

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

RONALD L. MADDUX, SR.,	:	CONSOLIDATED UNDER
	:	MDL 875
Plaintiff,	:	
	:	Transferred from the
	:	Southern District of
v.	:	Indiana
	:	(Case No. 98-00164)
	:	
OWENS CORNING FIBERGLAS CORPORATION, ET AL.,	:	E.D. PA CIVIL ACTION NO.
	:	2:09-64625-ER
Defendants.	:	

ORDER

AND NOW, this **26th** day of **July, 2012**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant **Foster Wheeler Energy Corporation** (Doc. No. 14) is **GRANTED**.¹

¹ This case was filed in the United States District Court for the Southern District of Indiana in October of 1998. In April of 2009, it was transferred to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Plaintiff Ronald L. Maddux, Sr., alleges that he was exposed to asbestos from products manufactured by Defendant Foster Wheeler Energy Corporation ("Foster Wheeler") during his career as a pipefitter, which lasted from 1967 to 1990.

Plaintiff was diagnosed with asbestosis and asbestos-related lung cancer. He asserts that he developed these diseases as a result of his asbestos exposure from Defendant's product(s). He was never deposed in this action.

Plaintiff brought claims against various defendants. Defendant Foster Wheeler has moved for summary judgment, arguing that there is no product identification evidence to establish causation with respect to any product(s) for which it is responsible. Defendant contends that Indiana substantive law applies but that it is irrelevant because its motion should be resolved as a matter of procedure under the Federal Rules of Civil Procedure, as a result of Plaintiff's alleged failure to



EDUARDO C. ROBRENO, J.

comply with Court orders regarding procedure. Plaintiff does not make clear what law he contends applies and, instead, requests that the Court hold the motion in abeyance so that he can clarify whether the case has already been settled with Defendant.

A hearing on Foster Wheeler's motion was scheduled for July 24, 2012 at 10:00 a.m. (See Doc. No. 7.) Neither counsel for Plaintiff nor counsel for Defendant Foster Wheeler appeared at the hearing. Neither party notified the Court of an out-of-court resolution of Defendant's motion. As provided under local rules, before the Court grants summary judgment, it must determine that the moving party is entitled to judgment as a matter of law. See Loc. R. Civ. P. 7.1(c). Therefore, notwithstanding counsel's failure to appear, the Court has reviewed the evidence present in the record and finds that there is no genuine dispute of material fact and that Defendant is entitled to judgment as a matter of law. The evidence and analysis are as follows:

Plaintiff alleges that he was exposed to asbestos from an asbestos-containing product(s) for which Defendant Foster Wheeler is responsible. However, Plaintiff has identified no evidence of exposure to asbestos from any product for which Foster Wheeler could potentially be responsible. Accordingly, no reasonable jury could conclude from the evidence that Defendant's product(s) was a cause of Plaintiff's illness. Therefore, summary judgment in favor of Defendant is warranted. See Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-50 (1986).

Under separate order, the Court will consider whether sanctions upon counsel are appropriate for failure to appear at the hearing.