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

GERALD L. HOFFEDITZ, ET AL.,	:	CONSOLIDATED UNDER MDL 875
Plaintiffs,	:	
v.	:	Transferred from the District of New Jersey (Case No. 09-00257)
AM GENERAL, LLC, ET AL.,	:	
Defendants.	:	E.D. PA CIVIL ACTION NO. 2:09-70103

O R D E R

AND NOW, this **28th** day of **July, 2011**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Detroit Diesel Corp. (doc. no. 53) is **GRANTED**.[1]

[1] Plaintiffs filed this action on November 5, 2008 in the New Jersey Superior Court after Gerald Hoffeditz was diagnosed with mesothelioma on or about May 5, 2008. This case was removed to the United States District Court for the District of New Jersey on or about January 16, 2009. This case was transferred to the United States District Court for the Eastern District of Pennsylvania on or about June 10, 2009 as part of MDL-875. Plaintiffs allege that Mr. Hoffeditz was exposed to asbestos when he worked as a mechanic and heavy equipment repairer and helper at the Letterkenny Army Depot in Chambersburg, Pennsylvania. Additionally, Plaintiffs allege that Mr. Hoffeditz was exposed to asbestos-containing material when he performed maintenance on personal automobiles.

Plaintiffs assert that Mr. Hoffeditz was exposed to asbestos in Detroit Diesel engines while working at the Letterkenny Army Depot. The engines which are the subject of this motion were manufactured by General Motors Corp. (GM). In 1988, GM sold its Detroit Diesel-Allison Division to a joint venture between GM and Penske Corporation. Since that time, Daimler North America Corp. has acquired 100% of the stock of Detroit Diesel-Allison Division. GM also agreed to indemnify the purchaser of the division for liabilities incurred as a result of products sold prior to the 1988 sale. GM was a defendant in this case, but

filed bankruptcy in 2009. Plaintiffs argue that the product line exception to Pennsylvania's rule of non-successor liability applies in this case and that Diesel Detroit Corp. can be held liable pursuant to that exception.

I. LEGAL STANDARD

A. Summary Judgment Standard

Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "A motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." Am. Eagle Outfitters v. Lyle & Scott Ltd., 584 F.3d 575, 581 (3d Cir. 2009) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986)). A fact is "material" if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

In undertaking this analysis, the court views the facts in the light most favorable to the non-moving party. "After making all reasonable inferences in the nonmoving party's favor, there is a genuine issue of material fact if a reasonable jury could find for the nonmoving party." Pignataro v. Port Auth. of N.Y. & N.J., 593 F.3d 265, 268 (3d Cir. 2010) (citing Reliance Ins. Co. v. Moessner, 121 F.3d 895, 900 (3d Cir. 1997)). While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the non-moving party who must "set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 250.

B. The Applicable Law

Plaintiffs filed their claim in New Jersey; however, all of Mr. Hoffeditz's alleged exposures occurred in Pennsylvania and the parties agreed to follow Pennsylvania law for purposes of this motion. This Court will therefore apply Pennsylvania law.

1. Successor Liability under Pennsylvania Law

In Continental Insurance Co. v. Schneider, Inc., the Supreme Court of Pennsylvania stated that "when one company sells or transfers all of its assets to another company, the purchasing or

receiving company is not responsible for the debts and liabilities of the selling company simply because it acquired the seller's property." 873 A.2d 1286, 1291 (Pa. 2005) (quoting Hill v. Trailmobile, Inc., 603 A.2d 602, 605 (Pa. Super. Ct. 1992) (abrogated by Schmidt v. Boardman Co., 11 A.3d 924, 927 (Pa. 2011) (citing 15 William Meade Fletcher, Fletcher Cyclopedia of the Law of Private Corporations § 7122)). "The general rule of nonliability can be overcome, however, if it is established that (1) the purchaser expressly or implicitly agreed to assume liability, (2) the transaction amounted to a consolidation or merger, (3) the purchasing corporation was merely a continuation of the selling corporation, (4) the transaction was fraudulently entered into to escape liability, or (5) the transfer was without adequate consideration and no provisions were made for creditors of the selling corporation." Id. The product line exception to the general rule of non-liability of successor corporations was established in Dawejko v. Jorgensen Steel Co., 434 A.2d 106 (Pa. Super. Ct. 1981).

