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

IN RE: ASBESTOS PRODUCTS LIABILITY LITIGATION (No. VI)	:	Consolidated Under MDL 875
GERALD L. HOFFEDITZ, et al.,	:	
	:	Civil Action No. 2:09-70103
v.	:	
AM GENERAL, LLC, et al.	:	Transferred from the District of New Jersey (N.J. No. 09-00257)

FILED
JUL 29 2011
MICHAEL E. KUNZ, Clerk
By_____Dep. Clerk

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 Ford Motor Company, filed on June 10, 2011 (doc. no. 59), is **DENIED**.[1]

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[1]On November 5, 2008 Plaintiffs commenced this action in the Superior Court of New Jersey Law Division. (Pls.' Resp., doc. no. 74 at 4.) The case was removed to the Federal District Court for the District of New Jersey on January 16, 2009. (Id.) It was subsequently transferred to the Eastern District of Pennsylvania as part of MDL 875. (Transfer Order, doc. no. 1.)

Plaintiffs seek to recover for injuries that Gerald L. Hoffeditz ("Mr. Hoffeditz") sustained as a result of asbestos exposure during the course of his employment at the Letterkenny Army Depot, as well as from extensive "shade three" mechanic work he conducted from 1962 to 1993. (Def.'s Mot. Summ. J. Statement of Material Facts, doc. no. 59 at 2-6.) The subject automotive repairs were performed in the driveway of Mr. Hoffeditz's homes. (Id. at 3.) Mr. Hoffeditz performed work on a 1953 Ford, which he purchased in 1962 and owned until 1968. (Id. at 4.) Mr. Hoffeditz also performed work on a 1964 Ford and a 1987 Mercury Marquis. (Id.) Mr. Hoffeditz was diagnosed with malignant mesothelioma on or about May 5, 2008. (Pls.' Resp. at 6.)

Defendant Ford Motor Company ("Ford") moved for summary judgment on June 10, 2010, arguing that Plaintiffs failed to establish product identification under Pennsylvania law. (Def.'s Mot. Summ. J. at 1.) Defendant further argues that Plaintiffs

cannot establish that Mr. Hoffeditz ever removed a Ford manufactured or supplied asbestos-containing product, and that Ford cannot be held liable for injuries and/or damages that are caused by products manufactured by third parties under a product defect claim, including actions for failure to warn. (Def.'s Reply, doc. no. 95 at 7-8.)

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, 247-48 (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. Failure to Warn Under Pennsylvania Law

Pennsylvania follows Section 402(A) of the Restatement (Second) of Torts. See Chicano v. General Elec. Co., No,. 03-5126, 2004 WL 2250990, at *5 (E.D. Pa. Oct. 5, 2004). Under Pennsylvania law, a defendant can be held strictly liable for failure to warn when Plaintiff establishes "(A) that defendant had a duty to warn of the dangers inherent in his product; (B) that the product was defective or in a defective condition; (C) that the defect causing the injury existed at the time the product left the seller's hands; and, (D) that the defective product was the cause of plaintiff's injuries. Id.; Berkebile v. Brantly Helicopter Corp., 337 A.2d 893, 898 (Pa. 1975).

In Chicano, this Court analyzed whether GE was liable for the decedent contracting of mesothelioma, even though GE did not produce or manufacture the asbestos-containing component of the product to which Plaintiff was exposed, but did have a contractual responsibility for servicing and inspecting the turbines in which the asbestos-containing components were placed. (Id. at *1-2.) This Court denied summary judgment for GE, concluding that because GE was aware that the turbines "would be insulated with asbestos-containing materials and knew that they were, in fact, insulated with asbestos-containing materials," there was a genuine issue of material fact as to whether GE could be held liable for the plaintiff's asbestos-related disease. (Id.)

However, a component part manufacturer has no duty to warn of dangers associated with the finished products into which its component was incorporated, if it did not know of the defect. Id. at *7, citing Wenrick v. Scholemann-Siemag Aktiengesellschaft, 654 A.2d 1244, 1248 (Pa. 1989) (reversed on other grounds); see also Toth v. Economy, 571 A.2d 420 (Pa. Super. Ct. 1990)

2. Product Identification and Exposure Under Pennsylvania Law

Under Pennsylvania law, a plaintiff must establish, as a threshold matter, "that [his or her] injuries were caused by a product of the particular manufacturer or supplier." Eckenrod v. GAF Corp., 544 A.2d 50, 52 (Pa. Super. Ct. 1988) (citing Wible v. Keene Corp., No. 86-4451, 1987 WL 15833 at *1 (E.D. Pa. Aug. 19, 1987)(in order to defeat defendant's motion, plaintiff must present evidence showing that he or she was exposed to an

asbestos product supplied by defendant)). Beyond this initial requirement, a plaintiff must further establish that the plaintiff worked with a certain defendant's product with the necessary frequency and regularity, and in close enough proximity to the product, to raise a genuine issue of material fact as to whether that specific product was a substantial factor (and thus the proximate cause) of Plaintiff's asbestos-related condition. Eckenrod, 544 A.2d at 52-53.

