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

JEREMY PEASE,	FILED	CONSOLIDATED UNDER MDL 875
Plaintiff,	JAN 14 2011	Transferred from the District of Delaware
v.	MICHAEL E. KUNZ, Clerk By Dep. Clerk	(Case No. 08-00624)
A.W. CHESTERTON CO., ET AL.,		E.D. PA CIVIL ACTION NO. 2:09-62581
Defendants.		

O R D E R

AND NOW, this **14th** day of **January, 2011**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Crane Co., filed on November 3, 2010 (doc. no. 124), is **DENIED**.[1]

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[1]Plaintiffs allege that Herbert Pease developed mesothelioma as a result of exposure to various defendants' asbestos-containing products while working as a machinist mate in the U.S. Navy from 1960 until 1963 and from 1965 until 1967. (Def.'s Mot. Summ. J., doc. no. 120-1 at 2). Mr. Pease filed this action on August 1, 2008 in the Superior Court of Delaware. (Pl.'s Reply Br., doc. no 134 at 4.) This case was transferred to the Eastern District of Pennsylvania as part of MDL 875 on February 9, 2009. (Transfer Order, doc no. 1.) Mr. Pease passed away on April 15, 2009 due to mesothelioma. (Pl.'s Reply Br. at 4). Mr. Pease testified that he served onboard the U.S.S. William Wood from 1960 until 1962, on the U.S.S. Yosemite from 1962 until 1963, and on the U.S.S. Coontz from 1965 until 1967. (Def.'s Mot. Summ. J. at 2).

When evaluating a motion for summary judgment, Federal Rule of Civil Procedure 56 provides that the Court must grant judgment in favor of the moving party when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact . . . ." Fed.

R. Civ. P. 56(c)(2). A fact is "material" if its existence or non-existence would affect the outcome of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of fact is "genuine" when there is sufficient evidence from which a reasonable jury could find in favor of the non-moving party regarding the existence of that fact. Id. at 248-49. "In considering the evidence the court should draw all reasonable inferences against the moving party." El v. SEPTA, 479 F.3d 232, 238 (3d Cir. 2007).

"Although the initial burden is on the summary judgment movant to show the absence of a genuine issue of material fact, 'the burden on the moving party may be discharged by showing - that is, pointing out to the district court - that there is an absence of evidence to support the nonmoving party's case' when the nonmoving party bears the ultimate burden of proof." Conoshenti v. Pub. Serv. Elec. & Gas Co., 364 F.3d 135, 140 (3d Cir. 2004) (quoting Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 192 n.2 (3d Cir. 2001)). Once the moving party has discharged its burden, the nonmoving party "may not rely merely on allegations or denials in its own pleading; rather, its response must - by affidavits or as otherwise provided in [Rule 56] - set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2).

Plaintiffs contend that since Mr. Pease filed suit in Delaware, Delaware law should apply in deciding Defendant's Motion for Summary Judgment. In oral argument, Defendant asserted that maritime law should apply since all of the alleged exposures occurred on Navy ships while the ships were on navigable waters or docked at foreign ports. Plaintiffs did not counter Defendant's argument that maritime law should apply. A party seeking to apply maritime law to a case

> must satisfy conditions both of locations and of connection with maritime activity. A court applying the location test must determine whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water. The connection test raises two issues. A court, first, must assess the general features of the type of incident involved, to determine whether the incident has a potentially disruptive impact on maritime commerce. Second, a court must determine whether the general character of the activity giving rise to the incident shows a substantial relationship to

traditional maritime activity.

Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995). Substantive admiralty law displaces substantive state law only when the laws conflict. Id. at 545-46. Mr. Pease's alleged exposures occurred on Navy ships floating on "navigable waters." Thus, the location test is met. Next, this court must determine whether the connection test is met. As Mr. Pease was working as a machinist mate aboard Navy ships, this Court finds that his alleged asbestos exposures had a substantial relationship to traditional maritime activities. While this Court has determined that maritime law does apply to this case, the result would be the same whether this motion was decided under maritime law or under Delaware law. Therefore, as maritime law and Delaware law do not conflict on the issue of product identification, this Court will apply Delaware law in deciding Defendant's Motion for Summary Judgment.

Under Delaware law, a plaintiff asserting a claim for asbestos-related injuries must introduce evidence showing a product nexus between defendant's product and plaintiff's asbestos-related injuries. Delaware courts have not followed the "frequency, proximity, and regularity" test, first set forth in Lohrmann, which has been adopted as the test in numerous jurisdictions. Delaware courts simply require that a plaintiff show that he was in proximity to the product at the time it was being used. Nutt v. A.C. & S. Co., 517 A.2d 690 (Del. Super. Ct. 1986). Plaintiff must show "that the asbestos product was used in an area where the plaintiff frequented, walked by, or worked adjacent to, with the result that fibers emanating from the use of the product would have been present in the area where the plaintiff worked." Cain v. Green Tweed & Co., Inc., 832 A.2d 737, 741 (Del. 2003). Delaware courts have held that a plaintiff can survive summary judgment if there is testimony that asbestos-containing products were used at a worksite during the time plaintiff was employed there. Farrall v. A.C.&S. Co., 1988 Del. Super. LEXIS 176 at *6 (Del. Super. Ct. 1988). However, it is insufficient to overcome summary judgment if the "time and place" testimony is based on speculation or conjecture. Id. (citing In re: Asbestos Litigation, 509 A.2d 1116 at 1117-18 (Del. Super. Ct. 1986)).

