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

STEVEN FERGUSON,	:	CONSOLIDATED UNDER
	:	MDL 875
Plaintiff,	:	
	:	Transferred from the
	:	Southern District
v.	:	of New York
	:	(Case No. 11-00408)
AIR & LIQUID SYSTEMS CORPORATION, ET AL.,	:	
	:	
	:	E.D. PA CIVIL ACTION NO.
Defendants.	:	2:11-CV-63523-ER

O R D E R

AND NOW, this **1st** day of **December, 2014**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Crane Co. (Doc. No. 22) is **GRANTED in part; DENIED in part, with leave to refile in the transferor court.**[1]

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[1] This case was transferred in March of 2011 from the United States District Court for the Southern District of New York to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Plaintiff Steven Ferguson ("Plaintiff" or "Mr. Ferguson") has alleged that he was exposed to asbestos during his service in the Navy (1956 to 1959), which included training that lasted for fourteen (14) weeks at a land-based facility, and at various non-Navy jobsites in New York (1965 to 1994). Plaintiff alleges that Defendant Crane Co. ("Crane" or "Crane Co.") is liable for packing and insulation used in connection with valves and pumps. The alleged exposure pertinent to Crane Co. occurred during the following periods of Mr. Ferguson's work:

- Navy service (1956 to 1959) at/on the following:
  - Great Lakes Naval Training Center - IL
  - USS Gearing (served aboard as fireman)
- IBM - White Plains, New York

Mr. Ferguson was diagnosed with mesothelioma. He was deposed for two days in December of 2010 and again for another day in August of 2011.

Plaintiff brought claims against various defendants. Defendant Crane Co. has moved for summary judgment arguing that three different laws apply to the claims against it, and that, under each of these laws (i) there is insufficient product identification evidence to support a finding of causation with respect to its product(s), (ii) it is entitled to summary judgment on grounds of the so-called "bare metal defense," and (iii) it is immune from liability by way of the government contractor defense.

The parties agree that Plaintiff's claims are subject to three different laws: maritime, New York, and Illinois law.

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 some of Plaintiff's claims. 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).

(i) Exposure Arising During Navy Service

a) Aboard Ship (USS Gearing)

It is undisputed that the alleged exposure pertinent to Defendant Crane Co. that occurred during Mr. Ferguson's period of Navy service included service aboard a ship (the USS Gearing). Therefore, this exposure was during sea-based work. See Conner, 799 F. Supp. 2d 455. Accordingly, maritime law is applicable to Plaintiff's claims against Defendant Crane Co. that arise from this alleged exposure. See Conner, 799 F. Supp. 2d at 462-63.

b) Great Lakes Naval Training Center (Illiniois)

It is undisputed that the alleged exposure pertinent to Defendant Crane Co. that occurred during Mr. Ferguson's training at the Great Lakes Naval Training Center involved work in a laboratory and not aboard an actual ship. Importantly, although this work was in a laboratory designed to simulate a ship, and containing equipment that would be found aboard a ship, and for

purposes of training Navy service personnel to perform work aboard ships at sea (such that the "connection" test is met), the laboratory itself was not on the sea and was not aboard an actual ship (e.g., in "dry dock"). Thus, the "locality" test is not met, and this exposure was therefore during land-based work. Accordingly, Illinois state law is applicable to Plaintiff's claims against Defendant Crane Co. that arise from this alleged exposure. See Conner, 799 F. Supp. 2d 455.

(ii) Exposure Arising During Non-Navy Work (IBM facility in New York)

It is undisputed that the alleged exposure pertinent to Defendant Crane Co. that occurred during Mr. Ferguson's work at the IBM facility in New York involved work exclusively on land (and not related to the Navy or the sea in any way). Therefore, this exposure was during land-based work. Accordingly, New York state law is applicable to claims against Defendant that arise from this alleged exposure. See Conner, 799 F. Supp. 2d 455.

