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

LAWRENCE PAYNE,	:	CONSOLIDATED UNDER MDL 875
Plaintiff,	:	
	:	Transferred from the Southern District of Illinois
v.	:	(Case No. 11-00820)
A.W. CHESTERTON COMPANY, ET AL.,	:	E.D. PA CIVIL ACTION 2:11-67704-ER
Defendants.	:	

O R D E R

AND NOW, this **1st** day of **April, 2013**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant General Electric Corporation (Doc. No. 485) is **GRANTED**.[1]

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

Plaintiff Lawrence Payne ("Plaintiff or "Mr. Payne") alleges, inter alia, that he was exposed to asbestos (1) while working as an electrician for the US Navy from 1961 to 1965, and (2) while working as a general laborer for General Electric in Youngstown, Ohio from 1965 to 1985. Defendant General Electric Corporation ("GE") manufactured generators and other electrical equipment. The alleged Naval exposure pertinent to Defendant GE occurred while Plaintiff was aboard the following ships:

- USS Randolph (1961-1963)
- USS George K. MacKenzie (1963-1965)

Plaintiff asserts that he developed lung cancer as a result of his exposure to asbestos. Mr. Payne was deposed in May 2012.

Plaintiff brought claims against various defendants. Defendant GE 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, (3) it is immune from

liability by way of the government contractor defense, and (4) Plaintiff's claims are barred by the exclusivity provision of the Ohio Workers' Compensation laws. Defendant alleges that maritime law applies to Plaintiff's sea-based claims and Ohio law applies to Plaintiff's land-based claims. Plaintiff alleges that Illinois law applies to his land-based claims.

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

1. Government Contractor Defense (Federal Law)

Defendant's motion for summary judgment on the basis of the government contractor defense is governed by federal law. In matters of federal law, the MDL transferee court applies the law of the circuit where it sits, which in this case is the law of the U.S. Court of Appeals for the Third Circuit. Various

Plaintiffs v. Various Defendants ("Oil Field Cases"), 673 F. Supp. 2d 358, 362-63 (E.D. Pa. 2009)(Robreno, J.).

2. State Law Issues (Maritime versus State Law)

Defendant alleges that maritime law applies to Plaintiff's sea-based claims, while Ohio law applies to Plaintiff's land-based claims. Plaintiff alleges that Illinois law applies to his land-based claims. 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) Naval Exposure

There is evidence that Plaintiff was exposed to GE product(s) (and alleged asbestos in connection therewith) aboard

the USS Randolph and the USS George K. MacKenzie. 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 these claims against GE. See id. at 462-63.

ii) Youngstown, Ohio Exposure

There is evidence that Plaintiff was exposed to insulation (and alleged asbestos in connection therewith) at a General Electric facility in Youngstown, Ohio. Accordingly, these exposures occurred during land-based work. Defendant contends that Ohio law applies to claims arising from this exposure because it occurred in Ohio, while Plaintiff contends Illinois law is applicable since the action was brought in Illinois. Therefore, the Court must determine whether Illinois or Ohio state law is applicable to Plaintiff's claims against Defendant GE that arise from alleged exposure in Youngstown, Ohio. See Conner, 799 F. Supp. 2d 455.

In deciding what substantive law governs a claim based in state law, a federal transferee court applies the choice of law rules of the state in which the action was initiated. Van Dusen v. Barrack, 376 U.S. 612, 637-40 (1964)(applying the *Erie* doctrine rationale to case held in diversity jurisdiction and transferred from one federal district court to another as a result of defendant's initiation of transfer); Commissioner v. Estate of Bosch, 387 U.S. 456, 474-77 (1967)(confirming applicability of *Erie* doctrine rationale to cases held in federal question jurisdiction). Therefore, because this case was initiated in Illinois, Illinois choice of law rules must be used to determine what substantive law applies to these claims.

