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

WILLIAM F. CAMPBELL,	FILED	CONSOLIDATED UNDER MDL 875
Plaintiff,	AUG -7 2015	
v.	MICHAEL E. KUNZ, Clerk By ____ Dep. Clerk	
FOSTER WHEELER COMPANY, ET AL.,	:	E.D. PA CIVIL ACTION NO. 2:11-31052-ER
Defendants.	:	

O R D E R

AND NOW, this **5th** day of **August, 2015**, it is hereby **ORDERED** that Defendant Hanna Mining Company's Motion for Partial Summary Judgment on grounds that it did not own the ships at issue (Doc. No. 66) is **DENIED**; its Motion for Partial Summary Judgment on grounds that it was not Plaintiff's employer (Doc. No. 64) is **DENIED**.[1]

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[1] This case was transferred in January 2011 from the United State District Court for the Northern District of Ohio to the United States District Court for the Eastern District of Pennsylvania, where it became part of the MDL-875 MARDOC docket.

Plaintiff alleges that he was exposed to asbestos while working aboard various ships, and that he developed an asbestos-related illness as a result of that exposure. Plaintiff brought claims against various defendants, including claims against Defendant Hanna Mining Company ("Hanna Mining" or "Defendant") for unseaworthiness under the general maritime law, and for negligence under the Jones Act. The ships for which Plaintiff asserts Defendant is liable for asbestos exposure thereon (as owner of the ship and/or as his employer while aboard the ship) include:

- George M. Humphrey - July to August 1981

Defendant has moved for partial summary judgment, arguing that Plaintiff's claims fail for one or both of the following reasons: (1) it was not the owner of either of the ships and, therefore, cannot be liable for unseaworthiness, and (2) it was not Plaintiff's employer during his work aboard those ships, and therefore cannot face liability under the Jones Act.

The parties agree that Plaintiff's claims are governed by maritime law, including the Jones Act.

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

Plaintiff's claims arise under federal law (general maritime law as well as the Jones Act). 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.). Therefore, the Court will apply Third Circuit law in deciding Defendants' motion.

To the extent that resolution of the issues herein involves matters that are governed by substantive state law, the Court will apply the appropriate state's law. 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. Shipowner Status (General Maritime Law - Unseaworthiness)

Under maritime law, the owner of a ship has a "non-delegable duty to provide seamen a vessel that is reasonably fit for its purpose." Calhoun v. Yamaha Motor Corp., U.S.A., 40 F.3d 622, 631 (3d Cir. 1994); see also Earles v. Union Barge Line Corp., 486 F.2d 1097, 1102 (3d Cir. 1973). A seaman who is injured as a result of the condition of a ship may bring a claim against the shipowner for "unseaworthiness." Id. In certain circumstances, an individual or entity who does not own the ship may become a "pro hac vice" owner, thus facing potential liability for unseaworthiness. See Matute v. Lloyd Bermuda Lines, Ltd., 931 F.2d 231, 235 (3d Cir. 1991); Aird v. Weyerhaeuser S.S. Co., 169 F.2d 606, 609-10 (3d Cir. 1948). Such a situation arises where an individual or entity enters into a "demise charter." Matute, 931 F.2d at 235; Aird, 169 F.2d at 609-10; The Doyle, 105 F.2d 113, 114 (3d Cir. 1939). A demise charter exists when the charterer of the ship is given "sole possession and control of the vessel for voyage or service contemplated." Aird, 169 F.2d at 611; see also Matute, 931 F.2d at 235 (defining "demise charterer" as "one who contracts for the vessel itself and assumes exclusive possession, control, command and navigation thereof"). Such a charter is also referred to as a "bareboat charter." Reed v. Steamship Yaka, 307 F.2d 203, 205 (3d Cir. 1963), rev'd on other grounds by 373 U.S. 410, 83 S. Ct. 1349 (1963); see also Rao v. Hillman Barge & Const. Co., 467 F.2d 1276, 1277 (3d Cir. 1972); Hawn v. Pope & Talbot, Inc., 198 F.2d 800, 802-03 (3d Cir. 1952).

