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

CHRISTINE P. PACE,	:	CONSOLIDATED UNDER MDL 875
Plaintiff,	:	
v.	:	Transferred from the District of South Carolina (Case No. 11-02688)
3M COMPANY, ET AL.,	:	
Defendants.	:	E.D. PA CIVIL ACTION NO. 2:11-67744-ER

O R D E R

AND NOW, this **19th** day of **April, 2013**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant The Gorman Rupp Company (Doc. No. 95) is **GRANTED.**[1]

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[1] This case was transferred in October of 2011 from the United States District Court for the District of South Carolina to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Plaintiff Christine Pace alleges that William Pace ("Decedent" or "Mr. Pace") was exposed to asbestos while working as a marine machinist (and apprentice marine machinist) at the Charleston Naval Shipyard from 1971 to 1995. Plaintiff contends that Defendant The Gorman Rupp Company ("Gorman Rupp") is liable for pumps with which asbestos-containing gaskets, packing, and insulation were used. The alleged exposure pertinent to Defendant Gorman Rupp occurred aboard various Navy ships and on land in two different machine shops.

Plaintiff asserts that Decedent developed mesothelioma as a result of his exposure to asbestos. Decedent was deposed in October of 2011.

Plaintiff brought claims against various defendants. Defendant Gorman Rupp has moved for summary judgment, arguing that there is insufficient evidence to establish causation with respect to any product for which it could be liable. The parties assert that South Carolina 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

The parties assert that South Carolina law applies. However, 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.

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 Aboard Ships

Plaintiff alleges exposure pertinent to Defendant that occurred aboard ships. Therefore, these alleged 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 Defendant that arise from this alleged exposure. See id. at 462-63.

ii) Exposure Arising On Land (Machine Shops 31 and 38)

Plaintiff alleges exposure pertinent to Defendant that occurred in two different machine shops on land (Shop No. 31 and Shop No. 38). Therefore, this exposure was during land-based work at the Charleston Naval Shipyard in Charleston, South Carolina. Accordingly, South Carolina state law is applicable to Plaintiff's claims against Defendant that arise from this alleged exposure. See Conner, 799 F. Supp. 2d 455.

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))).

E. Bare Metal Defense Under South Carolina Law

This Court has previously been faced with the issue of whether the so-called "bare metal defense" is recognized by South Carolina law. See Blackmon v. Owens-Illinois, Inc., No. 07-62975, 2011 WL 4790631 (E.D. Pa. Jan. 28, 2011)(Robreno, J.); Campbell v. A.W. Chesterton Co., No. 11-66745, 2012 WL 5392828 (E.D. Pa. Oct. 16, 2012)(Robreno, J.). In each case, it remanded the issue for a court in South Carolina to decide, noting that this issue is a matter of policy, which no appellate court in South Carolina has addressed, and which would be better addressed by a court closer to and more familiar with South Carolina policy.

F. Product Identification/Causation Under South Carolina Law

This Court has previously addressed the standard for product identification under South Carolina law. In Blackmon v. Owens-Illinois, Inc., the Court wrote:

> In Henderson v. Allied Signal, Inc., the Supreme Court of South Carolina explicitly adopted the "frequency, regularity, and proximity test." 644 S.E.2d 724, 727 (S.C. 2007) (citing Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156, 1162 (4th Cir. 1986)). The court noted that, "[t]o support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." 644 S.E.2d at 727. The court held that mere presence of "static asbestos" does not equate to asbestos exposure. Id.
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> In Roehling v. National Gypsum Co., the United States Court of Appeals for the Fourth Circuit decided an appeal from the Eastern District of Virginia. 786 F.2d 1225 (4th Cir. 1986). Plaintiff sued various defendants alleging that he developed mesothelioma due to exposure to their asbestos-containing products. Id. at 1226. The Court held that direct evidence of exposure is

not required in order for plaintiff to survive a motion for summary judgment. Id. at 1228. The evidence need only establish that plaintiff "was in the same vicinity as witnesses who can identify the products causing the asbestos dust and that all people in that area, not just the product handlers, inhaled." Id.

No. 07-62975, 2011 WL 4790631 (E.D. Pa. Jan. 28, 2011).

II. Defendant Gorman Rupp's Motion for Summary Judgment

A. Defendant's Arguments

Gorman Rupp contends that Plaintiff's evidence is insufficient to establish that any product for which it is responsible caused Decedent's mesothelioma.

B. Plaintiff's Arguments

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

- Deposition Testimony of Mr. Pace
  Mr. Pace testified that he worked as a apprentice marine machinist at Charleston Naval Shipyard from approximately 1971 to 1975. In 1975, he became a journeyman machinist working on the "steam gang." From 1982 until about 1992, he worked in the nuclear power department aboard nuclear submarines. He worked as a machinist at the shipyard until about 1995. The majority of his career at Charleston Naval Shipyard was spent working on land in Machine Shop No. 38.

  He also worked for about a year in Machine Shop No. 31 (during his time as an apprentice).

  His duties at all of these locations included maintaining and repairing pumps and valves,

including packing and repacking valves, and changing gaskets. He also worked on turbines and boilers, as well as other equipment. He did work with equipment used aboard at least twenty-five different Naval vessels.