Under Illinois law, "...a choice-of-law analysis begins by isolating the issue and defining the conflict. A choice-of-law determination is required only when a difference in law will make a difference in the outcome." Townsend v. Sears, Roebuck and Co., 227 Ill.2d 147, 155 (Ill. 2007).

a) Workers' Compensation Bar

The Court first considers whether the workers compensation laws of Illinois and Ohio are at conflict such that a choice of either, in this specific case, is outcome determinative. The Ohio's Workers Compensation Act protects employers who "comply with section 4123.34 of the Revised

Code...." Ohio Rev. Code Ann. § 4123.74. It is undisputed that Defendant GE is not protected under the applicable Illinois Workers Compensation Act. Importantly, as Plaintiff notes, Defendant has not provided evidence that it was an employer who complied with section 4123.35 of the Ohio Revised Code. As such, Defendant has not established that it is entitled to summary judgment on grounds of the Ohio Worker's Compensation Act. Therefore, with respect to this asserted basis for summary judgment, Defendant has failed to carry its burden of identifying the absence of a genuine dispute of material fact for trial. See Anderson, 477 U.S. at 248-50. Thus, for purposes of deciding Defendant's motion for summary judgment, based upon the evidence in the record, no conflict of law exists between the worker's compensation acts of Ohio and Illinois, as Plaintiff's claims are not barred at the summary judgment stage by the law of either state. As such, a choice of law determination would not be outcome determinative with respect to this issue and is therefore not required in order to decide Defendant's motion. See Townsend, 227 Ill.2d at 155.

b) Joint and Several Liability

Defendant next claims that a conflict exists between Illinois and Ohio law regarding joint and several liability. The apportionment of liability (and resulting damages) has no bearing on whether GE is entitled to summary judgment as a matter of law. As such, the Court will not reach this issue in determining the outcome of Defendant GE's motion for summary judgment. Therefore, for purposes of deciding GE's motion, a choice of law determination with respect to this issue is irrelevant and will not be factored into the Court's choice of law analysis.

c) Product Identification / Causation

The only remaining issue is whether the product identification and causation standards of Illinois and Ohio are at conflict such that a choice of either, in this specific cause of action, is outcome determinative. In order to establish causation for an asbestos claim under Illinois law, a plaintiff must show that the defendant's asbestos was a "cause" of the illness. Thacker v. UNR Industries, Inc., 151 Ill.2d 343, 354 (Ill. 1992). Illinois courts employ the "substantial factor" test in deciding whether a defendant's conduct was a cause of a plaintiff's harm. Nolan v. Weil-McLain, 233 Ill.2d 416, 431 (Ill. 2009)(citing Thacker, 151 Ill.2d at 354-55). Similarly, Ohio applies a "substantial contributing factor" test in asbestos

actions. See Ohio Rev. Code Ann. § 2307.96. With regard to defendant's motion for summary judgment on grounds of insufficient evidence of product identification and causation, the substantive law chosen between Illinois and Ohio will not be outcome determinative. Therefore, the Court will apply Illinois substantive law to Plaintiff's land-based claims, as the action was initiated in Illinois. See Van Dusen, 376 U.S. at 639.

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. Product Identification/Causation Under Illinois Law

This Court has previously considered the product identification/causation standard under Illinois law . Most recently, it wrote in Krik v. BP America (No. 11-63473):

> In order to establish causation for an asbestos claim under Illinois law, a plaintiff must show that the defendant's asbestos was a "cause" of the illness. Thacker v. UNR Industries, Inc., 151 Ill.2d 343, 354 (Ill. 1992). In negligence actions and strict liability cases, causation requires proof of both "cause in fact" and "legal cause." Id. "To prove causation in fact, the plaintiff must prove medical causation, i.e., that exposure to asbestos caused the injury, and that it was the defendant's asbestos-containing product which caused the injury." Zickhur v. Ericsson, Inc., 962 N.E.2d 974, 983 (Ill. App. (1st Dist.) 2011)(citing Thacker, 151 Ill.2d at 354). Illinois courts employ the "substantial factor" test in deciding whether a defendant's conduct was a cause of a plaintiff's harm. Nolan v. Weil-McLain, 233 Ill.2d 416, 431 (Ill. 2009)(citing Thacker, 151 Ill.2d at 354-55). Proof may be made by either direct or circumstantial evidence. Thacker, 151 Ill.2d at 357. "While circumstantial evidence may be used to show causation, proof which relies upon mere conjecture or speculation is insufficient." Id. at 354