Under Third Circuit law, a defendant to a maritime law unseaworthiness claim may seek indemnity from another entity. SPM Corp. v. M/V Ming Moon, 22 F.3d 523, 526 (3d Cir. 1994) (citing M & O Marine, Inc. v. Marquette Co., 730 F.2d 133, 135

(3d Cir. 1984)("'when indemnification is sought either under a maritime contract or under a theory of primary/secondary negligence based on a maritime tort, federal maritime law applies' and permits such indemnification").

D. Employer Status (Jones Act)

The Jones Act creates a cause of action for negligence against an injured seaman's employer. Cosmopolitan Shipping Co. v. McAllister, 337 U.S. 783, 790, 69 S. Ct. 1317, 1321 (1949). A claim under the Jones Act lies only against the seaman's employer - and may not be brought against any other entity. Id.; Matute, 931 F.2d at 235-36. Ordinarily, the shipowner is also the employer of the seaman, although this need not be the case. Id. at 236. Where an individual or entity is retained by a shipowner to handle certain duties in connection with the ship, a question may arise as to who the "employer" is, for purposes of asserting a claim under the Jones Act. The Supreme Court addressed this situation in Cosmopolitan Shipping Co., where it wrote:

> The issue in this case is whether a construction of the Jones Act carrying out the intention of Congress to grant those new rights to seamen against their employers requires or permits a holding that the general agent under the contract here in question is an employer under the Jones Act. The decision depends upon the interpretation of the contract between [the plaintiff seaman] and Cosmopolitan[, the general agent,] on one hand and that between Cosmopolitan and the United States[, who owned the ship and retained Cosmopolitan to work as a general agent, 'handling certain phases of the business of ships owned by the United States'] on the other. We assume without deciding that the rule of the Hearst case applies, that is, **the word 'employment' should be construed so as to give protection to seamen for torts committed against them by those standing in the proximate relation of employer, and the rules of private agency should not be rigorously applied.** Yet this Court may not disregard the plain and rational meaning of employment and employer to furnish a seaman a cause of action against one completely outside the broadest lines or definitions of employment or employer.
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> . . . .

> The solution of the problem of determining the employer under such a contract depends upon determining whose enterprise the operation of the vessel was. **Such words as employer, agent, independent contractor are not decisive. No single phrase can be said to determine the employer. One must look at the venture as a whole.** Whose orders controlled the master and the crew? Whose money paid their wages? Who hired the crew? Whose initiative and judgment chose the route and the ports? It is in the light of these basic considerations that one must read the contract.

337 U.S. at 795 (added internal quote at 785) (emphasis added). The Third Circuit has addressed the issue more recently, and has held that, "[t]he existence of the employment relationship is a question of fact, and the inquiry turns on the degree of control the alleged employer exerts over the employee." Reeves v. Mobile Dredging & Pumping Co., Inc., 26 F.3d 1247, 1253 (3d Cir. 1994) (citing Matute, 931 F.2d at 236). It has specified that, "[f]actors indicating control over the seaman include payment, direction, and supervision. Also relevant is the source of the power to hire and fire." Matute, 931 F.2d at 236.

Although it is true that, in 1949, the United States Supreme Court held in Cosmopolitan Shipping Co. that "under the Jones Act only one person, firm, or corporation can be sued as employer," 337 U.S. at 791, it has more recently been held by the Third Circuit (and other Circuits) that a Jones Act plaintiff may have more than one employer, and that more than one employer can be liable for the same injury. Neely v. Club Med Management Services, Inc., 63 F.3d 166, 173, 203 (3d Cir. 1995) (citing Simeon v. T. Smith & Son, Inc., 852 F.2d 1421, 1428-31 (5th Cir.1988); Self v. Great Lakes Dredge & Dock Co., 832 F.2d 1540, 1545-48 (11th Cir.1987); Joia v. Jo-Ja Service Corp., 817 F.2d 908, 915-18 (1st Cir.1987)); see also Guidry v. South Louisiana Contractors, Inc., 614 F.2d 447, 452 (5th Cir. 1980).

II. Defendant's Motions for Summary Judgment

A. Defendant's Arguments

Wrong Shipowner

Defendant contends that Plaintiff's claim for unseaworthiness pursuant to the general maritime law fails

because it was never the owner (or even the owner pro hac vice) of the ship for which Plaintiff contends it is liable: the George M. Humphrey. According to Defendant, an unseaworthiness claim lies only against the owner (or owner pro hac vice) of a vessel.