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., 842 F. Supp. 2d 791, 801 (E.D. Pa. 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. Bare Metal Defense Under Maritime Law

This Court has held that the so-called "bare metal defense" is recognized by maritime law, such that a manufacturer has no liability for harms caused by - and no duty to warn about hazards associated with - a product it did not manufacture or distribute. Conner v. Alfa Laval, Inc., 842 F. Supp. 2d 791, 801 (E.D. Pa. 2012)(Robreno, J.).

E. Product Identification/Causation Under New York Law

To establish proximate cause for an asbestos injury under New York law, a plaintiff must demonstrate that he was exposed to the defendant's product and that it is more likely than not that the exposure was a substantial factor in causing his injury. See Diel v. Flintkote Co., 611 N.Y.S.2d 519, 521 (N.Y. App. Div. 1994); Johnson v. Celotex Corp., 899 F.2d 1281, 1285-86 (2d Cir. 1990). Jurors are instructed that an act or omission is a "substantial factor ... if it had such an effect in producing the [injury] that reasonable men or women would regard it as a cause of the [injury]." Rubin v. Pecoraro, 141 A.D.2d 525, 527, 529 N.Y.S.2d 142 (N.Y. App. Div. 1988). A particular defendant's product need not be the sole cause of injury. However, a plaintiff "must produce evidence identifying each [defendant]'s product as being a factor in his injury." Johnson, 899 F.2d at 1286.

New York law requires a defendant seeking summary judgment in an asbestos case "to unequivocally establish that its product could not have contributed to the causation of the plaintiff's injury." Reid v. Georgia-Pacific Corp., 622 N.Y.S.2d 946, 947 (N.Y. App. Div. 1995)(citing Winegrad v. New York Univ. Med Ctr., 64 N.Y.2d 851 (N.Y. 1998)); see also In re New York City Asbestos Litig. ("Comeau"), 628 N.Y.S.2d 72, 73 (N.Y. App. Div. 1995); In re Eighth Judicial District Asbestos Litig. ("Takacs"), 679 N.Y.S.2d 777, 777 (N.Y. App. Div. 1998); Shuman v. Abex Corp. ("Shuman 1"), 700 N.Y.S.2d 783, 784 (N.Y. App. Div. 1999); Shuman v. Abex Corp. ("Shuman 2"), 698 N.Y.S.2d 207, 207 (N.Y. App. Div. 1999). Summary judgment in favor of a defendant is warranted when there is no evidence in the record to create a reasonable inference that the plaintiff inhaled asbestos fibers from the defendant's product. See Cawein v. Flintkote Co., 610 N.Y.S.2d 487, 487 (N.Y. App. Div. 1994)(summary judgment granted where the only evidence pertaining to defendant's product was testimony that the plaintiff saw an unopened package of the product); Diel v. Flintkote Co., 611 N.Y.S.2d 519, 521 (N.Y. App. Div. 1994)(same); see also Lustenring v. AC&S, Inc., 786 N.Y.S.2d 20, 21 (N.Y. App. Div. 2004); Penn v. Amchem Products, 925 N.Y.S.2d 28, 29 (N.Y. App. Div. 2011).

A defendant is not entitled to summary judgment merely because there are inconsistencies in a plaintiff's evidence regarding exposure to the defendant's product. Taylor v. A.C.S., Inc., 762 N.Y.S.2d 73, 74 (N.Y. App. Div. 2003). Nor is summary judgment in favor of a defendant warranted based on evidence presented by the defendant that its product could not have caused the plaintiff's injury, so long as there is conflicting evidence presented by the plaintiff. In re New York City Asbestos Litig. ("Ronsini"), 683 N.Y.S.2d 39 (N.Y. App. Div. 1998).

