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

CHARLES KRIK,	:	CONSOLIDATED UNDER
	:	MDL 875
Plaintiff,	:	
	:	
	:	Transferred from the Northern
v.	:	District of Illinois
	:	(Case No. 10-07435)
	:	
BP AMERICA, INC.,	:	
ET AL.,	:	E.D. PA CIVIL ACTION NO.
	:	2:11-63473-ER
Defendants.	:	

O R D E R

AND NOW, this **15th** day of **May, 2012**, it is hereby

ORDERED that the Motion for Summary Judgment of Defendant Crane Co. (Doc. No. 169) is **DENIED**.[1]

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[1] This case was transferred in February of 2011 from the United States District Court for the Northern District of Illinois to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Plaintiff Charles Krik ("Plaintiff") worked as a boilerman and boilermaker during his Navy career, from 1954 to 1970. His duties included pipefitting and insulation work. Plaintiff worked on repair ships for about six (6) years of his naval career, including some work in the valve shop when repairing the USS Tutuila. During his civilian career, Plaintiff worked as a boilermaker and pipefitter, including work for two unions in the Chicago area. In 1990, he received training in asbestos removal to recognize what materials were asbestos. Defendant Crane Co. ("Crane Co.") manufactured valves. Plaintiff has alleged that he was exposed to asbestos from Crane Co. valves during the following periods of his work:

- Navy Service (aboard ships) - 1954-1970
- Civilian Work (Illinois) - 1970-late 70s

Plaintiff was diagnosed with lung cancer in November of 2008 and bilateral pleural plaque formations in June of 2011. He was deposed for two (2) days in July and August of 2011.

Plaintiff has brought claims against various defendants. Defendant Crane Co. has moved for summary judgment, arguing that (1) it is entitled to the bare metal defense, (2) there is insufficient product identification evidence to establish causation with respect to its product(s), (3) it is not liable for injuries arising from some of the product(s) at issue under successor liability principles, and (4) it is immune from liability by way of the government contractor defense. Defendant contends that maritime law applies to some of Plaintiff's alleged exposure, while Illinois law applies to the remainder of the alleged exposure. Plaintiff contends that Illinois law applies to all exposure.

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

Defendant Crane Co. has asserted that maritime law is applicable with respect to Plaintiff's claims against it. Whether maritime law is applicable is a threshold dispute that is a question of federal law, see U.S. Const. Art. III, § 2; 28 U.S.C. § 1333(1), and is therefore governed by the law of the circuit in which this MDL court sits. See Various Plaintiffs v. Various Defendants ("Oil Field Cases"), 673 F. Supp. 2d 358, 362 (E.D. Pa. 2009)(Robreno, J.). This court has previously set forth guidance on this issue. See Conner v. Alfa Laval, Inc., 799 F. Supp. 2d 455 (E.D. Pa. 2011)(Robreno, J.).

In order for maritime law to apply, a plaintiff's exposure underlying a products liability claim must meet both a locality test and a connection test. Id. at 463-66 (discussing Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995)). The locality test requires that the tort occur on navigable waters or, for injuries suffered on land, that the injury be caused by a vessel on navigable waters. Id. In assessing whether work was on "navigable waters" (i.e., was sea-based) it is important to note that work performed aboard a ship that is docked at the shipyard is sea-based work, performed on navigable waters. See Sisson v. Ruby, 497 U.S. 358 (1990). This Court has previously clarified that this includes work aboard a ship that is in "dry dock." See Deuber v. Asbestos Corp. Ltd., No. 10-78931, 2011 WL 6415339, at *1 n.1 (E.D. Pa. Dec. 2, 2011)(Robreno, J.)(applying maritime law to ship in "dry dock" for overhaul). By contrast, work performed in other areas of the shipyard or on a dock, (such as work performed at a machine shop in the shipyard, for example, as was the case with the Willis plaintiff discussed in Conner) is land-based work. The connection test requires that the incident could have "'a potentially disruptive impact on maritime commerce,'" and that "'the general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'" Grubart, 513 U.S. at 534 (citing Sisson, 497 U.S. at 364, 365, and n.2).

