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

ARVA ANDERSON,	:	CONSOLIDATED UNDER MDL 875
Plaintiff,	:	
	:	Transferred from the District of Utah
v.	:	(Case No. 09-01534)
FORD MOTOR CO., ET AL.,	:	
	:	E.D. PA CIVIL ACTION NO. 2:09-69122
Defendants.	:	

O R D E R

AND NOW, this **27th** day of **April, 2011**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Carrier Corp., filed on October 20, 2010 (doc. no. 165), is **GRANTED.**[1]

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[1] Plaintiffs filed this action on October 1, 2008 in the Third Judicial District of Salt Lake County, Utah. (Def.'s Mot. Summ. J., doc. no. 45 at 3.) This case was removed to the United States District Court for the District of Utah and was subsequently transferred to the United States District Court for the Eastern District of Pennsylvania as part of MDL 875 on October 22, 2008. (Transfer Order, doc. no. 1.)

Joseph Anderson worked primarily as a pipefitter at various locations and job sites from 1950 until 1990. (Pl.'s Resp., doc. no. 209 at 2.) Mr. Anderson was diagnosed with mesothelioma on October 10, 2005. (Id.) Mr. Anderson passed away due to mesothelioma on June 7, 2008. (Id.) From 1969 until 1976, Mr. Anderson worked for Koldaire. (Anderson Dep. at 117.) Mr. Anderson stated that as part of his job at Koldaire, he worked at grocery stores on refrigeration, drains, and cooling towers for air compressors. (Id.)

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

Federal jurisdiction in this case is based on diversity of citizenship under 28 U.S.C. § 1332. The alleged exposures which are relevant to this motion occurred while Mr. Anderson worked at various jobsites in Utah. Therefore, this Court will apply Utah substantive 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).

In McCorvey v. Utah State Department of Transportation, the Supreme Court of Utah held that in order to establish proximate causation, a plaintiff must prove that the defendant's conduct "was a substantial causative factor leading to his injury." 868 P.2d 41, 45 (Utah 1993) (citing Mitchell v. Pearson Enter., 697 P.2d 240, 246 (Utah 1984); Hall v. Blackham, 417 P.2d 664, 667 (Utah 1966); Restatement (Second) of Torts § 431(a) (1965)). The

plaintiff bears the burden of proving causation and "[a] mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant." Weber v. Springville City, 725 P.2d 1360, 1367 (Utah 1986).

In the asbestos context, the District Court of the Third Judicial District in and for Salt Lake County, Utah has recognized that "there is no causation standard in Utah for asbestos exposure cases, other than the non-specific causation standard generally applicable to all cases in Utah." Sortor v. Asbestos Defendants, No. 040909899 (March 12, 2006). In this memorandum decision, Judge Iwasaki noted that, "the issue of causation is very fact sensitive and, accordingly, each case must stand on its own." Id. at 4. The court held that,

> plaintiffs have the burden of proving that plaintiff had or has an asbestos related injury, that plaintiff was exposed to an asbestos containing product manufactured by defendant, and that the exposure to the asbestos containing product was a substantial factor in causing the injury. The applicability of the Lohrmann considerations in the substantial factor analysis depends upon the facts in evidence and, presumably, will vary from case to case.

Id. In a subsequent memorandum decision clarifying the Sortor decision, Judge Iwasaki refused to require plaintiffs to establish a dosage or exposure requirement in order meet the substantial factor test. In re: Asbestos Litig., No. 01090083 (Sept. 6, 2007). Judge Iwasaki stated,

> [w]hile the Court foresees arguments regarding dosage will be made in connection with the "substantial factor" analysis, such will, by necessity, be subject to other considerations such as, 'the nature of the disease, the quality of the evidence presented, the types of asbestos involved, the location, how they were handled, as well as if and how they were released into the air,' just to name a few.

Id. at 6 (quoting Court's Memorandum Decision of March 12, 2006).

II. MOTION FOR SUMMARY JUDGMENT OF CARRIER CORP.

In his deposition, Mr. Anderson was asked,

Q: You talked about a company called "Carrier." What do you remember about Carrier?

A: Carrier for Koldaire, we buy cooling towers. It was a tower that we set out on the roof that would cool the water from the air compressors, so the air compressors would stay cold like a radiator.

Q: So did you personally work on carrier equipment?

A: Yes. That wasn't my main job though. My main job was in the plumbing division of the company. But I did get into hooking up some of the cooling towers and compressors.

(Anderson Dep., doc. no. 166-1 at 120.) Mr. Anderson was again asked about Carrier cooling towers.

Q: Now a Carrier - now a cooling tower, tell me what that is.

A: Well, every time you had refrigeration you have compressors that compress air that move the refrigerant and stuff around.

Q: Okay.

A: And these compressors have to be cooled. They have water under the compressors that cools them, just like in a car. And then they'll pump it out to the cooling tower, it will go through a cooling tower, which is no more than a big radiator. And it cools down the water and then sends it back to the compressors again to keep the compressors cool.

Q: Now the cool - I think that you testified that the cooling towers were Carrier -

A: Yes.

Q: -do you recall that? And you installed a Carrier cooling tower?

A: Yeah.

Q: Do you recall if the compressors were Carrier? Or were there another brand?

A: I'm not sure.

Q: Okay. And the cooling towers sit on the roof, right?

A: Yes.

(Id. at 417-18.) In his deposition, Mr. Anderson was asked,

Q: Do you have any basis for thinking that you were exposed to asbestos by installing those Carrier cooling towers?

A: I don't know if there's any asbestos in them.

(Anderson Dep. at 420.) In its answers to interrogatories, Carrier admitted that, "[c]ertain models of Freon compressors, residential furnaces, residential blowers, rooftop package units, industrial chillers, and marine equipment may have incorporated chrysotile asbestos-containing components from time to time." (Pl.'s Resp. at 4.) Defendant asserts that it did not manufacture cooling towers and that none of the products that it did manufacture comport with Mr. Anderson's description of cooling towers.

In his deposition, Mr. Anderson testified that he worked with Carrier Corp. cooling towers, but that he did not know whether these towers contained asbestos. In its answer to interrogatories, Carrier Corp. admitted that some of its rooftop package units and industrial chillers may have been incorporated with asbestos-containing component parts; however, Carrier Corp. maintains that it did not manufacture the cooling towers that Mr. Anderson worked with. Even if this Court accepts as true that Mr. Anderson did work with some Carrier Corp. product, Plaintiff has not presented sufficient evidence that any Carrier Corp. product Mr. Anderson worked with contained asbestos. In applying the substantial factor test, this Court considers the factors enumerated by Judge Iwasaki in his March 12, 2006 memorandum decision. As to the nature of the disease, Mr. Anderson passed away due to his development of mesothelioma. The quality of the evidence presented in this case is not strong since Defendant contends that it did not manufacture any cooling towers and Plaintiff has presented no evidence other than Mr. Anderson's testimony that he worked with Carrier Corp. cooling towers. Mr. Anderson is now deceased and Plaintiff has provided no co-worker testimony or documentary evidence. As to the other factors, there is no evidence that the Carrier Corp. products Mr. Anderson worked with contained asbestos or that any asbestos fibers were released when Mr. Anderson worked with any Carrier Corp. product. Accordingly, as Plaintiff has failed to raise a genuine issue of material fact as to whether exposure to Carrier Corp. asbestos-containing products was a substantial factor contributing to Mr. Anderson's development of mesothelioma, Defendant's Motion for Summary Judgment is granted.

E.D. PA NO. 2:09-69122

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.