In Ronsini, a plaintiff pipe-fitter testified that he saw a 50- to 60-pound bag of the defendant's product onboard a Navy ship (with the company name "Atlas" on it) and that the defendant's cement insulation was the only such product that he recalled seeing onboard the ship. Defendant Atlas Turner presented testimony that it did not sell its insulating cement in the United States and was prohibited by statute from doing so. The Appellate Division (First Department) upheld a jury verdict imposing liability upon the defendant, stating that "the jury merely acted within its province in resolving conflicting testimony on this issue." 683 N.Y.S.2d 39 (N.Y. App. Div. 1998).

In doing so, the court distinguished Cawein and Diel, noting that, in those cases, "the person identifying the product did not see an open bag of the subject product or know that its contents had actually been used." 683 N.Y.S.2d at 40.

F. Bare Metal Defense Under New York Law

Previously, in August of 2010, when faced with the issue of the so-called "bare metal defense" under New York law, this Court remanded the issue to the transferor court, which it noted has more experience and familiarity with the application of New York substantive law. Curry v. Am. Standard, No. 09-65685, 2010 WL 3221918 (E.D. Pa. Aug. 12, 2010) (Robreno, J.). Since that time, the only appellate authority from a New York court that has addressed the issue is In re New York City Asbestos Litigation, - N.Y.S.2d - , 2014 WL 2972304, at *13 (N.Y. App. (1st Dept.) July 3, 2014). In this decision, the Appellate Division (First Department) considered numerous issues on appeal after a jury verdict in favor of numerous defendants, including Crane Co., which challenged the trial court's use of the word "foreseeability" in its instructions to the jury. The Appellate Division upheld the verdict and found that, while "mere foreseeability is not sufficient," it remains that "[t]here is a place for the notion of foreseeability in failure to warn cases where, as here, the manufacturer of an otherwise safe product purposely promotes the use of that product with components manufactured by others that it knows not to be safe." Id. In doing so, it explicitly rejected Crane Co.'s assertion of the "component parts doctrine." Id.

G. 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." Thacker, 151 Ill.2d 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.

H. Bare Metal Defense Under Illinois Law

This Court has not previously addressed the so-called "bare metal defense" under Illinois law. Neither the Supreme Court of Illinois nor any appellate court of that state has squarely addressed this issue as articulated by Defendant within the context of an asbestos case.

I. 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)); Cuomo v. Crane Co., - F.3d - , 2014 WL 5859099, *4 (2d Cir. Nov. 13, 2014) (no explicit mention of warnings is necessary). Government approval of warnings must "transcend rubber stamping" to allow a defendant to be shielded from state law liability. 739 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., 811 F. Supp. 2d 1146 (E.D. Pa. Aug. 29, 2011)(Robreno, J.); Dalton v. 3M Co., No. 10-64604, 2011 WL 5881011, at *1 n.1 (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.

J. 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, 811 F. Supp. 2d at 1157 (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. DISCUSSION

A. Defendant's Argument

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 on the affidavits of Dr. Samuel Forman, Admiral David Sargent, and Anthony Pantaleoni (a company witness).

Bare Metal Defense

Crane Co. asserts the bare metal defense, arguing that it is immune from liability in this case under the defense as a matter of law (under maritime, New York, and Illinois law) and that it is, therefore, entitled to summary judgment. Specifically, Crane Co. argues that it has no duty to warn about and cannot be liable for injury arising from any product or component part that it did not manufacture or supply.

Product Identification / Causation

Crane Co. argues that there is no evidence that Plaintiff was exposed to any asbestos-containing product (or component part) that was manufactured, sold, or supplied by it.

Crane Co. argues that, to the extent that Plaintiff has identified "Crane packing" as the packing at issue, it is entitled to summary judgment because Crane Co. did not manufacture packing materials used in valves. In support of this assertion, Crane Co. submits deposition testimony of corporate representative Anthony Pantaleoni taken in another case on October 25, 2007. (Doc. No. 22-5, Def. Ex. E, 62:24-63:1.)