Locality Test

If a service member in the Navy performed some work at shipyards (on land) or docks (on land) as opposed to onboard a ship on navigable waters (which includes a ship docked at the shipyard, and includes those in "dry dock"), "the locality test is satisfied as long as some portion of the asbestos exposure occurred on a vessel

on navigable waters." Conner, 799 F. Supp. 2d at 466; Deuber, 2011 WL 6415339, at *1 n.1. If, however, the worker never sustained asbestos exposure onboard a vessel on navigable waters, then the locality test is not met and state law applies.

Connection Test

When a worker whose claims meet the locality test was primarily sea-based during the asbestos exposure, those claims will meet the connection test necessary for the application of maritime law. Conner, 799 F. Supp. 2d at 467-69. But if the worker's exposure was primarily land-based, then, even if the claims could meet the locality test, they do not meet the connection test and state law (rather than maritime law) applies. Id.

In instances where there are distinct periods of different types (e.g., sea-based versus land-based) of exposure, the Court may apply two different laws to the different types of exposure. See, e.g., Lewis v. Asbestos Corp., Ltd., No. 10-64625, 2011 WL 5881184, at *1 n.1 (E.D. Pa. Aug. 2, 2011)(Robreno, J.) (applying Alabama state law to period of land-based exposure and maritime law to period of sea-based exposure).

(a) Navy Service

It is undisputed that the alleged exposure pertinent to Crane Co. that occurred during Plaintiff's Navy service occurred during his work aboard various ships. Although Plaintiff alleges that this work included some work in a valve shop when repairing the USS Tutuila, his testimony indicates that this valve shop was located aboard a repair ship. Therefore, this alleged exposure was during sea-based work. See Conner, 799 F. Supp. 2d 455. Accordingly, maritime law is applicable to Plaintiff's claims against Crane Co. arising from this alleged exposure. See Id. at 462-63.

(b) Post-Navy Civilian Work

It is undisputed that the alleged exposure pertinent to Crane Co. that occurred during Plaintiff's post-Navy civilian work occurred on land in Illinois. Therefore, the alleged exposure pertinent to this defendant was during land-based work. See Conner, 799 F. Supp. 2d 455. Accordingly, as both parties agree, Illinois law is applicable to Plaintiff's claims against Crane Co. arising from this alleged exposure. See Id. at 462-63.

C. Product Identification/Causation Under Maritime Law

In order to establish causation for an asbestos claim under maritime law, a plaintiff must show, for each defendant, that "(1) he was exposed to the defendant's product, and (2) the product was a substantial factor in causing the injury he suffered." Lindstrom v. A-C Prod. Liab. Trust, 424 F.3d 488, 492 (6th Cir. 2005); citing Stark v. Armstrong World Indus., Inc., 21 F. App'x 371, 375 (6th Cir. 2001). This Court has also noted that, in light of its holding in Conner v. Alfa Laval, Inc., No. 09-67099, – F. Supp. 2d –, 2012 WL 288364 (E.D. Pa. Feb. 1, 2012)(Robreno, J.), there is also a requirement (implicit in the test set forth in Lindstrom and Stark) that a plaintiff show that (3) the defendant manufactured or distributed the asbestos-containing product to which exposure is alleged. Abbay v. Armstrong Int'l., Inc., No. 10-83248, 2012 WL 975837, at *1 n.1 (E.D. Pa. Feb 29, 2012)(Robreno, J.).

Substantial factor causation is determined with respect to each defendant separately. Stark, 21 F. App'x. at 375. In establishing causation, a plaintiff may rely upon direct evidence (such as testimony of the plaintiff or Decedent who experienced the exposure, co-worker testimony, or eye-witness testimony) or circumstantial evidence that will support an inference that there was exposure to the defendant's product for some length of time. Id. at 376 (quoting Harbour v. Armstrong World Indus., Inc., No. 90-1414, 1991 WL 65201, at *4 (6th Cir. April 25, 1991)).