In support of this contention, Defendant has submitted the U.S. Coast Guard Abstract of Title, which is maintained by the U.S. Coast Guard National Vessel Documentation Center. (Doc. No. 66-3.) Defendant points to the fact that the abstract of title for the George M. Humphrey indicates that, during the period at issue (1981), the vessel was owned by National Steel, for which it was built in 1954, and which owned it until August of 1984 (when it sold the vessel to Skar-Ore).

Wrong Employer

By way of separate motion, Defendant contends that Plaintiff's claim for negligence pursuant to the Jones Act fails because it was not Plaintiff's employer during his work (and alleged asbestos exposure) aboard the ship at issue: again, the George M. Humphrey. According to Defendant, a negligence claim pursuant to the Jones Act lies only against the plaintiff's employer - and, under Third Circuit law, direction, supervision, and payment are activities of an employer. Defendant also asserts that, under caselaw arising outside of the Third Circuit, it has been held that the name on the side of a ship is evidence of the identity of the employer of a seaman aboard that ship - and that, in general, it is the owner of a ship (or owner pro hac vice) who is the employer of the seamen aboard the ship.

With respect to the George M. Humphrey, Defendant Hanna Mining asserts that (1) the owner of the ship during the pertinent time period was National Steel. It further asserts that (2) unlicensed crewmembers employed aboard the ship (a) acted under the direction and supervision of National Steel, and (b) participated in the health, pension, and other benefit plans of National Steel. In addition, it asserts that (3) it was National Steel who paid Plaintiff for his work aboard this ship.

In support of these contentions, Defendant relies upon the following evidence:

- U.S. Coast Guard Abstract of Title - *George M. Humphrey*
  Defendant includes the Coast Guard "General Index or Abstract of Title" for the George M. Humphrey, which indicates that the ship was built for "National Steel Corporation" in 1954, and that National Steel remained the owner until August of 1984 (when it sold the vessel to Skar-Ore).

  (Doc No. 64-3)

- Social Security Administration Payroll Records
  Defendant includes information provided by a private records service (Renillo Record Services), which it contends include information from official Social Security Administration payroll records, indicating that, during the period at issue (August 1968 to June 1971), Plaintiff received payment from, among other employers, "National Steel Corporation" (for an unspecified portion of 1981).

  (Doc No. 64-4)

- Photo of the *George M. Humphrey*
  Defendant includes a photo of the George M. Humphrey, which shows the name "National Steel Corporation" displayed on the side of the ship.

  (Doc No. 64-19)

- Declaration of John S. Pyke, Jr.
  Defendant includes the declaration of Mr. Pyke, who is a former Vice President and General Counsel (among other job roles) for Defendant (Hanna Mining), employed by Defendant beginning in 1968 and continuing until sometime during or after 1979. Mr. Pyke provides testimony that:

  (1) Hanna Mining was appointed general agent by various vessel owners who authorized it to act in place of the owners in "handling, caring for and managing" at least eight different vessels;

> (2) In 1985, Hanna Mining changed its name to M.A. Hanna Company - which Mr. Pyke refers to collectively (stating "The Hanna Mining Company/M.A. Hanna Company (hereinafter 'Hanna');"
>
> and
>
> (3) Hanna acted as the general agent of the George M. Humphrey from 1954 (when it was built for National Steel) until 1984 (when it was sold); during this period, (i) the vessel was owned by National Steel, (ii) its crew was employed by National Steel, (iii) unlicensed crewmembers were paid by National Steel, (iv) unlicensed crew members acted under the direction and supervision of National Steel; and (v) unlicensed crew members participated in National Steel health, pension, and other benefit plans.
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> (Doc No. 64-6.)

Defendant acknowledges that the discharge certificate pertaining to Plaintiff's discharges from the ship at issue indicate that the "employer" was "Hanna Mining Company" (while other plaintiffs' discharge certificates from this ship and other ships identify the "employer" as "Hanna Mining Company, Agent"). (Doc No. 64-5.) However, Defendant asserts that the mere use of the term "employer" or "agent" or "independent contractor" on a discharge certificate is not determinative of the legal status of an entity. Defendant asserts that it is identified as "employer" on some of the discharge certificates because, during the years at issue, it acted as the general agent of the ships.