In applying the "substantial factor" test to cases based upon circumstantial evidence, Illinois courts utilize the "frequency, regularity, and proximity" test set out in cases decided by other courts, such as Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156 (4th Cir. 1986). Thacker, 151 Ill.2d at 359. In order for a plaintiff relying on circumstantial evidence "to prevail on the causation issue, there must be some evidence that the defendant's asbestos was put to 'frequent' use in the [Plaintiff's workplace] in 'proximity' to where the [plaintiff] 'regularly' worked." Id. at 364. As part of the "proximity" prong, a plaintiff must be able to point to "sufficient evidence tending to show that [the defendant's] asbestos was actually inhaled by the [plaintiff]." This "proximity" prong can be established under Illinois law by evidence of "fiber drift," which need not be introduced by an expert. Id. at 363-66.

In a recent case (involving a defendant Ericsson, as successor to Anaconda), an Illinois court made clear that a defendant cannot obtain summary judgment by presenting testimony of a corporate representative that conflicts with a plaintiff's evidence pertaining to product identification - specifically noting that it is the province of the jury to assess the credibility of witnesses and weigh conflicting evidence. See Zickuhr, 962 N.E.2d at 985-86. In Zickhur, the decedent testified that he worked with asbestos-containing Anaconda wire from 1955 to 1984 at a U.S. Steel facility, and that he knew it was asbestos-containing because the wire reels contained the word "asbestos" on them - and the word "asbestos" was also contained on the cable and its jacket. A co-worker (Scott) testified that, beginning in the 1970s, he had seen cable spools of defendant Continental (which had purchased Anaconda) that contained the word "asbestos" on them. A corporate representatives (Eric Kothe) for defendant Continental (testifying about both Anaconda and Continental products) provided contradictory testimony that Anaconda stopped producing asbestos-containing cable in 1946 and that the word "asbestos" was never printed on any Anaconda (or Continental) cable reel. A second corporate representative (Regis Lageman) provided testimony,

some of which was favorable for the plaintiff; specifically, that Continental produced asbestos-containing wire until 1984, that asbestos-containing wires were labeled with the word "asbestos," and that, although defendant did not presently have records indicating where defendant had sent its products, U.S. Steel had been a "big customer" of a certain type of defendant's wire that contained asbestos.

After a jury verdict in favor of the plaintiff, Defendant appealed, contending that (1) there was no evidence that defendant's cable/wire contained asbestos, and (2) there was no evidence that defendant's cable/wire caused decedent's mesothelioma. The appellate court affirmed the trial court (and upheld a jury verdict in favor of the plaintiff), holding that the issues of whether the cable and wire decedent worked with contained asbestos, and whether the defendant's cable and wire were the cause of the decedent's mesothelioma, were questions properly sent to the jury for determination. The appellate court noted that "the jury heard the evidence and passed upon the credibility of the witnesses and believed the plaintiff's witnesses over... Kothe." Id. at 986.

2012 WL 2914244, at *1.

In connection with another Defendant's motion/argument in that same case (Krik), this Court also wrote:

Defendant urges this Court to reconsider the standard previously set forth, arguing that Illinois courts employ the Lohrmann "frequency, regularity, and proximity" test in all cases, and not just those in which a plaintiff relies upon circumstantial evidence. Specifically, Defendant cites to Zickhur and Nolan in support of this argument. The Court has considered Defendant's argument and the cases upon which it relies.

The Court reiterates that Thacker is a decision of the Supreme Court of Illinois that directly addresses the product identification standard for asbestos cases brought under Illinois law. In Thacker, the decedent had testified to opening bags of asbestos of a kind not supplied by the defendant and had

testified that he did not recall seeing the defendant's product anywhere in the facility. The only evidence identifying the defendant's product was testimony of a co-worker that the defendant's product had been seen in a shipping and receiving area of the facility, although the co-worker had not witnessed the product in the decedent's work area. In assessing the sufficiency of the plaintiff's evidence, the Court applied the "frequency, regularity, and proximity" test, noting that "plaintiffs in cases such as this have had to rely heavily upon circumstantial evidence in order to show causation," 151 Ill.2d at 357. After discussing the Lohrmann "frequency, regularity, and proximity" test, the Thacker court set forth its rationale for applying the test to the evidence at hand, noting that "[t]hese requirements attempt to seek a balance between the needs of the plaintiff (by recognizing the difficulties of proving contact) with the rights of the defendant (to be free from liability predicated upon guesswork)." Id. at 359. This Court notes that the rationale of the Thacker court would not apply where a plaintiff relied upon direct evidence, as there would be no danger of "guesswork" and little (if any) difficulty of proving contact. The Court therefore concludes, as it has previously, that Thacker indicates that the "frequency, regularity, and proximity" test is applicable in cases in which a plaintiff relies on circumstantial evidence. This is not inconsistent with the holding of Lohrmann. See Lohrmann, 782 F.2d at 1162.

