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

IN RE: ASBESTOS PRODUCTS LIABILITY LITIGATION (No. VI)	:	Consolidated Under MDL DOCKET NO. 875
TYLER	:	Case No. 10-67422
v.	:	
VARIOUS DEFENDANTS	:	Transferred from the District of Columbia

ORDER

AND NOW, this **1st** day of **July, 2011**, it is hereby **ORDERED** that Defendant Honeywell, Inc.'s Motion for Summary Judgment (doc. nos. 341 and 352) filed on February 7, 2011 and February 11, respectively, are **DENIED**.[1]

---

[1] Decedent, John Tyler, was diagnosed with mesothelioma in October 2009. (Pl.'s Resp. to Defendant Honeywell's Mot., doc. no. 374, at 2.) He filed the instant action in the Superior Court of the District of Columbia on December 31, 2009, alleging that various defendants' asbestos-containing products caused his injuries. (Id.) He subsequently passed away. The case was removed to federal court and transferred to the Eastern District of Pennsylvania as part of MDL 875 In Re: Asbestos on May 11, 2010.

Plaintiff's claims against Honeywell International, Inc. ("Honeywell") revolve around Plaintiff's exposure to Bendix brakes, as Honeywell is a successor-in-interest to Bendix. John Tyler ("Decedent") was employed partially as a mechanic in Virginia from 1946-2000. Plaintiff asserts that Decedent began working on automobiles in high school, and continued to apply this knowledge to perform mechanic work "including brake repair and replacement, for friends, family, neighbors and others throughout his life until approximately 2000." (Pl.'s Resp., doc. no. 374, at 3.) Decedent also worked for many years for the United States Navy, the Naval Reserves, and the United States Army.

I. DISCUSSION

A. Legal Standard

Summary judgment is appropriate if there are no genuine issues of 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.

1. Product Identification under Virginia Law

The parties agree that Virginia law, rather than District of Columbia law, applies to the instant case, as Virginia is where the alleged tortious conduct occurred.

The state of Virginia has not adopted the "frequency, regularity, and proximity" standard that is utilized by many jurisdictions in asbestos cases. Rather, under Virginia law, a plaintiff must prove that a defendant's actions were both the actual and proximate cause of the alleged injuries, under traditional tort liability principles.

A proximate cause of an event is that "act or omission

which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces the event, and without which that event would not have occurred." Sugarland Run Homeowners Assoc. v. Halfmann, 535 S.E.2d 469, 472 (Va. 2000)(internal citations omitted). Generally, the issue of proximate cause is a question of fact to be resolved by a jury, unless reasonable minds could not differ, and it then becomes a question of law. Id. When there are two or more potential causes of a plaintiff's injury, "and it is impossible to determine in what proportion each contributed to the injury, either or both are responsible for the whole injury." Dickenson v. Tabb, 156 S.E.2d 795, 801 (Va. 1967); see also Sullivan v. Robertson, 639 S.E.2d 250, 255 (Va. 1007)("If separate and independent acts of negligence of two parties directly cause a single indivisible injury to a third person, either or both wrongdoers are responsible for the whole injury.").

In the context of product liability cases, to overcome summary judgment when there are multiple possible causes of an injury, a plaintiff "must link the defendant's act to the injury by proving specific causation and may not rely on mere speculation and conjecture." McCauley v. Purdue Pharma L.P., 331 F. Supp. 2d 449, 462 (W.D. Va. 2004). Plaintiff "must fail if it appears from the evidence just as probable damages were caused by one as by the other because the plaintiff must make out his case by a preponderance of the evidence." McCauley v. Purdue Pharma L.P., 331 F. Supp. 2d 449, 462 (W.D. Va. 2004)(quoting Cape Charles Flying Serv. Inc. v. Nottingham, 47 S.E.2d 540, 544 (Va. 1948).

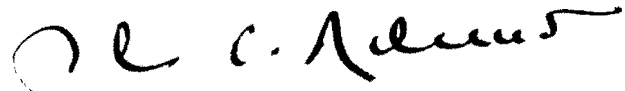
B. Defendant Honeywell's Motion for Summary Judgment

Honeywell avers that Plaintiff has failed to raise an issue as to whether Decedent's brake work, rather than work done during his employment with the United States Navy, was the proximate cause of Decedent's injuries. Plaintiff responds that Decedent's testimony, in combination with Plaintiff's experts, raises a genuine issue of material fact as to whether Honeywell's products were the proximate cause Decedent's injuries.

Plaintiff points to the following evidence of record indicating exposure to asbestos-containing brakes:

- In his de benne esse deposition, Decedent specifically

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

---

identified working with Bendix brakes, because he was brand loyal, and that he would "ask for Bendix shoes because I liked their product." (Pl.'s Resp. at 5.)

- When asked: "Are you able to quantify the number of Bendix brake shows that you filed and beveled over the years?" Decedent responded, "Over the years, I would say, estimate hundreds and hundreds. I really can't give you a concrete answer but I know it was well over the hundreds and hundreds." (Id. at 6.) Decedent further testified that the air was dusty while he performed the brake work, and that he breathed in the dust. (Id. at 9.)

- Defendant's answers to interrogatories state that Bendix brakes manufactured for the purpose of being replacement brakes in automobiles contained asbestos until around 1992. (Id. at 10.)

Plaintiff has designated experts who will opine that Mr. Tyler's exposure to Bendix brakes were a substantial cause of his mesothelioma. (Pl.'s Resp., doc. no. 374, at 12.) Plaintiff's theory of the case is that the exposures were cumulative, and that his brake-work exposure, like all exposures, "was significant and contributed to his over-all exposure, that his mesothelioma was caused by his cumulative exposure to asbestos." (Id., citing Dep. of Dr. Steven Markowitz.) Therefore, Plaintiff has raised a genuine issue of fact as to specific causation. The record in the instant case is distinguishable from that in McCauley, where plaintiffs failed to produce any expert testimony isolating defendant's products as a cause of their injuries.

II. CONCLUSION

For the above reasons, Defendant's Motion for Summary Judgment is denied. On the record presented, Plaintiff has raised a genuine issue of fact as to whether Honeywell's products, specifically, were a substantial contributing factor in causing Decedent's injuries.