A mere "minimal exposure" to a defendant's product is insufficient to establish causation. Lindstrom, 424 F.3d at 492. "Likewise, a mere showing that defendant's product was present somewhere at plaintiff's place of work is insufficient." Id. Rather, the plaintiff must show "'a high enough level of exposure that an inference that the asbestos was a substantial factor in the injury is more than conjectural.'" Id. (quoting Harbour, 1991 WL 65201, at *4). The exposure must have been "actual" or "real", but the question of "substantiality" is one of degree normally best left to the fact-finder. Redland Soccer Club, Inc. v. Dep't of Army of U.S., 55 F.3d 827, 851 (3d Cir. 1995). "Total failure to show that the defect caused or contributed to the accident will foreclose as a matter of law a finding of strict products liability." Stark, 21 F. App'x at 376 (citing Matthews v. Hyster Co., Inc., 854 F.2d 1166, 1168 (9th Cir. 1988)(citing Restatement (Second) of Torts, § 402A (1965))).

D. Product Identification/Causation Under Illinois Law

In order to establish causation for an asbestos claim under Illinois law, a plaintiff must show that the defendant's asbestos was a "cause" of the illness. Thacker v. UNR Industries, Inc., 151 Ill.2d 343, 354 (Ill. 1992). In negligence actions and strict liability cases, causation requires proof of both "cause in fact" and "legal cause." Id. "To prove causation in fact, the plaintiff must prove medical causation, i.e., that exposure to asbestos caused the injury, and that it was the defendant's asbestos-containing product which caused the injury." Zickhur v. Ericsson, Inc., 962 N.E.2d 974, 983 (Ill. App. (1st Dist.) 2011)(citing Thacker, 151 Ill.2d at 354). Illinois courts employ the "substantial factor" test in deciding whether a defendant's conduct was a cause of a plaintiff's harm. Nolan v. Weil-McLain, 233 Ill.2d 416, 431 (Ill. 2009)(citing Thacker, 151 Ill.2d at 354-55). Proof may be made by either direct or circumstantial evidence. Thacker, 151 Ill.2d at 357. "While circumstantial evidence may be used to show causation, proof which relies upon mere conjecture or speculation is insufficient." Id. at 354.

In applying the "substantial factor" test to cases based upon circumstantial evidence, Illinois courts utilize the "frequency, regularity, and proximity" test set out in cases decided by other courts, such as Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156 (4th Cir. 1986). Thacker, 151 Ill.2d at 359. In order for a plaintiff relying on circumstantial evidence "to prevail on the causation issue, there must be some evidence that the defendant's asbestos was put to 'frequent' use in the [Plaintiff's workplace] in 'proximity' to where the [plaintiff] 'regularly' worked." Id. at 364. As part of the "proximity" prong, a plaintiff must be able to point to "sufficient evidence tending to show that [the defendant's] asbestos was actually inhaled by the [plaintiff]." This "proximity" prong can be established under Illinois law by evidence of "fiber drift," which need not be introduced by an expert. Id. at 363-66.

In a recent case (involving a defendant Ericsson, as successor to Anaconda), an Illinois court made clear that a defendant cannot obtain summary judgment by presenting testimony of a corporate representative that conflicts with a plaintiff's evidence pertaining to product identification – specifically noting that it is the province of the jury to assess the credibility of witnesses and weigh conflicting evidence. See Zickuhr, 962 N.E.2d at 985-86. In Zickhur, the decedent testified that he worked with asbestos-containing Anaconda wire from 1955