B. Plaintiffs' Arguments

Government Contractor Defense

Plaintiff argues that summary judgment in favor of Defendant on grounds of the government contractor defense is not warranted because the Navy never precluded warnings about asbestos hazards, and, instead, specifications pertaining to warnings left the nature of warnings to the determination of manufacturers, with some explicit requirements that the manufacturer warn.

To contradict the evidence relied upon by Crane Co., Plaintiff cites to, inter alia, (a) an expert affidavit of Captain Arnold P. Moore, and (2) various iterations of MIL-M-15071 that span a time period that includes (and exceeds in each direction) the years of Plaintiff's alleged exposure (with the first iteration in August of 1954 and the last iteration in August 1967), and (b) a document entitled "Uniform Labeling Program - Navy" (dated September 24, 1956), each of which Plaintiff attaches as an exhibit and contends, together, indicate that the Navy permitted and even expressly required warnings from manufacturers, leaving the discretion to warn largely to the manufacturer.

Bare Metal Defense

Plaintiff contends that Defendant is not protected under New York or Illinois law from liability for component parts it did not manufacture or supply. Specifically, Plaintiff argues that New York and Illinois law impose a duty on manufacturers "to warn about foreseeable and likely post-sale product modifications that are, in turn, ultrahazardous and known to cause death or serious injuries or disease." (Pl. Opp. at 16.) Plaintiff does not dispute the availability to Defendant of the so-called "bare metal defense" under maritime law. However, Plaintiff asserts that the "bare metal defense" issue is largely irrelevant to this case because its allegations pertain largely to original asbestos-containing component parts that Crane supplied.

Product Identification / Causation

Plaintiff contends that there is sufficient product identification evidence with respect to packing and insulation used in connection with valves and pumps that it alleges were manufactured and/or supplied by Crane Co. In support of this assertion, Plaintiff points to:

- Deposition testimony of Plaintiff (Mr. Ferguson):

(i) Naval Training Center (Illinois)

Mr. Ferguson testified that he spent approximately fourteen (14) weeks at the Great Lakes Naval Training Center in Waukegan, Illinois. He testified that this training was six (6) days per week and that each day involved approximately four (4) to six (6) hours in the "lab" portion of training. He testified that the "lab" was set up like the engine room of a ship, with all of the same equipment that one would find on a ship. He testified that this work was "hands on" work, including changing packing on pumps and valves, including centrifugal and reciprocating pumps. When asked whether he believed he was exposed to asbestos from the work he did on pumps while in the lab, he testified, "absolutely" and explained that this was through asbestos packing and asbestos insulation. He testified that the reciprocating pumps were made by "Crane."

(ii) Navy Service Aboard Ships (Maritime)

Mr. Ferguson testified that, during his service in the Navy (aboard ships), he believed he was exposed to asbestos from the packing in valves. When asked whether he knew the manufacturer of any of the packing he worked with aboard the USS Gearing, he answered, "Crane a lot." Mr Ferguson testified that, when replacing packing, the old packing "was usually pretty dried out, so you get a lot of dust." He testified that he breathed this dust. He testified that Crane was the only brand of packing that he remembered. He testified that he recalled Crane as one of two manufacturers who made the valves.

(iii) IBM (New York)

Mr. Ferguson testified that he believes that, during his work at IBM, he was exposed to asbestos from the packing work he did on pumps. When asked if he knew who made the packing, he answered, "Crane a lot. That's what we mostly used." When asked if he used any other brands of packing other than Crane, he answered, "Not that I remember." He testified that he knew the packing

at IBM was Crane packing because it said "Crane" on the package. He testified that he worked directly with Crane packing on both pumps and valves, and that he also worked around others (in a supervisory role) who were working with it. He testified that he worked with Crane valves while at IBM and that he knew they were Crane because he saw the name "Crane" on the body of the valves. He testified that the Crane valves were covered with asbestos insulation.