There has been significant confusion as to which factors are mandatory or even relevant in determining whether the product line exception applies under Pennsylvania law. In Dawejko, the Superior Court of Pennsylvania recognized the product line exception. 434 A.2d at 110. The court relied on California and New Jersey case law in finding that various factors are pertinent in deciding whether the product line exception applies, but also noted that the product line exception "should be phrased in general terms." Id. at 111 (citing Ray v. Alad Corp., 560 P.2d 3 (Ca. 1977); Ramirez v. Amsted Indus., 431 A.2d 811 (N.J. 1981)). The court reasoned that the three-part test followed by California "will always be useful to consider" and adopted the formulation of the Ramirez court. Id. Therefore, after Dawejko, it was unclear whether any factors were mandatory or were just considerations to be taken into account.

After Dawekjo, in Hill v. Trailmobile, Inc., the Superior Court of Pennsylvania indicated that the Ray factors of the California Supreme Court were mandatory. 603 A.2d 602, 606 (Pa. Super. Ct. 1992) (abrogated by Schmidt, 11 A.3d 924). The Superior Court of Pennsylvania in Schmidt v. Boardman Co. attempted to be faithful to both Dawekjo and Hill, ultimately instructing the jury to apply the Ray factors, but also included the language from Dawejko that the product line exception "should be phrased in general terms." 958 A.2d 498. The Superior Court in Schmidt determined that the first factor, that the successor purchase all or substantially all of the predecessor's assets, was met where the successor purchased a division of the

predecessor as opposed to the entire corporation. Id.

In Schmidt, the Supreme Court of Pennsylvania granted a petition for allowance of appeal to address "whether this Court should adopt the product-line exception to the general rule of successor non-liability in strict liability actions, and, if so, on what terms." 11 A.3d 924, 927 (Pa. 2011). As to the continuing vitality of the exception, the court determined that this issue had been waived and thus, "consideration of it is postponed." Id. at 946. The court determined that Hill improperly stated that the Ray factors were mandatory and reverted to Dawejko as the proper standard. Id. at 945. The court affirmed the Superior Court's jury instruction as the appropriate standard, despite the fact that it "can be read as centered on Ray." Id. The court also noted that the Superior Court's instruction that the successor could be liable even though it only purchased a division of the predecessor was flawed. Id. The jury must be informed about the larger structure of the predecessor in order to determine whether the plaintiff's remedies against the predecessor were destroyed by virtue of the sale. Id. at 945-46. After Schmidt, this Court should not consider either the Ray or Ramirez factors as mandatory, but should adopt a flexible approach considering all of these factors.

The Ray factors include: (1) the virtual destruction of the plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business, (2) the successor's ability to assume the original manufacturer's risk-spreading role, and (3) the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's good will being enjoyed by the successor in the continued operation of the business. 560 P.2d at 8-9.

The Ramirez factors include consideration of whether: (1) one corporation acquires all or substantially all the manufacturing assets of another corporation, even if exclusively for cash, and (2) undertakes essentially the same manufacturing operation as the selling corporation. 431 A.2d 811.

II. MOTION FOR SUMMARY JUDGMENT OF DETROIT DIESEL CORP.

Plaintiff alleges exposure to Detroit Diesel engines between 1969 and 1981. These engines which Detroit Diesel is allegedly liable for were manufactured by GM. (Def.'s Mot. Summ. J. at 6.) "The Detroit Diesel engines to which Mr. Hoffeditz claims exposure were manufactured by GM's GM Diesel Division, Detroit

Diesel Division, or Detroit-Allison Division before 1988." (Id. at 9.) In 1988, GM sold some of its asserts, but none of its liabilities of its Detroit Diesel-Allison Division to a joint venture between GM and Penske Corporation. (Id.) Since that time, Daimler North America Corp. has acquired 100% of the stock of Detroit Diesel-Allison Division. Defendant asserts that as part of the 1988 sale, GM agreed to retain all liabilities and to indemnify Detroit Diesel Corp. for any products manufactured by GM's Detroit Diesel-Allison Division prior to 1988. "Under this agreement, up until GM's June 2009 bankruptcy filing, GM defended DDC against all product liability claims arising from Detroit Diesel products manufactured, distributed or sold by GM prior to 1988." (Id. at 10.)

