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

THOMAS HALL,	:	CONSOLIDATED UNDER
	:	MDL 875
Plaintiff,	:	
	:	Transferred from the
	:	Southern District of New York
v.	:	(Case No. 11-03400)
	:	
A.W. CHESTERTON COMPANY, ET AL.,	:	E.D. PA CIVIL ACTION NO. 2:11-66335-ER
Defendants.	:	

O R D E R

AND NOW, this **6th** day of **May, 2013**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Crane Co. (Doc. No. 44) is **GRANTED.**[1]

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[1] This case was transferred in June 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 Thomas Hall ("Plaintiff or "Mr. Hall") alleges that he was exposed to asbestos while serving in the U.S. Navy from 1966 to 1969. Defendant Crane Co. manufactured valves. The alleged exposure pertinent to Defendant Crane Co. occurred while Plaintiff was working as a boilertender aboard the following ships:

- USS Oklahoma City
- USS Hanson

Plaintiff asserts that he developed mesothelioma as a result of his exposure to asbestos. He was deposed in July and September of 2012.

Plaintiff brought claims against various defendants. Defendant Crane Co. has moved for summary judgment, arguing that (1) there is insufficient evidence to establish causation with respect to its product(s), (2) it is entitled to summary judgment on grounds of the bare metal defense, and (3) it is immune from liability by way of the government contractor defense. Defendant

asserts that maritime law applies to Plaintiff's claims. Plaintiff contends that New York law applies.

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 asserts maritime law applies to Plaintiff's claims. Plaintiff contends that New York law applies. Where a case sounds in admiralty, application of a state's law (including a choice of law analysis under its choice of law rules) would be inappropriate. Gibbs ex rel. Gibbs v. Carnival Cruise Lines, 314 F.3d 125, 131-32 (3d Cir. 2002). Therefore, if the Court determines that maritime law is applicable, the analysis ends there and the Court is to apply maritime law. See id.

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 almost always meet the connection test necessary for the application of maritime law. Conner, 799 F. Supp. 2d at 467-69 (citing Grubart, 513 U.S. at 534). This is particularly true in cases in which the exposure has arisen as a result of work aboard Navy vessels, either by Navy personnel or shipyard workers. See id. 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.

Mr. Hall's alleged exposures to Crane Co. valves occurred aboard ships. Therefore, these exposures were during sea-based work. See Conner, 799 F. Supp. 2d 455; Deuber, 2011 WL 6415339, at *1 n.1. Accordingly, maritime law is applicable to Plaintiff's claims against Crane Co. See id. at 462-63.

C. 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., No. 09-67099, - F. Supp. 2d -, 2012 WL 288364, at *7 (E.D. Pa. Feb. 1, 2012)(Robreno, J.).

D. 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))).

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

A. Defendant's Arguments

Product Identification / Causation

Crane Co. contends that Plaintiff's evidence is insufficient to establish that any product for which it is responsible caused Mr. Hall's mesothelioma.

Bare Metal Defense

Crane Co. argues that, under maritime law, 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, supply, or install.

Government Contractor Defense

Crane Co. asserts the government contractor defense, arguing that it is immune from liability in this case, and therefore entitled to summary judgment, because the Navy exercised discretion and approved reasonably precise specifications for the products at issue, Defendant provided warnings that conformed to the Navy's approved warnings, and the Navy knew about the hazards of asbestos. In asserting this defense, Crane Co. relies upon the affidavits and reports of Admiral David Sargent, Dr. Anthony Pantaleoni, and Dr. Samuel Forman.

B. Plaintiff's Arguments

Product Identification / Causation / Bare Metal Defense

In support of Plaintiff's assertion that he has identified sufficient evidence of exposure/causation/product identification to survive summary judgment, Plaintiff cites to the following evidence:

- Deposition Testimony of Plaintiff
  Mr. Hall testified that he was exposed to respirable dust from gaskets, packing, and insulation used in connection with Crane Co. valves aboard at least two different ships, including one ship that was in dry dock undergoing an overhaul. This dust came both from performing maintenance and repair work on the valves, and from dust on the floor that was disturbed when Mr. Hall swept it up.

- Testimony of Captain Arnold P. Moore
  Captain Moore states that Naval records confirm that Crane Co. valves were used aboard that ships at issue, and that they were supplied with asbestos-containing gaskets and packing, and were used with asbestos-containing insulation.

- Deposition Testimony of Crane Co. Corporate Representative (William McLean)
  Mr. McLean testified that Crane Co. supplied valves with asbestos-containing gaskets and packing until as late as the 1990s, could

foresee (and even knew) that its valves would need component parts replaced, and called for or required the use of asbestos-containing components with its valves.

- Miscellaneous Crane Documents
  Plaintiff submits various documents which he contends indicate the following:
  - Crane Co. manufactured valves that were sold with asbestos-containing gaskets, packing, and discs.
  - Crane Co. sold and may have manufactured asbestos-containing replacement parts (especially gaskets) for use with its valves.
  - Crane Co. knew (and perhaps called for or required) that asbestos-containing gaskets, packing, and insulation would be used with its valves.

Government Contractor Defense

Plaintiff argues that summary judgment in favor of Defendant on grounds of the government contractor defense is not warranted because there are genuine issues of material fact regarding its availability to Defendant. Plaintiff cites to evidence from Captain Moore that the Navy not only did not prohibit Defendant from providing warnings with its products but, instead, relied upon Defendant to provide such warnings.

C. Analysis

Plaintiff alleges that he was exposed to asbestos from gaskets, packing, and insulation that were used in connection with Crane Co. valves. There is evidence that Mr. Hall worked with Crane Co. valves aboard the ships at issue. There is evidence that he was exposed to dust as a result of gaskets, packing, and insulation used in connection with Crane Co. valves. There is evidence that these gaskets, packing, and insulation contained asbestos. There is evidence that the original gaskets and packing that Crane Co. supplied with the valves contained asbestos. There is evidence that Crane Co. supplied some

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AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.

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asbestos-containing gaskets and packing to the Navy for use as replacement parts with its valves. Importantly, however, there is no evidence that Mr. Hall was exposed to asbestos dust from any gasket, packing, or insulation manufactured or supplied by Crane Co. Therefore, no reasonable jury could conclude from the evidence that he was exposed to asbestos from a product manufactured or supplied by Crane Co. such that it was a substantial factor in the development of his mesothelioma, because any such finding would be based on conjecture. See Lindstrom, 424 F.3d at 492.

With respect to asbestos-containing products (or component parts) to which Plaintiff may have been exposed in connection with Crane Co. valves, but which were not manufactured or supplied by Defendant Crane Co., the Court has held that, under maritime law, Defendant cannot be liable. Conner, 2012 WL 288364, at *7. Accordingly, summary judgment in favor of Defendant Crane Co. is warranted. Anderson, 477 U.S. at 248-50.

In light of this determination, the Court need not reach Defendant's other arguments.