- Crane Co. 30(b)(6) Witness - Plaintiff has identified deposition testimony of Crane Co.'s 30(b)(6) witness (Anthony Pantaleoni), who testifies that Crane pumps and valves contained packing, including asbestos packing, and that Crane Co. products were supplied with asbestos-containing component parts into the 1980s.

- Other Evidence - Plaintiff has also submitted other evidence: interrogatory responses of Defendant, a Navy manual, and various invoices, correspondence, catalogs, and marketing materials that he contends are Defendant's. The Court does not describe this evidence in detail herein, as it was not necessary to consider it in resolving Defendant's motion.

C. Analysis

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 expert testimony of Captain Arnold Moore, military specifications (including various iterations of MIL-M-15071), and the "Uniform Labeling Program - Navy" document. Plaintiff contends these demonstrate that the Navy would have permitted Crane Co. to include warnings with its products, and even expressly required warnings from such manufacturers, and that it left the discretion to warn largely to the manufacturers. 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.

Bare Metal Defense / Product Identification / Causation

Plaintiff alleges that he was exposed to (i) asbestos from packing used in valves during his time in the Navy (claims subject to maritime law); (ii) asbestos from packing and/or insulation used in connection with valves and/or pumps during his non-Navy work at IBM (claims subject to New York law); and (iii) packing and/or insulation used in connection with pumps during his training at the Great Lakes Naval Training Center (claims subject to Illinois law). Each set of claims is analyzed separately, as follows:

(i) Navy Exposure Claims - Maritime Law

Plaintiff alleges that he was exposed to asbestos from packing used in valves during his time in the Navy. There is evidence that Mr. Ferguson worked with asbestos-containing "Crane" packing in connection with valves, including "Crane" valves, during his approximately three-year-long service in the Navy. There is evidence that his work with this packing created asbestos dust, which he breathed. A reasonable jury could conclude from the evidence that Mr. Ferguson was exposed to asbestos from packing manufactured (and/or supplied) by Crane Co. (either in Crane Co. valves or for use with valves manufactured by other companies) such that it was a substantial factor in the development of his mesothelioma. See Lindstrom, 424 F.3d at 492; Stark, 21 F. App'x at 376; Abbay, 2012 WL 975837, at *1 n.1. This is true despite the fact that Crane Co. denies that it ever manufactured packing. Accordingly, summary judgment in favor of Crane Co. is not warranted with respect to this alleged exposure. Id.; Anderson, 477 U.S. at 248.

With respect to replacement packing used in connection with Crane Co. valves (but not manufactured or supplied by Crane Co.), the Court has held that, under maritime law, Defendant cannot be liable. Conner, 842 F. Supp. 2d at 801. Therefore, to the extent that Plaintiff is alleging liability for exposure to replacement packing used in Crane Co. valves, Defendant is entitled to summary judgment. Id.; Anderson, 477 U.S. at 248.

(ii) Non-Navy Exposure Claims (IBM) - New York Law

Plaintiff alleges that he was exposed to asbestos from packing and/or insulation used in connection with valves and/or pumps during his non-Navy work at IBM. Claims pertaining to packing and insulation are analyzed separately:

(a) Packing

There is evidence that Mr. Ferguson worked with asbestos-containing "Crane" packing in connection with valves and pumps during his work at IBM, including "Crane" valves. There is evidence that Mr. Ferguson was exposed to respirable asbestos from this work. As such, a reasonable jury could conclude from this evidence that Mr. Ferguson was exposed to asbestos from packing manufactured (and/or supplied by) Crane Co. (either in Crane Co. valves or for use with valves manufactured by other companies) such that it was a substantial factor in the development of his mesothelioma. See Diel, 611 N.Y.S.2d at 521; Reid, 622 N.Y.S.2d at 947; Johnson, 899 F.2d at 1285-86. This is true despite the fact that Crane Co. denies that it ever manufactured packing. Accordingly, summary judgment in favor of Crane Co. is not warranted with respect to this alleged exposure. Id.; Anderson, 477 U.S. at 248.

