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

CHRISTINE P. PACE,	:	CONSOLIDATED UNDER
	:	MDL 875
Plaintiff,	:	
	:	Transferred from the
	:	District of South Carolina
v.	:	(Case No. 11-02688)
	FILED	
	APR - 4 2013	
3M COMPANY, ET AL.,	:	E.D. PA CIVIL ACTION NO.
	MICHAEL E. KUNZ, Clerk	2:11-67744-ER
Defendants.	By_____ Dep. Clerk	

O R D E R

AND NOW, this **4th** day of **April, 2013**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant John Crane Inc. (Doc. No. 92) is **DENIED.**[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 alleges that Defendant John Crane Inc. ("John Crane") manufactured packing. The alleged exposure pertinent to Defendant John Crane occurred aboard various Navy ships.

Plaintiff asserts that Decedent developed mesothelioma as a result of his exposure to asbestos, and later died from this illness. Decedent was deposed in October of 2011.

Plaintiff brought claims against various defendants. Defendant John Crane has moved for summary judgment, arguing that there is insufficient evidence to establish causation with respect to any product for which it is responsible. 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.

The alleged exposure pertinent to Defendant 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 Defendant. 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 John Crane's Motion for Summary Judgment

A. Defendant's Arguments

John Crane contends that Plaintiff has failed to identify sufficient evidence to establish causation with respect to any product for which it is responsible caused Mr. Hall's mesothelioma.

In connection with its reply brief, Defendant objects to Plaintiff's reliance on deposition testimony from John Blackmon. Specifically, Defendant argues that this testimony is inadmissible against it because it is from another action to which Defendant was not a party.

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 Guy Lookabill, Sr.
  Mr. Lookabill, a co-worker of Decedent, testified that he and Decedent worked with John Crane packing. He testified that they removed and installed John Crane packing on both pumps and valves. He testified that both the packing they removed and the packing they installed contained asbestos. Mr. Lookabill testified that the process of removing packing was a dusty process, which took approximately 30 to 45 minutes when removed from a valve, and longer when removed from a pump. He testified that the process of installing packing required cutting the packing. When asked to try to specify how much of the packing was John Crane packing (as opposed to some other brand of packing), he answered that John Crane packing was "mostly what we worked with." He also testified that he and Decedent did not use masks or respiratory protection during their work.

  (Doc. No. 123-6 at pp. 54-55, 83-84, 87-88, and 124.)

- Other Evidence
  Plaintiff points to a variety of other evidence (including testimony from numerous other witnesses and discovery responses of Defendant) which need not be detailed herein.

  (Doc. Nos. 123-1 through 123-5, and 123-7 through 123-10.)

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.

C. Analysis

Plaintiff alleges that Decedent was exposed to asbestos from packing manufactured and/or supplied by Defendant John Crane. There is evidence that Decedent was repeatedly exposed to respirable dust from asbestos-containing John Crane packing that he removed (and perhaps also from John Crane packing that he installed) during work periods lasting thirty minutes or more. Therefore, a reasonable jury could conclude from the evidence that Decedent was exposed to asbestos from packing manufactured and/or supplied by John Crane such that it was a substantial factor in the development of his illness. See Lindstrom, 424 F.3d at 492. Accordingly, summary judgment in favor of Defendant John Crane is not warranted. Anderson, 477 U.S. at 248-50.

Because Plaintiff need not rely upon the testimony of witness John Blackmon in order to survive Defendant John Crane's motion for summary judgment, the Court need not reach Defendant's objections to this testimony in connection with this motion. The Court therefore declines to do so, preferring instead to leave the issue for determination by the trial judge.