B. Plaintiff's Arguments

Wrong Employer

Plaintiff does not dispute that a negligence claim pursuant to the Jones Act lies only against the plaintiff's employer. Rather, Plaintiff asserts that Defendant identified itself as - and held itself out to be - Plaintiff's employer aboard the vessel at issue. It asserts that, despite an explicit

contractual obligation to do otherwise, it failed to disclose its status as an agent managing vessels.

Without directly stating as much, Plaintiff suggests that Defendant was one and the same as (and with) the entity that Defendant contends was Plaintiff's employer. Specifically, Plaintiff asserts that Defendant was one of four entities that entered into an intercompany agreement - and that these entities included National Steel (the entity that Defendant asserts was Plaintiff's employer aboard the ship at issue). However, Plaintiff contends that the evidence indicates that (1) Defendant Hanna Mining negotiated insurance and benefits for employees such as Plaintiff (and made the logistical arrangements around those, including payroll deductions), and that (2) the pension funds for Plaintiff were actually co-mingled funds from all four companies.

Plaintiff argues that he should not have to guess who to sue - and he notes that Defendant can seek indemnity from whichever of the other entities it deems appropriate.

In support of these contentions, Plaintiff relies upon, inter alia, the following evidence:

- Certificates of Discharge
  Plaintiff includes his discharge certificate from the ship at issue, which identifies his "Employer" as "Hanna Mining Co." He also includes discharge certificates for approximately a dozen other seamen who worked aboard the ship at issue (and other ships) during the same general time period, which indicate throughout that the "Employer" is sometimes identified as "Hanna Mining Co. Agents," but is sometimes listed as "Hanna Mining Co."

  (Doc Nos. 93-6 and 93-7)

- Intercompany Agreements as to Pension Plans, Management, and Insurance
  Plaintiff includes correspondence and an agreement, which indicate that Hanna Mining negotiated group benefits, including health insurance, not only for itself, but also, acting as an agent, for National Steel, Hansand Steamship, and Hanna Furnace.

(Doc Nos. 93-9 to 93-10)

Plaintiff maintains that the existence of an employment relationship is a question of fact and that the inquiry turns on the degree of control the alleged employer exerts over the employee. In support of this assertion, Plaintiff relies upon Reeves v. Mobil Dredging and Pumping Company, Inc., 26 F.3d 1247 (3d Cir. 1994) (citing Matute v. Lloyd Bermuda Lines, 931 F.2d 231, 236 (3d Cir. 1991)), and Osorio v. Texaco, Inc., 1990 WL 65709 (E.D. Pa. 1990). Plaintiff asserts that "control" includes the power to determine the route of the ship and the activities of the crew and, for this assertion, relies upon Cosmopolitan Shipping Company v. McAllister, 337 U.S. 789, 69 S. Ct. 1370 (1949). He asserts that, pursuant to the rule set forth in Matute, some of the factors demonstrating "control" include payment, direction, supervision, and discretion to hire and fire.

Wrong Shipowner

Plaintiff does not dispute that an unseaworthiness claim lies only against the owner (or owner pro hac vice) of a vessel. Rather, Plaintiff contends that Defendant held itself out as the pro hac vice owner of the vessels it managed (including the George M. Humphrey). Specifically, Plaintiff contends that the evidence indicates that Defendant considered the vessel at issue to be part of its fleet, and that it treated all of the vessels alike (whether it owned them or was appointed as an agent to manage them).

Again, without directly stating as much, Plaintiff suggests that Defendant was one and the same as (and with) the entity that Defendant contends was the owner of the ship at issue. Specifically, Plaintiff asserts that Defendant was one of four entities that entered into an intercompany agreement - and that these entities included National Steel (the entity that Defendant asserts was the owner of the ship at issue). For example, Plaintiff contends that the evidence indicates that Defendant Hanna Mining negotiated insurance and benefits for crewmembers on behalf of itself, Hanna Furnace, Hansand Steamship, and National Steel.

Again, Plaintiff suggests that he should not have to guess who to sue - and that Defendant can seek indemnity from whichever of the other entities it deems appropriate.