Mr. Pace testified that he worked "mostly on pumps and valves" during the years 1972 and 1973 and that, in some cases, he would "put a brand new one in."

Mr. Pace testified that work with packing could have created dust (and, in particular, that "steam systems [are] always bad"). He testified that he worked with a lot of gaskets and that "there's a lot of dust going on when you're trying to get a gasket off."

(Doc. No. 125, Exs. A-B.)

- Deposition Testimony of Raymond Lee
  Mr. Lee testified that Decedent worked in Shop 31 for about a year doing mainly pump and valve assembly. He also testified that he worked with Decedent in Shop 38. He testified that he worked with Decedent "a lot" during the late 1970s.

  (Doc. No. 125, Ex. D.)

- Deposition Testimony of Theron Morgan, Jr.
  Mr. Morgan testified that the residual gasket material Decedent removed in Shop 31 was from gaskets that were original to the pump. When asked if he saw Decedent do any work at Shop 31 that exposed him to asbestos, Mr. Morgan explained that Decedent's work removing external insulation from equipment that came to the shop would have exposed him to asbestos. He explained that removing the insulation was a dusty process.

  (Doc. No. 125, Ex. E.)

- Deposition Testimony of David Fanchette
  Mr. Fanchette worked with Decedent during the years 1972 and 1974. He recalled seeing Gorman Rupp pumps at the shipyard, including aboard ships, but could not testify to seeing Decedent work with or around a Gorman Rupp pump. He testified that these pumps generally had insulation on them. He testified that it was possible that Decedent was exposed to asbestos from a Gorman Rupp pump, but that he could not testify that Decedent was so exposed, because he did not know.

  (Doc. No. 125, Ex. F.)

- Deposition Testimony of Mark Kreinbihl (Corporate Representative)
  Plaintiff points to testimony (from another action) of Mr. Kreinbihl (the corporate representative for Defendant Gorman Rupp), in which she contends he testified that Gorman Rupp manufactured asbestos-containing pumps and pump systems - some of which incorporated asbestos-containing components, including gaskets and/or packing until approximately 1985 or 1986.

  (Doc. No. 125, Ex. G.)

C. Analysis

Plaintiff alleges that Decedent was exposed to asbestos from gaskets, packing, and insulation used in connection with pumps manufactured by Gorman Rupp. She alleges that this exposure occurred both aboard ships and in machine shops (on land). The Court examines the sufficiency of Plaintiff's evidence regarding each alleged source of exposure separately.

i) Exposure Arising Aboard Ships (Maritime Law)

There is evidence that Gorman Rupp pumps were aboard ships at the Charleston Naval Shipyard. There is evidence that Decedent worked with and around pumps on ships, including removing and replacing packing and gaskets. There is evidence

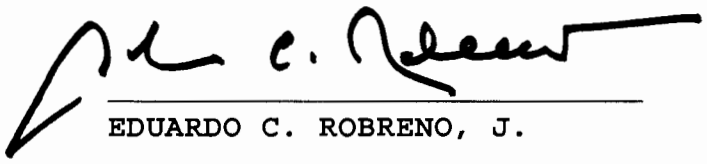
that pumps aboard ships were insulated. However, there is no evidence that Decedent worked with or around any Gorman Rupp pumps aboard any ship - much less that he was exposed to asbestos in connection with any Gorman Rupp pump aboard a ship. Therefore, no reasonable jury could conclude from the evidence that Decedent was exposed during work aboard ships to asbestos from or in connection with a pump manufactured or supplied by Gorman Rupp 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 Decedent may have been exposed, but which were not manufactured or supplied by Gorman Rupp 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 Gorman Rupp is warranted with respect to claims arising from sea-based exposure to asbestos in connection with pumps. Anderson, 477 U.S. at 248-50.

ii) Exposure Arising On Land (South Carolina Law)

There is evidence that Gorman Rupp pumps were in machine shops (i.e., on land) at the Charleston Naval Shipyard. There is evidence that Decedent worked with and around pumps in those machine shops, including removing and replacing packing and gaskets. However, there is no evidence that Decedent worked with or around Gorman Rupp pumps in any machine shop - much less that he was exposed to asbestos in connection with any Gorman Rupp pump in a machine shop. Therefore, even if South Carolina did not recognize the "bare metal defense" and instead held manufacturers liable for harms arising from products or component parts used in connection with its products (e.g., gaskets, packing, and insulation), but not manufactured or supplied by it - an issue this Court need not consider - no reasonable jury could conclude from the evidence that Decedent was exposed to asbestos from any product or component part manufactured or supplied by Gorman Rupp, or used in connection with Gorman Rupp pumps, such that it was a substantial cause of the development of his mesothelioma. See Henderson, 644 S.E.2d 724, 727. Accordingly, summary judgment in favor of Defendant Gorman Rupp is warranted with respect to claims arising from land-based exposure to asbestos in connection with pumps. Anderson, 477 U.S. at 248-50.

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

D. Conclusion

Summary judgment in favor of Defendant Gorman Rupp is granted with respect to all claims against it.