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

WILLIAM J. ROBINSON AND GAIL A. ROBINSON, Plaintiffs,	:	CONSOLIDATED UNDER MDL 875
v.	:	Transferred from the District of New Jersey (Case No. 11-04078)
AIR AND LIQUID SYSTEMS CORP. et al., Defendants.	:	E.D. PA CIVIL ACTION NO. 2:11-67687-ER

File

O R D E R

AND NOW, this **7th** day of **February, 2013**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Cameron International Corporation (Doc. No. 130) is **GRANTED.**[1]

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

Plaintiff Gail Robinson alleges that William Robinson, ("Decedent" or "Mr. Robinson") was exposed to asbestos during his work at (1) a chemical company ("General Chemical") in New Jersey, during the period 1968 to 1999, and (2) the Green River, Wyoming soda ash plant. Mr. Robinson developed mesothelioma and died from that illness.

Plaintiffs have brought claims against various defendants. Defendant Cameron International Corporation ("Cameron" or "Cameron International") has moved for summary judgment arguing that there is insufficient evidence to support a finding of causation with respect to any product for which it is liable. The parties agree that New Jersey 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 agree that New Jersey substantive law applies. Therefore, this Court will apply New Jersey law in deciding Defendant's Motion for Summary Judgment. See Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938); see also Guaranty Trust Co. v. York, 326 U.S. 99, 108 (1945).

C. Product Identification / Causation Under New Jersey Law

This Court has previously considered the product identification/causation standard under New Jersey law. In Lewis v. Asbestos Corp, (No. 10-64625), this Court wrote:

> To maintain an asbestos action in New Jersey, a plaintiff must "provide sufficient direct or circumstantial evidence from which a jury could conclude that plaintiff was in close proximity to, and inhaled, defendant's asbestos-containing product on a frequent and regular basis." Kurak v. A.P. Green Refractories Co., 689 A.2d 757, 761 (N.J. Super. Ct. App. Div. 1997) (quoting Sholtis v. American Cyanamid Co., 568 A.2d 1196, 1208 (N.J. Super. Ct. App. Div. 1989)). In order to meet this "frequency, regularity and proximity test," plaintiff must do more than "demonstrate that a defendant's asbestos product was present in the workplace or that he had 'casual or minimal exposure' to it." Kurak, 689 A.2d at 761 (quoting Goss v. American Cyanamid Co., 650 A.2d 1001, 1005 (N.J. Super. Ct. App. Div. 1994)). In addition to meeting the "frequency, regularity, and proximity test," plaintiff must establish causation by presenting "competent evidence, usually supplied by expert proof" showing that there is a nexus between exposure to defendant's product and plaintiff's condition. Kurak, 689 A.2d at 761.

2011 WL 5881183, * 1 n.1 (E.D. Pa. Aug. 2, 2011)(Robreno, J.).

D. Presumption Re: Warning Defect Under New Jersey Law

This Court has previously addressed the presumption regarding warning defect claims that exists under New Jersey law. In Lewis v. Asbestos Corp, (No. 10-64625), this Court wrote:

> In Coffman v. Keene Corp., the plaintiff claimed that an asbestos manufacturer's failure to place warnings on its asbestos-related products was a proximate cause of the plaintiff's development of asbestosis. 628 A.2d 710, 715 (N.J. 1993). The court recognized that, "[c]ausation is a fundamental requisite for establishing any product-liability action. The plaintiff must demonstrate so-called product-defect causation-that the defect in the product was a proximate cause of the injury." Id. at 716 (citing Michalko v. Cooke Color & Chem. Corp., 451 A.2d 179 (N.J. 1982); Vallillo v. Mushkin Corp., 514 A.2d 528 (N.J. App. Div. 1986)). "When the alleged defect is the failure to provide warnings, a plaintiff is required to prove that the absence of a warning was a proximate cause of his harm."