The Delaware Supreme Court has not yet addressed the issue of the "bare metal" defense. The Delaware Superior Court issued a slip opinion addressing the "bare metal" defense in Dawson v. Weil-McLain. No. 00C-12-177 (Del. Super Ct. 2005). In Dawson, the

court adopted a foreseeability approach based on the Restatement 188 and held that a manufacturer could be held liable for another manufacturer's product incorporated into its own product if the manufacturer had knowledge that the product was hazardous and would be incorporated into its product. Id. at 138. In Bernhardt v. Ford Motor Co., the Delaware Superior Court held that the duty to warn is dependent on whether the manufacturer had knowledge of the hazards associated with the product., No. 06C-06-307 (Del. Super. Ct. 2010). "This does not require a manufacturer to study and analyze the product of others and to warn users of the risk of those products. Any duty is restricted to warnings based on the characteristics of the manufacturer's own product." Id. at 33.

Mr. Pease testified that he worked as a machinist mate on the William Wood from 1960 until 1962. (Pl.'s Reply Br. at 3; Pease Depo., doc. no. 124-4 at 34-35.) He testified that he worked with valves and pumps all of the time and that he was exposed to asbestos from these products. (Pl.'s Reply Br. at 3.) When asked who manufactured the valves he worked with in the Navy, Mr. Pease responded, "Crane was a big one." (Pease Depo., doc. no. 124-4 at 71-72.) When asked who manufactured the pumps he worked with in the Navy, Mr. Pease responded, "Peerless, Crane. That's a couple of them. Those are two right off the top of my head." (Id. at 56.) Mr. Pease testified that "Crane" was one of the manufacturers of gaskets and packing he worked with. (Id. at 66.) Plaintiffs aver that Mr. Pease did the same type of work on the U.S.S. Yosemite and U.S.S. Coontz as he testified to doing on the William Wood. (Pl.'s Reply Br. at 4.)

Mr. Pease's testimony is corroborated by James Moody and John Dolan. (Pl.'s Reply Br. at 4-5). Mr. Moody worked on the USS Coontz from 1962 until 1968. (Id. at 5.) Mr. Moody testified that he and Mr. Pease worked in the engine room together. (Moody Depo., doc. no. 131-15 at 16-17.) Mr. Moody testified that Crane supplied "packing materials and other products that were used in the engine room." (Id. at 102.) Mr. Moody was asked,

Q: Do you recall a company by the name of Crane Co.?
A: Crane Co.?
Q: Yes, sir.
A: That doesn't- that doesn't sound terribly familiar to me, no.
Q: Okay. Do you recall a company with a name Crane being involved in it?
A: Yes.

(Id. at 145.) Mr. Moody was again questioned about Crane.

Q: All right. I guess what my question is - because I think you had earlier mentioned and you mentioned in your - in your own case about John Crane. And are you referring to the - when you say "Crane," are you referring to John Crane or are you referring to something else?
A: I - I'm referring to John Crane, I believe.
Q: Okay. You've never heard of the company Crane Co.?
A: Crane Co.? I don't believe so.
Q: Okay. You never saw packaging of any products with the name Crane Co.?
A: I - not that I recall.
Q: Okay. All right. You never saw any equipment that had the name Crane Co. on it?
A: I - I've seen valves that said - that said Crane on it. They were manufactured by a company that - that had the name Crane.

(Id. at 146.) Mr. Dolan was on board the USS Yosemite from 1961 until 1963 and testified that he worked with Crane valves on the ship. (Pl.'s Reply Br. at 5; Dolan Depo., doc. no. 131-20 at 120.)

Viewing the facts in the light most favorable to Plaintiffs, Plaintiffs have created a genuine issue of material fact as to whether Defendant's asbestos-containing products were a substantial factor in causing Mr. Pease's mesothelioma. Mr. Pease testified that he worked with Crane asbestos-containing products onboard the William Wood. Mr. Moody testified that Mr. Pease worked in the engine room on the USS Coontz and that Crane asbestos-containing products were present in the engine room. Although it is unclear whether Mr. Moody was testifying about John Crane or Crane Co., Plaintiffs have at least raised a genuine issue of material fact as to whether Mr. Pease was exposed to Crane Co. asbestos-containing products on the USS Coontz. Mr. Dolan testified that Crane valves were present on the USS Yosemite and Plaintiffs have presented evidence that Mr. Pease worked on the USS Yosemite during the same time period as Mr. Dolan.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.

Defendant argues that even assuming that Crane Co. manufactured any of the products at issue, it would not be liable for asbestos-containing component parts which were incorporated into its products. (Def.'s Mot. Summ. J. at 9.) Even if this Court accepted Defendant's "bare metal" defense, Defendant's would not be entitled to summary judgment as Plaintiffs have raised a genuine issue of material fact as to whether Crane Co. products used by Mr. Pease contained asbestos. Accordingly, Plaintiffs have raised a genuine issue of material fact as to whether Mr. Pease was exposed to asbestos-containing products manufactured by Crane Co.