Defendant argues that the decision of the Supreme Court of Illinois in Nolan makes clear that the "frequency, regularity, and proximity" test is applicable in all cases, regardless of whether a plaintiff is relying on direct or circumstantial evidence. Nolan, however, did not directly address the product identification standard for asbestos cases under Illinois law. Rather, the question considered by the court was whether the trial court erred in excluding from trial all evidence of a plaintiff's exposure to asbestos from other manufacturers' products when a sole defendant was remaining at trial. Nolan, 233 Ill.2d at 428. In deciding that issue, the court rejected the intermediary appellate court's conclusion that, when the "frequency, regularity, and proximity" test is met, legal causation has been established.

> Although it is true that Nolan makes reference to the Lohrmann test without clarifying that it is only applicable in cases based upon circumstantial evidence, the Nolan court was not deciding whether the trial court had applied the proper product identification standard, and it cannot be fairly or accurately said that Nolan sets forth the Illinois standard for product identification, nor that it stands for the proposition that the "frequency, regularity, and proximity" test is applicable in all cases. Nothing in Nolan indicates that the Supreme Court of Illinois intended to alter the standard it set forth in Thacker.
>
> Finally, the Court has considered Defendant's argument that Zickhur indicates that the "frequency, regularity, and proximity" test is applicable in all cases, regardless of the type of evidence relied upon by a plaintiff. As an initial matter, the Court notes that a decision from an intermediary appellate court will not, by itself, displace a rule of law issued by the highest court of the state. However, Zickhur does not contradict Thacker. Rather, the Zickhur court makes clear that the "frequency, regularity, and proximity" test is not always applicable - noting that "the 'frequency, regularity and proximity' test may be used...[and] that a plaintiff can show exposure to defendant's asbestos" with it. 962 N.E.2d at 986 (emphasis added). Moreover, while it is true that Zickhur involved some pieces of direct evidence, it is worth noting that the court's resolution of the issue of the sufficiency of the evidence to withstand a motion for a directed verdict turned on its analysis of circumstantial evidence, in the context of direct and conflicting evidence presented by parties on both sides of the case. Therefore, it cannot be fairly or accurately said that Zickhur sets forth the Illinois standard for product identification, nor that it stands for the proposition that the "frequency, regularity, and proximity" test is applicable in all cases.

2012 WL 2914246, at *1.

II. Defendant GE's Motion for Summary Judgment

Product Identification / Causation / Bare Metal Defense

GE contends that Plaintiff's evidence is insufficient to establish that any product for which it is responsible caused Mr. Payne's lung cancer. GE 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.

As to Plaintiff's land-based claims, in its reply GE asserts that Plaintiff's product identification evidence is inadmissible and fails to prove that the insulation Plaintiff was allegedly exposed to actually contained asbestos.

Government Contractor Defense

GE 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, GE relies upon the affidavits and reports of David Hobson, Admiral Ben Lehman, and Captain Lawrence Betts.

B. Plaintiff's Arguments

Product Identification / Causation

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. Payne served as an electrician on the USS Randolph from 1961 to 1963 and the USS George K. MacKenzie from 1963 to 1965. His job duties included performing electrical and mechanical repairs of the motors, pumps, and compressors aboard the ship. Mr. Payne testified that he believed he was exposed to asbestos from pumps, gaskets, and compressors while serving in the Navy.

Mr. Payne testified that there were GE turbo generators on the ships. Mr. Payne performed maintenance and inspections on the generators. Mr. Payne did not associate asbestos with the generators and did not know the maintenance history of the generators. Mr. Payne also testified that the generators were not insulated.