In support of these contentions, Plaintiff relies upon the following evidence:

- Agreements With National Steel Corporation (re: the *George M. Humphrey*)
  Plaintiff includes three agreements (dated January 1, 1950, January 1, 1955, and January 1, 1960) between M.A. Hanna Company and National Steel Corporation. Each of the agreements indicates that (1) National Steel "does hereby put and place the handling, care and management of its vessels, [including, among others, the George M. Humphrey] for the transportation of iron ore and other bulk cargoes on the Great Lakes." Each agreement also indicates that (2) M.A. Hanna Company "does hereby accept the handling, care and management of said vessels and agrees to use its best efforts in such handling care and management and to attend to all business matters and details in connection therewith."

  (Doc No. 93-2)

- 1984 Management Agreement With Skar-Ore Steamship (re: Management of Various Vessels)
  Plaintiff includes a "Management Agreement" dated August 31, 1984 between Defendant Hanna Mining Company and Skar-Ore Steamship Corporation, which reflects an agreement for Hanna Mining to manage four vessels (including the George M. Humphrey). The agreement indicates that:

  (1) Skar-Ore appoints Hanna Mining "as its agent to manage the operation and to conduct the business of the Vessels,"

  (2) Hanna Mining "agrees to manage the operation and to conduct, as agent only, the business of the Vessels in accordance with the orders of the Company,"

(3) "Nothing in this Agreement shall be construed as giving [Hanna Mining] control or possession of any Vessel or as having any interest whatever in the business, profits, insurance proceeds or liabilities resulting from the operation of any vessel,"

(4) "Ultimate control over the operation and navigation of the Vessels shall remain with [Skar-Ore],"

(5) Hanna Mining "shall perform all the customary duties of a managing agent," which, in particular, requires it to:

(a) "[a]ssist [Skar-ore] in the selection and engagement of suitable Master, officers and crew personnel for each Vessel,"
(b) "[c]ause to be furnished to each Vessel, provisions, fuel, fresh water, stores, supplies and equipment required for the business of such Vessel,"
(c) "[a]ppoint local agents for the business of each Vessel,"
(d) "[a]rrange for and, when necessary, supervise periodic drydockings and routine and casualty repairs to the extent authorized and approved by [Skar-Ore],"
(e) "[m]aintain, in separate accounts, which shall be subject to audit by [Skar-Ore] at reasonable times, an accounting of the funds advanced to [Hanna Mining] for operation of the Vessels,"
(f) "[a]rrange for the loading and discharging of cargoes; the preparation and execution of bills of lading; and in general provide what is known as 'Traffic Management' for each Vessel and each Vessel's business if and to the extent required by [Skar-Ore],"
(g) "[a]s instructed by [Skar-Ore], arrange for Marine Hull and Machinery, P. & I., War Risk and other insurance with such underwriters, with such limits and at such premium rates as the Company shall approve,"

(h) "[a]s instructed by [Skar-Ore], receive, handle, supervise and arrange for the adjustment of Hull and P. & I. claims,"
(i) "[a]ssist [Skar-Ore] in the negotiation of bargaining contracts with labor organizations; review and discuss labor problems and in general perform what is referred to as "Labor Management" in connection with the operation and business of each Vessel," and
(j) "maintain a qualified staff of personnel adequate to perform the operations required under this Agreement."

(Doc No. 93-3)

- Deposition Testimony of Paul Aquilla
Plaintiff cites to deposition testimony (from another action) of Mr. Aquilla, who worked as an Assistant Fleet Engineer for the Hanna Dock and Vessel Department. Mr. Aquilla initially testified that Hanna Mining owned only 1 and 1/3 vessels (which included 1/3 of the Joseph H. Thompson), but that he later discussed another seven vessels as well, which Plaintiff asserts he referred to as "The Hanna Fleet" (although, in the excerpt of the deposition transcript submitted on the docket, Mr. Aquilla never refers to the vessels by this name).