to 1984 at a U.S. Steel facility, and that he knew it was asbestos-containing because the wire reels contained the word "asbestos" on them – and the word "asbestos" was also contained on the cable and its jacket. A co-worker (Scott) testified that, beginning in the 1970s, he had seen cable spools of defendant Continental (which had purchased Anaconda) that contained the word "asbestos" on them. A corporate representatives (Eric Kothe) for defendant Continental (testifying about both Anaconda and Continental products) provided contradictory testimony that Anaconda stopped producing asbestos-containing cable in 1946 and that the word "asbestos" was never printed on any Anaconda (or Continental) cable reel. A second corporate representative (Regis Lageman) provided testimony, some of which was favorable for the plaintiff; specifically, that Continental produced asbestos-containing wire until 1984, that asbestos-containing wires were labeled with the word "asbestos," and that, although defendant did not presently have records indicating where defendant had sent its products, U.S. Steel had been a "big customer" of a certain type of defendant's wire that contained asbestos.

After a jury verdict in favor of the plaintiff, Defendant appealed, contending that (1) there was no evidence that defendant's cable/wire contained asbestos, and (2) there was no evidence that defendant's cable/wire caused decedent's mesothelioma. The appellate court affirmed the trial court (and upheld a jury verdict in favor of the plaintiff), holding that the issues of whether the cable and wire decedent worked with contained asbestos, and whether the defendant's cable and wire were the cause of the decedent's mesothelioma, were questions properly sent to the jury for determination. The appellate court noted that "the jury heard the evidence and passed upon the credibility of the witnesses and believed the plaintiff's witnesses over... Kothe." Id. at 986.

E. The "Sham Affidavit" Doctrine

The "sham affidavit doctrine" is recognized pursuant to Federal Rule of Civil Procedure 56 as a way of showing that there is no genuine dispute as to any material fact. Given that the "sham affidavit doctrine" is an issue of federal law, the MDL transferee court applies the federal law of the circuit where it sits, which in this case is the law of the United States Court of Appeals for the Third Circuit. In re Asbestos Prods. Liability Litig. (No. VI), 673 F. Supp. 2d 358, 362 (E.D. Pa. 2009) (citing In re Diet Drugs Liability Litig., 294 F. Supp. 2d 667, 672 (E.D. Pa. 2003)).

In Baer v. Chase, the United States Court of Appeals for the Third Circuit described the "sham affidavit" doctrine noting that, "we have held that a party may not create a material issue of fact to defeat summary judgment by filing an affidavit disputing his or her own sworn testimony without demonstrating a plausible explanation for the conflict." Id. at 624 (citing Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)).

Although the "sham affidavit doctrine" has traditionally been applied to strike affidavits filed after depositions have been taken, it applies with equal force to affidavits filed prior to the taking of a deposition. In re: Citx Corp., 448 F.3d 672, 679 (3d Cir. 2006). The United States Court of Appeals for the Third Circuit noted, [w]e perceive no principle that cabins sham affidavits to a particular sequence." Id. (internal citations omitted). Testimony taken in a deposition, rather than sworn to in an affidavit, is considered more favorable for summary judgment purposes since testimony sworn to in an affidavit is not subject to cross-examination. 448 F.3d at 680 (citing 10B Charles Alan Wright & Mary Kay Kane, Federal Practice and Procedure § 2722 at 373, 379).

F. 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 v. Benjamin Foster Co., 739 F. Supp. 2d 770, 783 (E.D. Pa. 2010) (Robreno, J.)(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.

G. Government Contractor Defense at 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 dispute as to any material fact regarding whether it is entitled to the government contractor defense. Compare Willis, 2011 WL 3818515 at *9 (addressing defendant's burden at the summary judgment stage), with Hagen, 739 F. Supp. 2d 770 (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 dispute as to any 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.

II. Defendant Crane Co.'s Motion for Summary Judgment

A. Defendant's Arguments

Bare Metal Defense

Crane Co. argues that it is entitled to summary judgment (under both maritime law and Illinois law) because it cannot be liable for products or component parts that it did not manufacture or supply.