Defendant does not make any arguments as to product identification or causation, but moves for summary judgment solely on the successor liability issue. In their briefing, the parties asserted that the following factors were mandatory in determining whether Detroit Diesel should be entitled to summary judgment: (1) whether one corporation acquires all or substantially all the manufacturing assets of another corporation, (2) whether the purchasing corporation undertakes essentially the same manufacturing operation as the selling corporation, and (3) whether the transaction between the predecessor and successor caused the destruction of the plaintiff's remedies against the manufacturer. The parties have only contested whether the sale at issue satisfies the first and third factors. This Court notes that after the Supreme Court of Pennsylvania's decision in Schmidt, these factors are relevant in the analysis, although not determinative.

The parties contest whether Detroit Diesel can be held liable as a successor since it did not purchase all of substantially all of GM's assets, but rather purchased only a division of GM. The Superior Court in Schmidt permitted a finding of liability against a successor which had only purchased a division of a predecessor. The Supreme Court in Schmidt affirmed the Superior Court's findings, but noted that as to this aspect of the case, the Superior Court's cursory rationale that the successor which only purchased a division of a predecessor could be held liable failed to take into account that if the predecessor continued to exist, then the plaintiff's remedies against the predecessor might not be destroyed. Therefore, the Supreme Court did not reject the finding that a successor which purchased a division of a predecessor corporation could be held liable under the product line exception, but found that this fact would be relevant in determining whether the plaintiff's remedies

bankruptcy which would necessitate Diesel become taking up this

against the predecessor were destroyed by virtue of the sale of the division.

The parties do not contest that the second factor, whether the purchasing corporation undertakes essentially the same manufacturing operation as the selling corporation, is met in this case.

As to the third factor, whether the sale caused the destruction of plaintiff's remedies against the predecessor corporation, this Court notes that plaintiff initially filed a claim against GM in this lawsuit. It was GM's 2009 bankruptcy and not the sale of GM's division to Detroit Diesel in 1988 which destroyed plaintiff's remedies against GM. GM remained a viable defendant to be held liable for the engines at issue in this case for 20 years after Detroit Diesel purchased GM's division. Therefore, no matter how far the causation argument is stretched, it was GM's bankruptcy, and not the sale of GM's division to Detroit Diesel, which caused the destruction of the Plaintiffs' remedies. As to the indemnity agreement where GM agreed to indemnify Detroit Diesel for liabilities associated with GM's division, this only establishes that in some jurisdictions, Detroit Diesel could have been held liable and then would have had a right of indemnification against GM. Because this Court concludes that Detroit Diesel cannot be held liable under the product line exception to Pennsylvania's rule of successor non-liability since GM's bankruptcy and not the sale of GM's division to Detroit Diesel resulted in the destruction of the Plaintiffs' remedies, the indemnity agreement has no bearing on this matter.

In accordance with the Supreme Court of Pennsylvania's decision in Schmidt, this Court notes that the factors cited by the parties are not determinative in this matter. Thus, this Court must also consider "the successor's ability to assume the original manufacturer's risk-spreading role, and the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's good will being enjoyed by the successor in the continued operation of the business" as the Ray court did. 560 P.2d at 8-9. Detroit Diesel could take up GM's role since GM is no longer a viable defendant; however, this would not comport with traditional notions of fairness since it would be GM's bankruptcy and not the sale which occurred 20 years prior to the bankruptcy which would necessitate Diesel Detroit taking up this role. Accordingly, in consideration of the Ray and Ramirez factors, since it was GM's bankruptcy and not the sale of GM's division to Detroit Diesel which destroyed Plaintiffs' remedies

in this case, the product line exception does not apply. As no exception to the general rule of non-successor liability applies in this case, Defendant is entitled to summary judgment.

E.D. PA NO. 2:09-70103

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.