Because Plaintiff has identified sufficient evidence to survive summary judgment with respect to originally supplied packing (as opposed to replacement packing), the Court need not address the issue of the so-called "bare metal defense" under New York law in connection with this alleged exposure. However, to the extent that Plaintiff intends to pursue at trial claims arising from packing used with Crane Co. valves but not manufactured or supplied by Defendant Crane Co., the trial court will need to reach this issue if the case proceeds to trial.

(b) Insulation

There is evidence that, during his work at IBM, Mr. Ferguson was exposed to asbestos-containing insulation that covered "Crane" valves during his post-Navy work. Although there is no explicit testimony that Mr. Ferguson's work in repacking these valves required disturbing this external insulation, or that he was exposed to airborne asbestos dust as a result of his exposure to this insulation, a reasonable jury could infer that it was necessary to disturb this external insulation in order to perform the work. As such, a reasonable jury could conclude from the evidence that Mr. Ferguson was exposed to asbestos from insulation used in connection with a Crane Co. valve such that it was a substantial factor in the development of his mesothelioma. See Cawein, 610 N.Y.S.2d at 487; Diel, 611 N.Y.S.2d at 521; Johnson, 899 F.2d at 1285-86.

Importantly, however, in the absence of any evidence that Crane Co. supplied (or manufactured) this external insulation, Crane Co. is only liable for this alleged exposure if New York law does not recognize the so-called "bare metal defense." Although the recent decision of the Appellate Division (First Department) in In re New York City Asbestos Litigation, 2014 WL 2972304 (which rejected Crane Co.'s assertion of the "component parts doctrine") suggests that New York law does not recognize this defense, the decision does not squarely address the issue or provide further explanation or analysis. As such, there is no clear statement of New York law on the issue. Whether New York law recognizes this defense (i.e., whether New York law holds a switchgear manufacturer liable for insulation used in connection with - or component parts incorporated into - its product, which it neither manufactured nor supplied) is a matter of policy. A court situated in New York is closer to - and has more familiarity with - New York law and policy. As such, the Court deems it appropriate to remand this case for the transferor court to decide this issue. See, e.g., Faddish v. CBS Corp., No. 09-70626, 2010 WL 4159238 (E.D. Pa. Oct. 22, 2010) (Robreno, J.); Pray v. AC and S, Inc., No. 08-91884 (Dec. 17, 2012) (Robreno, J.) (Order on motion for summary judgment of Defendant Westinghouse Electric Corporation). Accordingly, summary judgment in favor of Defendant on grounds of insufficient evidence of product identification/ causation is denied with respect to claims arising from this alleged source of asbestos exposure, with leave to refile in the transferor court after remand. See id.; Anderson, 477 U.S. at 248.

(iii) Naval Training Exposure Claims - Illinois Law

Plaintiff alleges that he was exposed to packing and/or insulation used in connection with pumps during his training at the Great Lakes Naval Training Center. Plaintiff is relying on direct evidence to establish causation. Therefore, he need not satisfy the "frequency, regularity, and proximity" test. See Thacker, 151 Ill.2d at 359. Claims pertaining to packing and insulation are analyzed separately:

(a) Packing

There is evidence that Mr. Ferguson was exposed to asbestos from packing used in connection with "Crane" pumps.