Product Identification / Causation

Crane Co. argues that there is insufficient product identification evidence to support a finding of causation with respect to its product(s). Specifically, Crane Co. argues that Plaintiff testified he did not know the maintenance history of any of the valves he worked on. Crane Co. also contends that the original gaskets and packing in those valves were likely replaced, such that there is no evidence they were Crane Co. products.

Motion to Strike Plaintiff's Declaration (Sham Affidavit)

In connection with its reply brief, Crane Co. asks the Court to strike Plaintiff's declaration on grounds that it is a "sham affidavit." Specifically, Crane Co. contends that Plaintiff testified at his deposition that he worked with "Crane" gasket material, while, in his declaration, he states that he worked with "Cranite" gasket material. Furthermore, Crane Co. contends that Plaintiff did not testify at his deposition that the brand of the manufacturer was visible on the gaskets, while the declaration contains this information.

Successor Liability Issues

In its initial brief, Crane Co. argues that it cannot be liable for Cochrane products about which Plaintiff testified at his deposition. Specifically, Crane Co. contends it is not legally responsible for any such product manufactured prior to 1960 because Crane Co. did not acquire Cochrane's assets until November of 1960.

Government Contractor Defense

Crane Co. asserts the government contractor defense, arguing that it is immune from liability in this case because the Navy exercised discretion and approved the warnings supplied by Defendants for the products at issue, Defendants provided warnings that conformed to the Navy's approved warnings, and the Navy knew about asbestos and its hazards. In asserting this defense, Crane Co. relies upon the affidavits of Dr. Samuel Forman, Admiral David Sargent, and Anthony Pantaleoni (a company witness).

B. Plaintiff's Arguments

Product Identification / Causation

Plaintiff argues that there is sufficient product identification evidence regarding Cranite gasket material manufactured and/or supplied by Crane Co. In support of this argument, he relies upon (1) his deposition testimony, and (2) his subsequent declaration. A summary of this evidence is as follows:

- Deposition Testimony of Plaintiff
  Plaintiff testified that, during his service in the Navy, he ordered Crane brand asbestos sheet gasket material. He testified that making gaskets from this material usually required using a ball-peen hammer to bang the gasket material until it was cut. He testified that he was in charge of a "valve shop" on the Tutuila and that he worked on "probably a couple hundred" Crane valves. He testified that repairing a Crane valve involved tearing it down, and adding new gaskets and packing. He testified that the sheet gasket material used with Crane valves was made of asbestos. He testified that this sheet gasket material was used for high temperature applications. He testified that he removed gaskets from Crane valves with a scraper, and then a wire brush to clean it off. He specifically identified the Sproston and Jenkins as ships on which he performed work changing gaskets and packing on Crane valves. Plaintiff testified that, during his work on the Atlantic fleet, he worked on about fifty (50) to one hundred (100) Crane valves.

  (Pl. Ex. 25, Doc. 256-10, Dep. of Charles Krik, July 18, 2011, pages 55-59 and 62-74.)

- Declaration Testimony of Plaintiff
  Plaintiff provides declaration testimony stating:

  4. I ordered Cranite brand sheet packing from the Navy supply catalog on a routine basis, probably at least a hundred times. The materials were listed in the Navy catalog under the trade name "Cranite." . . . Cranite was the primary brand of sheet packing material I ordered.

5. I worked with Cranite sheet packing material to make gaskets on a regular basis between 1954 and 1970, performing repair work on high-temperature steam lines, including valves and flanges on those lines, associated with boilers and turbines and other steam systems equipment, on numerous Pacific Fleet ships. This work included the removal of existing Cranite gaskets and installation of new Cranite gaskets. The installation of gaskets required first the removal of the existing gaskets, which was preformed in the manner described in my deposition testimony.