He testified that (1) his work for Hanna Dock and Vessel Department included (a) communicating with the vessels regarding repairs needed (either by land phone or by personally visiting the boats), (b) ordering supplies for the vessels, (c) supervising renovation of vessels, (d) retaining companies to perform renovation work, (e) performing design functions and developing specifications for repairs for the whole fleet of vessels, and (f) overseeing renovations. He provides testimony that (2) others from "Hanna" oversaw renovations, (3) for at least one vessel, "Hanna" paid for the renovations, and (4) "Hanna" approved specifications for work on the vessels, including replacement of insulation with asbestos.

In particular, Plaintiff quotes the following portions of Mr. Aquilla's deposition:

A: Right, but the design functions that I have been talking to you about apply to the whole fleet.
Q: Even the ships that were operated by Hanna?
A: That's correct.
Q: And owned by others.
A: That's correct yes.

. . .

Q: Mr. Aquilla, just a couple of questions. My name is Reg Kramer. I want to ask you about the work you performed for Hanna with regard to the supervision of major repairs and some of the design work that you and your department might have done with respect to those repairs. When it came to the specifications for those sort of repairs, who was responsible for specifying the insulating materials that would replace existing materials?
A: By and large the shipyards.
Q: Did you have to approve those specifications before they would be performed on the Hanna ships?
A: Yes.

Having reviewed the deposition transcript, the Court notes also that Mr. Aquilla testified that (1) National Steel was one of "the Hanna companies," (2) of the eight ships discussed as being in "the fleet," he testified that (a) five were owned by National Steel (including the George M. Humphrey, (b) 1 and 1/3 were owned by "Hanna (including 1/3 of the Joseph H. Thompson), and (c) he believed one was owned by Hanna Furnace (the George R. Fink, which he testified was managed by "Hanna"), although he was not certain, and (3) his work included ordering asbestos-containing materials, and approving replacement of insulation with asbestos-containing material.

(Doc No. 93-11)

- Discovery Responses of Defendant
  Plaintiff cites to the discovery responses of Defendant, which indicate that (1) in 1985, The Hanna Mining Company changed its name to "M.A. Hanna Company" (a Delaware corporation), (2) in 1929, a different corporation, "The M.A. Hanna Company" (an Ohio corporation), helped form National Steel Corporation and subsequently acted as manager of its vessels, (3) Hansand Steamship Corporation was formed in 1951 and, in 1971, was an equal joint venture among three corporations, including The Hanna Mining Company, and (4) The Hanna Mining Company agreed to assume the liabilities and obligations of National Steel Corporation under a Memorandum of Agreement dated January 1, 1960 (but only the liabilities accruing after the assignment's effective date of November 1, 1961).

  The Court notes also that, although the discovery responses do not explicitly mention Hanna Furnace, they note that, for some period of time, The M.A. Hanna Company had a "blast furnace business," some part of which was sold in 1929.

  (Doc No. 93-12)

In essence, Plaintiff suggests that Defendant is liable for the vessel at issue because Defendant Hanna Mining (which is now M.A. Hanna Company), assumed the post-November 1, 1961 liabilities of National Steel (which was created in part by The M.A. Hanna Company, and whose vessels were managed by The M.A. Hanna Company)[and which Defendant contends was Plaintiff's employer aboard the George M. Humphrey].

Moreover, Plaintiff asserts that it was Defendant who made the decisions to place asbestos materials aboard the vessels at issue, and implies that it is therefore the entity properly named as a defendant in this asbestos action.

C. Analysis

Wrong Shipowner

The parties do not dispute that an unseaworthiness claim lies only against the owner (or owner pro hac vice) of a vessel. Defendant contends that U.S. Coast Guard records confirm that, during the relevant time period, it was not the owner of the ship at issue and that, instead, the ship was owned by National Steel. Plaintiff disputes this and contends that, during the time of his employment aboard the vessel at issue (the George M. Humphrey (1981)), Defendant held itself out as the pro hac vice owner of the vessel and is therefore the entity properly liable for unseaworthiness.

In addition, Plaintiff suggests that, even if Defendant's assertion of ownership of the ship is correct, Defendant is nonetheless liable. With respect to the George M. Humphrey, Plaintiff suggests that this is because Defendant Hanna Mining (which is now M.A. Hanna Company) assumed the post-November 1, 1961 liabilities of National Steel (which was created in part by The M.A. Hanna Company, and whose vessels were managed by The M.A. Hanna Company) - and which Defendant contends was the owner (or owner pro hac vice) of the vessel.

