d at 761 (quoting Goss v. American Cyanamid Co., 650 A.2d 1001, 1005 (N.J. Super. Ct. App. Div. 1994)). In addition to meeting the "frequency, regularity, and proximity test," plaintiff must establish causation by presenting "competent evidence, usually supplied by expert proof" showing that there is a nexus between exposure to defendant's product and plaintiff's condition. Kurak, 689 A.2d at 761.

2011 WL 5881183, * 1 n.1 (E.D. Pa. Aug. 2, 2011)(Robreno, J.).

D. Presumption Re: Warning Defect Under New Jersey Law

This Court has previously addressed the presumption regarding warning defect claims that exists under New Jersey law. In Lewis v. Asbestos Corp, (No. 10-64625), this Court wrote:

> In Coffman v. Keene Corp., the plaintiff claimed that an asbestos manufacturer's failure to place warnings on its asbestos-related products was a proximate cause of the plaintiff's development of asbestosis. 628 A.2d 710, 715 (N.J. 1993). The court recognized that, "[c]ausation is a fundamental requisite for establishing any product-liability action. The plaintiff must demonstrate so-called product-defect causation-that the defect in the product was a proximate cause of the injury." Id. at 716 (citing Michalko v. Cooke Color & Chem. Corp., 451 A.2d 179 (N.J. 1982); Vallillo v. Mushkin Corp., 514 A.2d 528 (N.J. App. Div. 1986)). "When the alleged defect is the failure to provide warnings, a plaintiff is required to prove that the absence of a warning was a proximate cause of his harm." 628 A.2d at 715 (citing Campos v. Firestone Tire & Rubber

Co., 485 A.2d 305 (N.J. 1984)). The court adopted a "heeding presumption" in products liability failure to warn cases that the plaintiff "would have followed an adequate warning had one been provided, and that the defendant in order to rebut that presumption must produce evidence that such a warning would not have been heeded." 628 A.2d at 720. Evidence that the plaintiff was aware of the dangers associated with the defendant's product or that the plaintiff would have disregarded the warnings had they been provided may rebut this heeding presumption. Id. at 721. The court held that "to overcome the heeding presumption in a failure-to-warn case involving a product used in the workplace, the manufacturer must prove that had an adequate warning been provided, the plaintiff-employee with meaningful choice would not have heeded the warning." Id. at 724.

2011 WL 5881181, * 1 n.1 (E.D. Pa. Aug. 2, 2011)(Robreno, J.).

II. Defendant Arvinmeritor's Motion for Summary Judgment

A. Defendant's Arguments

Defendant Arvinmeritor argues that there is insufficient product identification evidence to support a finding of causation with respect to any product(s) for which it is liable.

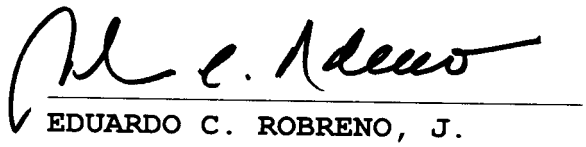
B. Plaintiff's Arguments

In response to Defendant's assertion that there is insufficient product identification evidence to establish causation with respect to its product(s), Plaintiff has identified the following evidence:

- Testimony re: Rockwell
  Plaintiff cites testimony from various sources, which she contends indicates that Rockwell's brake assemblies were placed on AM General's 2 1/2 ton and 5 ton vehicles.

  (Pl. Exs. 54 at 112-18, 57 at 44-45, 75 at 57, 65, 92-94, 124-25, 154-55; Doc. Nos. 267-80, 267-83, 267-102, and 267-103.)

AND IT IS SO ORDERED.



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- Evidence re: Rockwell Brake Assemblies
  Plaintiff cites evidence that AM General was Rockwell's major and only customer for axles and brake assemblies for 2 1/2 and 5 ton trucks from 1965 to 1975, and that it also sold replacement friction material for the brake assemblies it manufactured for the military. She cites evidence that all of the brake assemblies during the relevant time period contained asbestos.

  (Pl. Ex. 58, Doc. No. 267-84.)

- Evidence re: Rockwell Knowledge
  Plaintiff cites evidence regarding Rockwell's alleged knowledge of asbestos hazards.

  (Pl. Exs. 74-75; Doc. Nos. 267-101 to 267-103.)

C. Analysis

Plaintiff contends that Defendant Arvinmeritor, the successor-in-interest to Rockwell, is liable for asbestos-containing brake assemblies (and replacement component parts) used with AM General vehicles. Plaintiff has identified no evidence that the brake assemblies (either new/original or replacement) to which Decedent was exposed in connection with his work on or around AM General vehicles were manufactured or supplied by Rockwell, or that Rockwell was an exclusive supplier of brakes for those vehicles. While Plaintiff has provided evidence that AM General was the sole customer of Rockwell's, it does not follow that AM General only used Rockwell brake assemblies. Therefore, no reasonable jury could conclude from the evidence that Decedent was exposed to asbestos from brake assemblies or replacement component parts manufactured or supplied by Rockwell such that it was a substantial factor in the development of his mesothelioma because any such finding would be based on speculation. See Kurak, 689 A.2d at 761. Accordingly, summary judgment in favor of Defendant Arvinmeritor is granted. Anderson, 477 U.S. at 248-50.