6. Frequently I observed that the existing gasket I was replacing was Cranite product, as when the material was not too deteriorated the Cranite name or logo was still visible on the gasket. The installation of the new Cranite gasket was done in the manner described in my deposition testimony. I installed and removed Cranite materials over one hundred times each.

7. I also ordered and worked with Cranite gasket and sheet packing materials after being honorably discharged from the Navy in 1970 and working in the civilian sector at industrial sites. The manner in which I installed and removed Cranite products was the same in the civilian work as it was in the Navy. In civilian work I installed and removed Cranite brand over one hundred times each.

8. As a civilian boilermaker and pipefitter I recall removing and replacing many Cranite gaskets and packing material products on a regular basis through at least the mid to late-1970s. Typically, the gaskets on valves on high-temperature lines need to be replaced on average every five years, although some can have shorter or longer intervals before replacement.

(Pl. Ex. 23, Doc. 256-8, Decl. of Charles Krik ¶¶ 4-8 (Feb. 9, 2012).)

Motion to Strike Plaintiff's Declaration (Sham Affidavit)

In response to Defendant's request to strike Plaintiff's declaration on grounds that it is a "sham affidavit," Plaintiff argues that nothing in his declaration is in contradiction with or inconsistent with his deposition testimony. Specifically, Plaintiff argues that his declaration contains only additional details pertaining to the testimony given in his deposition.

Successor Liability Issues

Plaintiff is not pursuing claims against Crane Co. based on Cochrane products. Therefore, Plaintiff notes that this argument of Crane Co.'s is irrelevant and moot.

Government Contractor Defense

Plaintiff submits an affidavit of expert and Retired Navy Captain R. Bruce Woodruff, who provides expert testimony that the Navy would have allowed Crane Co. to provide warnings about the dangers of the asbestos contained in Cranite.

C. Analysis

Motion to Strike Plaintiff's Declaration (Sham Affidavit)

As a preliminary matter, the Court considers Defendant Crane Co.'s motion to strike Plaintiff's declaration. During his deposition, Plaintiff testified about being exposed to asbestos from sheet gasket material used with Crane valves. When asked at his deposition if this sheet gasket material was the same brand as the valves (i.e., "Crane"), he testified that it was. Plaintiff's subsequent declaration provides testimony that is consistent in substance, but which refers to this gasket material as being "Cranite."

This Court has previously held that a witness's identification of a product as "Crane" or "John Crane" was sufficient to raise a genuine dispute as to whether Crane Co. was the manufacturer of the product at issue. Pease v. A.W. Chesterton Corp., No. 09-62581, 2011 WL 4807465, at *1 n.1 (E.D. Pa. Jan. 14, 2011)(Robreno, J.). Applying this same rationale, a reasonable jury could conclude that, when Plaintiff referred to the sheet gasket material at issue as "Crane" during his deposition and as "Cranite" in his declaration, he was referring

to the same material each time (from the same manufacturer) and was not intending to testify about two different products (or two different manufacturers). Reference to the product at issue by these two names does not create a contradiction or inconsistency between Plaintiff's deposition testimony and his declaration – particularly in light of the fact that Crane Co. concedes that it supplied Cranite (at least until 1972). The fact that Plaintiff provided additional detail in his affidavit about seeing the brand name stamped on the gasket is not inconsistent with his deposition testimony, as he was not asked about this detail during his deposition; the declaration testimony does not contradict anything he said during his deposition. Therefore, the Court finds that Plaintiff's declaration pertaining to Defendant Crane Co. is not a "sham affidavit" and, accordingly, it will not be stricken. Having determined that Plaintiff may rely upon his declaration in opposing Crane Co.'s motion for summary judgment, the Court turns next to the merits of that motion.