However, there is no evidence that Crane Co. manufactured or supplied this packing. As such, Crane Co. can only be liable for this alleged exposure if Illinois law does not recognize the so-called "bare metal defense." Neither the Supreme Court of Illinois nor any appellate court of that state has squarely addressed this issue as articulated by Defendant within the context of an asbestos case. As such, there is no clear statement of Illinois law on the issue. Whether Illinois law recognizes this defense (i.e., whether Illinois law holds a pump manufacturer liable for component parts used in connection with - or incorporated into - its product, which it neither manufactured nor supplied) is a matter of policy. There is no reason to believe that the transferor court (situated in New York) is any closer to - or has any more familiarity with - Illinois law and policy than does this MDL Court. However, this case is already being remanded to the transferor court for decision of issues of New York state law. Therefore, the Court deems it appropriate to remand this issue, with suggestion that the transferor court sever the claims governed by Illinois law and transfer them to a district court situated in Illinois, which will be more familiar with Illinois law and policy. Accordingly, summary judgment in favor of Defendant on grounds of insufficient evidence of product identification/ causation is denied with respect to claims arising from this alleged source of asbestos exposure, with leave to refile in the transferor court after remand. See id.; Anderson, 477 U.S. at 248.

(b) Insulation

There is evidence that Mr. Ferguson was exposed to asbestos from insulation used in connection with "Crane" pumps. However, there is no evidence that Crane Co. manufactured or supplied this insulation. Therefore, Defendant's potential for liability for this alleged exposure depends on whether (and to what extent) Illinois law recognizes the so-called "bare metal defense." For the reasons already set forth herein, the Court deems this issue appropriate for remand to the transferor court, with suggestion that this claim be severed and transferred to a district court in Illinois. Accordingly, summary judgment in favor of Defendant on grounds of insufficient evidence of product identification/ causation is denied with respect to claims arising from this alleged source of asbestos exposure, with leave to refile in the transferor court after remand. See id.; Anderson, 477 U.S. at 248.

IV. Conclusion

With respect to the government contractor defense, summary judgment in favor of Defendant is denied because Plaintiff has identified evidence contradicting Defendant's proofs.

With respect to alleged asbestos exposure arising from packing used in valves during Mr. Ferguson's time in the Navy but neither manufactured nor supplied by Crane Co., summary judgment in favor of Defendant is granted because Defendant cannot be liable for such exposure under maritime law.

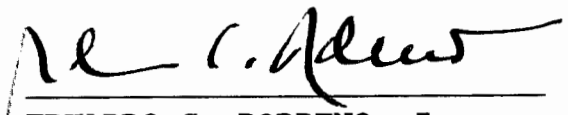
With respect to alleged asbestos exposure arising from packing used in valves during Mr. Ferguson's time in the Navy and supplied by Defendant, summary judgment in favor of Defendant is denied because Plaintiff has identified sufficient evidence of exposure to packing originally supplied by Defendant to survive summary judgment.

With respect to alleged asbestos exposure arising from packing used in connection with valves and pumps at the IBM facility in New York, summary judgment in favor of Defendant is denied because Plaintiff has identified sufficient evidence of exposure to packing originally supplied by Defendant to survive summary judgment.

With respect to alleged asbestos exposure arising from insulation at the IBM facility in New York for which there is no evidence of manufacture or supply by Crane Co., summary judgment in favor of Defendant is denied, with leave to refile in the transferor court, because there is no clear statement of New York law on this issue, and the Court deems the transferor Court better situated to address this issue.

With respect to alleged asbestos exposure arising from packing at the Great Lakes Naval Training Center in Illinois, but for which there is no evidence of manufacture or supply by Crane Co., summary judgment in favor of Defendant is denied, with leave to refile in the transferor court. Because there is no clear statement of Illinois law on this issue in the context of an asbestos case, and because there is no reason to believe that the transferor court has any particular familiarity with Illinois law and policy, the Court suggests that this claim be severed and transferred to a district court situated in Illinois.

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

With respect to alleged asbestos exposure arising from insulation at the Great Lakes Naval Training Center in Illinois, but for which there is no evidence of manufacture or supply by Crane Co., summary judgment in favor of Defendant is denied, with leave to refile in the transferor court. Because there is no clear statement of Illinois law on this issue in the context of an asbestos case, and because there is no reason to believe that the transferor court has any particular familiarity with Illinois law and policy, the Court suggests that this claim be severed and transferred to a district court situated in Illinois.