In addition to articulating the "frequency, regularity and proximity" standard, Eckenrod also held that "the mere fact that appellees' asbestos products came into the facility does not show that the decedent ever breathed these specific asbestos products or that he worked where these asbestos products were delivered." Id. at 53. Gregg v. VJ Auto Parts, Co., 943 A.2d 216 (Pa. 2007), further upheld the discretion of the trial court in evaluating the evidence presented at the trial stage, ruling that

> we believe it is appropriate for courts, at the summary judgment stage, to make a reasoned assessment concerning whether, in light of the evidence concerning frequency, regularity, and proximity of a plaintiff's . . . asserted exposure, a jury would be entitled to make the necessary inference of a sufficient causal connection between the defendant's product and the asserted injury.

Id. at 227. The Gregg court adopted a fact sensitive approach regarding the sufficiency of product identification evidence. Moreover, "the plaintiff's exposure to each defendant's product should be independently evaluated when determining if such exposure was a substantial factor in causing the plaintiff's injury." Tragarz v. Keene Corp., 980 F.2d 411, 425 (7th Cir. 1992) (discussed by Gregg court in setting out the product identification criteria in Pennsylvania).

II. MOTION FOR SUMMARY JUDGMENT OF DEFENDANT FORD MOTOR COMPANY

1. Failure to Warn

Defendants argue that this Court should follow the Pennsylvania Court of Common Pleas rulings in Stralo v. Yarway Corp., No. 0187, 2010 Phila. Ct. Com. Pl. Lexis 125 (Phila. Cty.

June 11, 2010); Linster v. Penumo Abex LLC, No. 0390, 2010 Phila. Ct. Com. Pl. Lexis 78 (Phila. Ct. Apr. 7, 2010); and, Iannucci v. Cleaver-Brooks, Inc., No. 1830, No. 3869, 2008 Phila. Ct. Com. Pl. Lexis 73 (Phila. Cty. Mar. 25, 2008). Defendants also urge this Court to follow a non-precedential slip opinion from the Superior Court of Pennsylvania in Schaffner v. Aesys, 991 A.2d 369, slip op at 12 (Pa. Super. Ct. 2010). These cases are distinguishable in that none present analogous fact patterns, where Defendant knew and/or required asbestos-containing replacement parts to be used in its products.

The facts of this case are analogous to those set forth in Chicano, No. 03-5126, 2004 WL 2250990, at *5. In Chicano, this Court denied summary judgment, finding there was a genuine issue of material fact as to whether GE had a duty to warn regarding the asbestos-containing products used to insulate its turbines. Id. at *10. This Court based its decision primarily on the fact that GE knew its turbines would be insulated with asbestos-containing materials. Id. at *2. Here, Plaintiffs have presented evidence of Ford's knowledge that the replacement brakes for its vehicles would contain asbestos-containing parts. Plaintiffs produced an internal Ford memorandum showing that Ford vehicles were specifically designed to use asbestos-containing friction materials. (Pls.' Resp. at 22, citing Apr. 11, 1977 Internal Ford Mem. (Exh. 16.)) Additionally, Ford was aware that non-asbestos-containing brakes could not be used in its vehicles unless it redesigned its braking systems. (Pls.' Resp. at 22, citing May 10, 1977 Internal Ford Mem. (Exh. 17.))

Because Plaintiffs raised a genuine issue of material fact as to whether Mr. Hoffeditz was exposed to replacement brakes between 1968 and 1993, Mr. Hoffeditz suffers from mesothelioma, and Ford knew of the asbestos-containing replacement brakes, this Court concludes that Ford had a duty to warn Mr. Hoffeditz of the known dangers of using replacement brakes. See Chicano, No. 03-5126, 2004 WL 2250990 at *6.

2. Product Identification and Exposure

Under Pennsylvania law, Plaintiff must show "that [his or her] injuries were caused by a product of the particular manufacturer or supplier." Eckenrod, 544 A.2d at 52. Additionally, Plaintiff must show that Plaintiff worked with a certain defendant's product with the necessary frequency and regularity, and in close enough proximity to the product, to raise a genuine issue of material fact as to whether that

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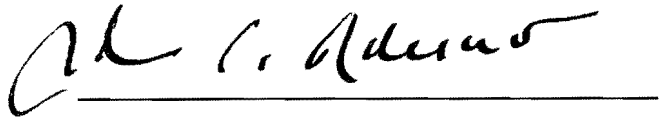
AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

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specific product was a substantial factor (and thus the proximate cause) of Plaintiff's asbestos-related condition. Eckenrod, 544 A.2d at 52-53. It is up to the trial court to decide whether a plaintiff has established the requisite frequency, regularity and proximity of exposure to allow a jury to make the appropriate inference of a causal connection between a defendant's product and a plaintiff's alleged injury. Gregg, 943 A.2d at 227.

Here, Plaintiffs presented evidence of at least fifty replacement brake jobs on Ford vehicles with over 100,000 miles, and two potential first time brake-jobs on the 1964 Ford and 1987 Mercury Marquis. (Pls.' Resp. at 10.) As set forth in Gregg, there is no threshold number of exposures to asbestos-containing products required to support liability; however, determination of liability should be tailored to the specific facts of the case. Gregg, 943 A.2d at 226, citing Tragarz, 980 F.2d at 421. Because Defendant had a duty to warn Plaintiff of asbestos-containing replacement parts, the aggregate number of asbestos exposures is fifty-two (52). Plaintiffs have presented sufficient evidence to raise a genuine issue of material fact as to whether Ford is responsible for Mr. Hoffeditz's asbestos-related disease.

For the above stated reasons, summary judgment is denied.