Product Identification / Causation

Plaintiff alleges that he was exposed to asbestos from Cranite gaskets used with Crane valves both during his service in the Navy and during his post-Navy civilian work. The Court considers the evidence pertaining to each separate time period (each of which is governed by a different law) separately:

a. Navy Service (Maritime Law)

There is evidence that, during his Navy service, Plaintiff worked cutting, removing, and replacing Cranite sheet packing material in connection with Crane Co. valves (and other valves) on a regular basis (at least one hundred times) between 1954 and 1970. There is evidence that this gasket material contained asbestos. There is evidence that removing old gaskets created dust and that cutting the new gaskets also resulted in dust, which was brushed or swept. There is evidence that both the gaskets being removed and the new gaskets used to replace them were made from Cranite gasket material. Therefore, a reasonable jury could conclude from the evidence that Plaintiff was exposed to asbestos from Cranite gasket material such that this exposure was a "substantial factor" in the development of his illness. See Lindstrom, 424 F.3d at 492; Stark, 21 F. App'x at 376; Abbay, 2012 WL 975837, at *1 n.1. Accordingly, summary judgment in favor of Defendant Crane Co. is not warranted with respect to claims arising from this alleged exposure. Id.; Anderson, 477 U.S. at 248.

b. Post-Navy Civilian Work (Illinois Law)

There is evidence that, during his post-Navy civilian work, Plaintiff cut, removed, and replaced Cranite sheet packing material in connection with Crane Co. valves (and other valves) on a regular basis (at least one hundred times), starting in 1970 and continuing through the late 1970s. There is evidence that this gasket material contained asbestos. There is evidence that removing old gaskets created dust and that cutting the new gaskets also resulted in dust, which was brushed or swept. There is evidence that both the gaskets being removed and the new gaskets used to replace them were made from Cranite gasket material. Therefore, a reasonable jury could conclude from the evidence that Plaintiff was exposed to asbestos from Cranite gasket material such that it was a "substantial factor" in the development of his illness. Nolan, 233 Ill.2d at 431; Thacker, 151 Ill.2d at 354-55. Accordingly, summary judgment in favor of Defendant Crane Co. is not warranted with respect to claims arising from this alleged exposure. Id.; Anderson, 477 U.S. at 248.

Bare Metal Defense

Plaintiff's claims are limited to those based on alleged exposure to products for which he has evidence of manufacture and/or supply by Defendant Crane Co. Therefore, the Court need not reach the issue of the so-called "bare metal defense" (under maritime law or Illinois law) in order to determine that summary judgment in favor of Defendant is not warranted on this basis.

Successor Liability Issues

This issue has become mooted, as Plaintiff is not pursuing claims based on equipment manufactured by Cochrane. Therefore, summary judgment in favor of Defendant is not warranted on this basis.

Government Contractor Defense

Plaintiff has pointed to evidence that contradicts (or at least appears to be inconsistent with) Crane Co.'s evidence as to whether the Navy did or did not reflect considered judgment over whether warnings could be included with Crane Co.'s products. Specifically, Plaintiff has identified an affidavit of Captain R. Bruce Woodruff, who provides expert testimony that the

Navy would have permitted Crane Co. to warn about its products had it attempted to do so. This is sufficient to raise genuine disputes of material fact as to whether the first and second prongs of the Boyle test are satisfied with respect to Crane Co. See Willis, 811 F. Supp. 2d 1146. Accordingly, summary judgment on grounds of the government contractor defense is not warranted. Id.; Anderson, 477 U.S. at 248.

D. Conclusion

Defendant's motion to strike Plaintiff's declaration is denied because it does not contradict – and is not inconsistent with – Plaintiff's deposition testimony. Defendant's motion for summary judgment on grounds of insufficient product identification is denied because Plaintiff has identified sufficient evidence to support a finding of causation with respect to Crane Co.'s product(s). Defendant's motion for summary judgment on grounds of the government contractor defense is denied because Plaintiff has submitted evidence that contradicts Defendant's proofs as to its entitlement to the defense. Defendant's motion for summary judgment on grounds of the bare metal defense is denied as moot, as is its motion for summary judgment on grounds of successor liability principles.