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

			ORD	DER		
			MICHAEL E. KUNZ, Cle By Dep. C	erk Ierk		
	Defenda	ant.	APR - 8:2011			
SGL	CARBON,	LLC,	FILED	E.D. PA CIVII 2:10-02916	L ACTION	NO.
			:			
	v .					
	v.					
			:			
	Plaint	iff,	:	MDL 875		
			•	CONSOLIDATED	UNDER	
PATRICIA WAGERS,			:			

AND NOW, this 6th day of April, 2011, it is hereby ORDERED

that the Motion for Partial Summary Judgment of Plaintiff filed on February 14, 2011 (doc. no. 13), is **GRANTED** in part and **DENIED**

in part.¹

¹ Defendant asserted twenty-one (21) defenses to all causes of action in its Answer to Plaintiff's Complaint. (Doc. no. 6.) Pursuant to the Scheduling Order issued in this case, all discovery was to be completed by February 1, 2011. (Doc. no. 11.) Plaintiff contends that "no legal evidence to support the vast majority of Defendant's alleged defenses has been proffered." Plaintiff asks this Court to grant summary judgment on fifteen (15) of Defendant's defenses. (Pl.'s Mot. Summ. J., doc. no. 13-1 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. <u>Anderson v. Liberty Lobby, Inc.</u>, 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. <u>Id.</u> at 248-49. "In considering the evidence the court should draw all reasonable inferences against the moving party." <u>El v. SEPTA</u>, 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." <u>Conoshenti v. Pub. Serv. Elec. & Gas Co.</u>, 364 F.3d 135, 140 (3d Cir. 2004) (quoting <u>Singletary v. Pa. Dep't of Corr.</u>, 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).

On the affirmative defense of intervening or superseding acts or omissions by other parties or entities, Defendant has raised a genuine issue of material fact based on evidence that Mr. Wagers worked at various job sites where various asbestoscontaining products could have caused his mesothelioma. On the affirmative defenses of contributory negligence and assumption of the risk, Defendant has raised a genuine issue of material fact as to whether Mr. Wagers knew of the dangers of asbestos at the time he worked for Siding, Inc. Defendant presented evidence that as a supervisor for Siding, Inc., Mr. Wagers was required to attend training sessions on OSHA regulations about asbestos.

Accordingly, Plaintiff's Motion for Partial Summary Judgment is denied on the defenses of intervening or superseding acts or omissions by other parties or entities, assumption of the risk, and contributory negligence. Plaintiff's Motion for Partial Summary Judgment is granted on the defenses of product misuse, that Mr. Wagers' labor union proximately cause his injury, that Mr. Wagers failed to notify Defendant, that the product was used or installed state of the art, on the issue of workers compensation, on the issue of government contract specifications and regulations, failure to mitigate, and insufficiency of process and service of process since Defendant does not contest Plaintiff's Motion for Summary Judgment as to these defenses. E.D. PA CIVIL ACTION NO. 2:10-02916

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bldeens AND IT IS SO OFDERED. 1. EDUARDO C. ROBRENO, J.