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

IN RE: ASBESTOS PRODUCTS LIABILITY LITIGATION (No. VI)	:	Consolidated Under MDL DOCKET NO. 875
VARIOUS PLAINTIFFS	:	Certain cases in which Plaintiffs are represented by Glasser & Glasser, listed in Exhibit "A," attached
v.	:	
VARIOUS DEFENDANTS	:	

O R D E R

AND NOW, this **10th** day of **October**, **2012**, it is hereby **ORDERED** that the Motions to Dismiss or, in the Alternative, Motions for Summary Judgment of Defendant Pullman Passenger Car Company, Inc., listed in Exhibit "A," attached, are **DENIED** without prejudice.[1]

[1] The 2,350 cases from the Eastern District of Virginia that are currently before the Court constitute one of the largest groups of cases still remaining on this Court's multidistrict litigation docket. On September 19, 2011, the cases were referred to the Honorable M. Faith Angell, U.S. Magistrate Judge, for oversight and supervision. See Referral Order, No. 01-md-875 (E.D. Pa. Sept. 19, 2011), ECF No. 8138. In the meantime, the Kurns case was making its way through the courts, and on February 29, 2012, the Supreme Court issued its opinion in Kurns. Kurns v. Railroad Friction Products Corp., 565 U.S. ___, 132 S. Ct. 1261 (2012). Subsequently, the Court held a Status Conference with the parties involved in the present cases from the Eastern District of Virginia. The Court issued a briefing schedule for Pullman to file, and Plaintiffs to oppose, motions to dismiss related to federal preemption and, specifically, whether and, if so, to what extent, the Kurns decision applied to these cases. See Briefing Schedule Order, No. 01-md-875 (E.D. Pa. May 19, 2011), ECF No. 8567. After oral argument, the matter is ripe for disposition. The single Motion that Pullman filed was filed in each case, and Plaintiffs' Opposition was filed in each case as well. The cases have never been on scheduling orders, and therefore no discovery has been conducted in the cases.

Before the Court is the Rule 12(b)(6) motion to dismiss or, in the alternative, motion for summary judgment of Defendant Pullman Passenger Car Company, Inc. ("Defendant" or "Pullman"). Def.'s Mot. Dismiss, No. 01-md-875 (E.D. Pa. May 21, 2012), ECF No. 8590 [hereinafter "Motion"].

Plaintiffs in these cases include former railroad workers, representatives, survivors, and spouses ("Plaintiffs"). Plaintiffs claim that they were exposed to asbestos-containing insulation products produced by Pullman that were onboard passenger railcars. Such insulation products, Plaintiffs claim, were present in or on the "walls, ceilings, floors, and heating components" of passenger cars. See Pls.' Mem. Opp., No. 01-md-875 at 5 (E.D. Pa. June 4, 2012), ECF No. 8606 [hereinafter "Opposition"]. Plaintiffs have said that they "have addressed these cases as though each and every case addresses the entire Pullman car, which is a car that has asbestos insulation in the walls, ceiling, floor and steam pipes." Tr. at 6:12-18, July 26, 2012. Pullman is the only remaining defendant in these cases.

The issue in these cases is whether the Locomotive Inspection Act ("LIA"), 49 U.S.C. § 20701-20703 (2006), and/or the Safety Appliance Act ("SAA"), 49 U.S.C. § 20301-20306 (2006), operate to preempt Plaintiffs' state law claims, especially in light of the recent Supreme Court decision in Kurns, 132 S. Ct. at 1261, which affirmed the breadth of the long-standing field preemption of the LIA.

Pullman argues that Plaintiffs' complaints should be dismissed because their claims are preempted by the LIA and/or the SAA. Plaintiffs argue that Kurns and the LIA do not operate to preempt their claims, as the LIA regulates only self-propelled locomotives and their tenders, parts, and appurtenances, but does not specifically govern passenger railcars and equipment thereon. Plaintiffs further argue that the SAA does not preempt their state law claims, as it regulates only a specific, finite list of safety devices.

Pullman's Motion sweeps too broadly. No discovery has yet taken place in any of the cases in which Defendant filed its Motion. It has become clear that important facts remain unknown in these cases. Specifically, it is not clear which products attributable to Defendant each Plaintiff claims he was exposed to. See Tr. at 5:3-13, July 26, 2012 ("We don't have specific allegations of exactly which products, and none of the plaintiffs

It is further **ORDERED** that U.S. Magistrate Judge M. Faith Angell, to whom the cases are referred, and Special Master Bruce Lassman, Esq., shall place the cases on scheduling orders and shall manage discovery and other pretrial matters.

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno, J.
EDUARDO C. ROBRENO, J.

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have been deposed."). For example, at some points in the briefing and in the hearing on Defendant's Motion, the parties referred to entire passenger cars as products themselves, whereas at other times, the insulation materials onboard the passenger trains were referred to as products.

Each case must be treated individually given its distinct factual background, and there is a likelihood that different Plaintiffs might have been exposed to different products, if any. Without the parties having conducted discovery, and without knowing which of Defendant's products, specifically, each Plaintiff allegedly has been exposed to, it is premature for the Court to determine whether the products to which each Plaintiff claims exposure would be preempted by the SAA, the LIA, and Kurns. For example, Plaintiffs allege exposure to asbestos-containing "insulation products" attributable to Pullman onboard passenger cars (as opposed to onboard locomotives). "Insulation products" is a broad category of products, and the answer to, for example, whether state regulation of heating pipe insulation onboard a passenger car would be preempted, might well be different from the answer to whether state regulation of certain heating components would be preempted.