628 A.2d at 715 (citing Campos v. Firestone Tire & Rubber Co., 485 A.2d 305 (N.J. 1984)). The court adopted a "heeding presumption" in products liability failure to warn cases that the plaintiff "would have followed an adequate warning had one been provided, and that the defendant in order to rebut that presumption must produce evidence that such a warning would not have been heeded." 628 A.2d at 720. Evidence that the plaintiff was aware of the dangers associated with the defendant's product or that the plaintiff would have disregarded the warnings had they been provided may rebut this heeding presumption. Id. at 721. The court held that "to overcome the heeding presumption in a failure-to-warn case involving a product used in the workplace, the manufacturer must prove that had an adequate warning been provided, the plaintiff-employee with meaningful choice would not have heeded the warning." Id. at 724.

2011 WL 5881181, * 1 n.1 (E.D. Pa. Aug. 2, 2011)(Robreno, J.).

II. Defendant Cameron's Motion for Summary Judgment

A. Defendant's Arguments

Product Identification / Causation

Cameron argues that there is insufficient product identification evidence to support a jury finding of causation with respect to any product(s) for which it is liable. It contends that this is , in part, because Plaintiff has no evidence that it is liable for compressors manufactured under the name "Joy."

B. Plaintiffs' Arguments

Product Identification / Causation

In response to Defendant's assertion that there is insufficient product identification evidence to establish causation with respect to its product(s), Plaintiffs have identified the following evidence:

- Deposition of Decedent
  Decedent testified that he began working at the Allied Chemical plant in 1968 when it was new, and

that it hadn't yet begun to operate at the time he started. He testified that Allied Chemical later became General Chemical. He testified that he believed he was exposed to asbestos from gaskets, packing, and insulation used with pumps, valves, turbines, steam traps, and pipes. He testified that removal of packing from pumps and valves was done with a packing puller, which looked like a corkscrew; and that this process left packing on the floor which - when walked on and pushed around after it dried - created dust. He testified that removal of gaskets required scraping them off with a putty knife and brushing with a steel brush - a process that created dust. He testified that maintenance on pumps, such as repacking them, required removing and disturbing insulation, and that this was a process that created dust. He testified that all of the gaskets used around heat contained asbestos, and that this was generally all of the gaskets at the plant (with perhaps an occasional rubber gasket).

(Doc. No. 143-1, Pl. Ex. 6 at 48-50; Ex 10 at 15, 50-54, 61-63, 72-83, 86, 110-15, 119-21, 128-30, 201; Ex. 11 at 274-85.)

- Deposition of Co-Worker Jack Jereb

Mr. Jereb (a co-worker) testified that he and Decedent began working together at the Allied Chemical plant on the same day in 1961, when it first opened, and that they worked together on the dayshift for 31 years. He testified that the plant was new and had not yet become operational, and that all of the equipment there at that time (including, specifically, pumps and valves) was new. He testified that he and Decedent changed the gaskets and packing on pumps on a regular basis (which he specified meant that every day something was done on pumps or valves). He testified that changing the gaskets involved removing gaskets with a scraper and wire brush, and that this process created dust from the gaskets. He testified that insulation would have to be removed from pumps and that this was done by scraping it with a wire brush, which would create dust "off the flange." He testified that he knew from his

training in the industry that the gaskets, packing, and insulation were made of asbestos. He testified that it was necessary to use asbestos gaskets, packing, and insulation because "everything got hot." He testified that removal of insulation created dust that could be breathed by someone working on or near the equipment from which the insulation was removed. Mr. Jereb specified that he saw Decedent working on or near pumps when gaskets, packing, and insulation were removed/changed from pumps. He testified that he saw Decedent making gaskets out of sheet material with a ball peen hammer. When asked to identify the manufacturer of the pumps, Mr. Jereb answered that there were "so many," but that he recalled Durco and Morris. He also stated that BorgWarner sounded familiar. Mr. Jereb testified that no warnings were given about asbestos in the various products and that no dust masks or respirators were given to the employees.