Plaintiff worked aboard the George M. Humphrey during July to August of 1981. Defendant contends that, during this period, the ship was owned by National Steel. Defendant's discovery responses state that, in 1960, it (Hanna Mining, which is now M.A. Hanna Company) assumed the future, post-November 1, 1961 liabilities of National Steel. As such, even under Defendant Hanna Mining's own assertion of the facts regarding ownership of the vessel (i.e., that National Steel was the owner), it is liable for injury sustained by Plaintiff as a result of unseaworthiness during his time aboard the George M. Humphrey. Accordingly, Defendant's motion for partial summary judgment on the basis that it was not the owner of the George M. Humphrey is denied. See Anderson, 477 U.S. at 248-50.

The Court notes that Third Circuit law provides that Defendant Hanna Mining was free to seek indemnity from National Steel on the unseaworthiness claim had it believed that any liability to Plaintiff was properly absorbed by National Steel. SPM Corp. v. M/V Ming Moon, 22 F.3d 523, 526 (3d Cir. 1994).

Wrong Employer

Defendant next contends that it cannot be liable on Plaintiff's Jones Act claim because it was not Plaintiff's employer during his work aboard the ship at issue. The parties do not dispute that a Jones Act claim for negligence lies only against the plaintiff's employer at the time of the alleged asbestos exposure. Defendant contends that, during the relevant time period, Plaintiff's employer aboard the ship was National Steel. Plaintiff disputes this and contends that, during the times of his employment aboard the vessel (1981), Defendant held itself out as Plaintiff's employer and is therefore the entity properly liable for negligence pursuant to the Jones Act.

Specifically, Plaintiff asserts that Defendant was one of four entities that entered into an intercompany agreement (including National Steel - the entity that Defendant asserts was Plaintiff's employer aboard the ship at issue), and that (1) Defendant Hanna Mining negotiated insurance and benefits for employees such as Plaintiff (and made the logistical arrangements around those, including payroll deductions), and that (2) the pension funds for Plaintiff were actually co-mingled funds from all four companies, such that joint and/or several liability is implied. Without directly stating as much, Plaintiff suggests that Defendant is and/or was one and the same as (and with) the entity that Defendant contends was Plaintiff's employer.

In the alternative, Plaintiff seems to suggest that, even if Defendant's assertion of employer identification for the ship is correct, Defendant is nonetheless liable. Plaintiff suggests that this is because Defendant Hanna Mining (which is now M.A. Hanna Company) assumed the post-November 1, 1961 liabilities of National Steel (which was created in part by The M.A. Hanna Company, and whose vessels were managed by The M.A. Hanna Company) - and which Defendant contends was Plaintiff's employer aboard the vessel.

Plaintiff worked aboard the George M. Humphrey during July to August of 1981. Defendant asserts that Plaintiff's employer during this work was National Steel. Defendant's discovery responses state that, in 1960, it (Hanna Mining, which is now M.A. Hanna Company) assumed the future, post-November 1, 1961 liabilities of National Steel. As such, even under Defendant Hanna Mining's own assertion of the facts (i.e., that National Steel was Plaintiff's employer while aboard the ship),

AND IT IS SO ORDERED.

EDUARDO, C. ROBRENO, J.

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it is liable for injury sustained by Plaintiff as a result of employer negligence during his time aboard the George M. Humphrey. Accordingly, partial summary judgment in favor of Defendant on grounds that it was not Plaintiff's employer while he worked aboard this ship is not warranted. Anderson, 477 U.S. at 248-50.

D. Conclusion

Defendant's motion for partial summary judgment (as to the alleged exposure giving rise to Plaintiff's general maritime law claim for unseaworthiness) on grounds that it did not own the ship at issue is denied because Defendant assumed the future, post-1961 liabilities of National Steel, who Defendant contends was the ship's owner.

Defendant's motion for partial summary judgment (as to the alleged exposure giving rise to Plaintiff's Jones Act claim for negligence) on grounds that it was not Plaintiff's employer while he was working aboard the ships at issue is denied because Defendant assumed the future, post-1961 liabilities of National Steel, who Defendant contends was Plaintiff's employer while aboard the ship.