Mr. Payne worked at a General Electric facility in Youngstown, Ohio from 1965 to 1985. From 1965 to 1968, Mr. Payne worked as a general laborer which involved cleaning up pipe insulation on the floor. Mr. Payne asserted that the brand of the pipe insulation was Mundet. Mr. Payne testified that he breathed in dust that was released from the Mundet pipe insulation when it was cut by other employees. After the insulation was cut from the pipes, Mr. Payne was responsible for sweeping up the dust and debris. Mr. Payne testified that he was in the vicinity of people working with Mundet insulation approximately two times per week for those three years.

(Doc. No. 522-2, Ex. A and Doc. No. 485-3)

Miscellaneous Documents

Plaintiff submits various documents which assert the following:

- GE generators incorporated asbestos-containing insulation and gaskets.
- Mundet manufactured an asbestos-containing pipe and block insulation named "Custom-Molded 85% Magnesia Heat Insulation."

(Doc. No.'s 522-4, Ex.'s M and N)

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 prior depositions and various military specifications which, he argues, show that the Navy did not prohibit Defendant from providing warnings with its products.

C. Analysis

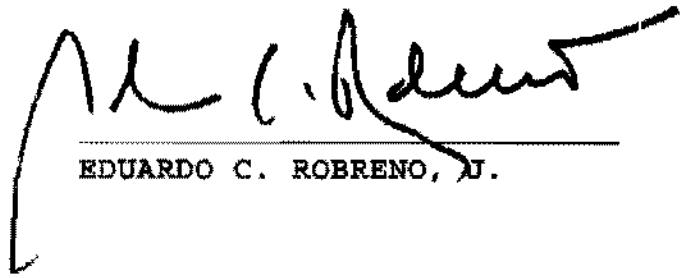
Plaintiff alleges that he was exposed to asbestos attributable to GE while aboard the USS Randolph and USS George K. MacKenzie (sea-based exposure) and while working for General Electric in Youngstown, Ohio (land-based exposure). The Court examines the evidence pertaining to each type of alleged exposure separately:

i) Naval Exposure (Sea-Based)

Plaintiff alleges that he was exposed to asbestos from asbestos-containing GE turbo generators. There is evidence that GE generators were on the USS Randolph and USS George K. MacKenzie. There is testimony that Plaintiff maintained and inspected these generators. There is evidence that GE may have supplied some of its generators with asbestos-containing insulation and gaskets. Importantly, there is no evidence that the GE equipment on the ships at issue contained asbestos. Additionally, there is no evidence that Mr. Payne's maintenance of the GE generators involved working with original components (i.e., supplied by GE). Therefore, no reasonable jury could conclude from the evidence that Mr. Payne was exposed to asbestos from GE generators (or any associated components) manufactured or supplied by GE such that it was a substantial factor in the development of his lung cancer, because any such finding would be impermissibly conjectural. 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 GE equipment, but which were not manufactured or supplied by Defendant GE, 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 GE is warranted with respect to Plaintiff's sea-based exposure to GE equipment. Anderson, 477 U.S. at 248-50.

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

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ii) Youngstown, Ohio Exposure (Land-Based)

Plaintiff alleges that he was exposed to asbestos from Mundet insulation used at the General Electric facility in Youngstown, Ohio. There is evidence that Plaintiff was in the vicinity of workers who cut and removed Mundet pipe insulation. There is evidence that Mr. Payne inhaled dust attributable to the Mundet insulation. There is evidence that Mundet, at some point in time, manufactured a brand of asbestos-containing insulation. Importantly, however, there is no evidence that the Mundet insulation used at the General Electric facility by Mr. Payne (and his co-workers) contained asbestos. Accordingly, no reasonable jury could conclude from the evidence that Plaintiff was exposed to an asbestos-containing product at the General Electric facility such that it was a "substantial factor" in the development of his illness, because any such finding would be impermissibly conjectural. Nolan, 233 Ill.2d at 431; Thacker, 151 Ill.2d at 354-55. Therefore, summary judgment in favor of Defendant GE is warranted with respect to all alleged land-based exposure. Id.; Anderson, 477 U.S. at 248.

D. Conclusion

Defendant GE's motion for summary judgment is granted with respect to claims arising from all alleged sources of asbestos exposure. In light of this determination, the Court need not reach Defendant's other arguments.