Mr. Jereb testified that maintenance of compressors was part of Decedent's job and that he did this work regularly. He testified that Decedent assisted him with replacement of asbestos gaskets on a few different brands of compressors. He testified that the compressor was new at the facility when it first opened.

(Doc. No. 143-1, Pl. Ex. 9 at 12-19, 26-27, 38-39, 47-48, 141-43.)

- Affidavit of Co-Worker Jack Jereb

Plaintiffs point to an affidavit of co-worker Jack Jereb, which indicates that Decedent assisted him with replacement of gaskets on a Joy compressor, and that the packaging for the replacement gaskets had the name of the gasket manufacturer on it.

(Doc. No. 143-1, Pl. Ex. 10.)

- Medical Expert Report

Plaintiffs point to an expert report of Dr. Jacqueline Moline regarding causation.

(Doc. No. 143-3, Pl. Ex. 15.)

Bare Metal Defense

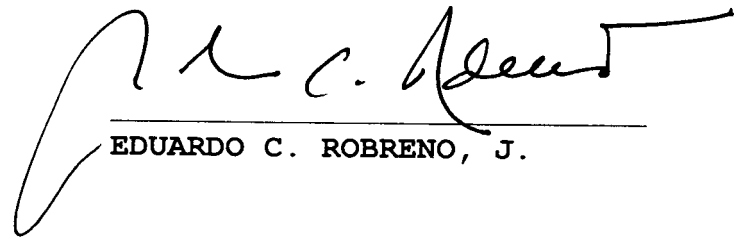
Plaintiffs cite to various cases and contend that New Jersey law would not recognize the "bare metal defense."

C. Analysis

Plaintiffs have alleged that Defendant Cameron International is liable for exposure to asbestos arising from gaskets used in connection with a compressor(s) manufactured and/or supplied by Defendant (or a related or predecessor entity) under the name Joy. There is evidence that Decedent was exposed to respirable asbestos dust from gaskets used in connection with at least one compressor manufactured and/or supplied under the name Joy. However, while there is evidence that maintaining compressors (including changing gaskets on them) was part of Decedent's regular responsibilities, there is no evidence that this exposure occurred on a frequent and regular basis, as would be required under New Jersey law. See Kurak, 689 A.2d at 761. Although it is true that there is evidence that Decedent's responsibilities for maintaining the compressors at the plant began when the pumps were brand new (as originally supplied) - such that a reasonable jury could conclude that at least the first exposure arose from the gasket(s) originally installed on the Joy compressor, there is no evidence that Decedent worked on more than one Joy compressor, or that any replacement gasket was manufactured or supplied by Defendant (or Joy).

Plaintiffs rely upon the affidavit of co-worker Jack Jereb (Doc. No. 143-1, Ex. 10) to support their assertion that Defendant supplied the replacement gaskets. However, while the affidavit specifies that another defendant-manufacturer (Ingersoll-Rand) supplied the replacement gaskets used with its compressors, the affidavit does not make the same assertion with respect to the compressor at issue for this Defendant. At best, and by contrast, with respect to Cameron, the affidavit indicates only that the replacement gaskets contained some manufacturer's name on them - not that it was Defendant's (or Joy's) name that appeared on the packaging to indicated that Defendant (or Joy) manufactured or supplied the replacement gaskets. In light of this fact, the evidence at best supports only a conclusion that Decedent was exposed to a single gasket supplied by Defendant (or Joy) on a single occasion. Therefore, no reasonable jury could conclude from the evidence that Decedent was exposed to asbestos from gaskets supplied by Defendant (or Joy) such that it was a substantial factor in the development of his illness. See Kurak,

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

689 A.2d at 761; Anderson, 477 U.S. at 248-50. Accordingly, summary judgment in favor of Defendant is warranted.

In light of this determination, the Court need not reach the issue of whether Plaintiffs have presented sufficient evidence to demonstrate that Defendant Cameron International is liable for compressors manufactured under the name "Joy."