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

BOBBY FLOYD AND BARBARA FLOYD,	:	CONSOLIDATED UNDER MDL 875
Plaintiffs,	:	
	:	Transferred from the Northern District of California (Case No. 10-01960)
v.	:	
AIR & LIQUID SYSTEMS CORPORATION, ET AL.,	:	E.D. PA CIVIL ACTION NO. 2:10-CV-69379-ER
Defendants.	:	

O R D E R

AND NOW, this **9th** day of **February, 2012**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant IMO Industries, Inc. (Doc. No. 275) is **GRANTED**.[1]

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[1] This case was originally filed in April of 2010 in California state court. It was thereafter removed to the United States District Court for the Northern District of California, and later transferred to the United States District Court for the Eastern District of Pennsylvania as part of MDL-875.

Decedent Bobby Floyd has alleged exposure to asbestos while working aboard various Navy ships - and, for one assignment, on "shore duty," performing land-based work - throughout his employment with the Navy (January 1953 to August 1972). He has also alleged exposure to asbestos during the course of work for two private entities, in which he performed work on Navy ships and/or at a land-based machine shop, after he left the Navy: (1) RAM Enterprises, and (2) PacOrd. Defendant IMO Industries, Inc. ("IMO" or "IMO Industries") supplied pumps and turbines (with the brand name Delaval) that were used on Navy ships. The alleged exposure pertinent to Defendant IMO Industries occurred during the following periods of Decedent's work:

- USS Ranger - (May 1957 to April 1962)
- USS Constellation - (July 1964 to May 1969)

- RAM Enterprises (1975 to September 1976)(servicing products removed from Navy ships and brought back to a machine shop on land)

- PacOrd (September 1976 to 1998)(servicing products removed from Navy ships and brought back to a machine shop on land)

Decedent died of mesothelioma in January of 2011. He was deposed for eight (8) days prior to his death.

Plaintiffs have brought claims against various defendants, including, inter alia, strict products liability claims and negligent failure to warn claims. Defendant IMO has moved for summary judgment, arguing that (1) it is entitled to the bare metal defense, (2) there is insufficient product identification to support a finding of causation with respect to its product(s), (3) there is no evidence to support a claim of (a) false representation, (b) intentional tort (intentional failure to warn), or (c) punitive damages, (4) Plaintiffs' loss of consortium claim is a derivative claim properly dismissed upon the granting of summary judgment on Plaintiffs' other claims, and (5) it is immune from liability by way of the sophisticated user defense. Defendant IMO Industries asserts that maritime law applies.

Plaintiffs contend that summary judgment is not warranted because (1) the bare metal defense is not available under maritime law or California law, (2) even if the bare metal defense is available, there are genuine issues of material fact regarding Decedent's alleged exposure to original asbestos-containing component parts that were incorporated into Defendant's products at the time they were distributed, (3) there is sufficient product identification evidence, (4) there are genuine issues of material fact regarding their false representation and intentional tort claims, and (5) the loss of consortium claim survives summary judgment to the same extent that any other claim does. Plaintiffs (6) concede that summary judgment (on grounds of mootness) is warranted at this time on their punitive damages claim, as the Court has previously ruled that such claims are severed. Plaintiffs assert that California law applies.

I. Legal Standard

A. Summary Judgment 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.

B. The Applicable Law (Maritime versus California Law)

Defendant IMO Industries has asserted that maritime law is applicable. Whether maritime law is applicable is a threshold dispute that is a question of federal law, see U.S. Const. art. III, § 2; 28 U.S.C. § 1333(1), and is therefore governed by the law of the circuit in which this MDL court sits. See In re Asbestos Prods. Liab. Litig. (Oil Field Cases), 673 F. Supp. 2d 358, 362 (E.D. Pa. 2009)(Robreno, J.). This court has previously set forth guidance on this issue. See Conner v. Alfa Laval, Inc., No. 09-67099, - F. Supp. 2d -, 2011 WL 3101810 (E.D. Pa. July 22, 2011)(Robreno, J.). A party seeking application of maritime law must establish that maritime jurisdiction is properly invoked. Id. at *5.

In order for maritime law to apply, a plaintiff's exposure underlying a products liability claim must meet both a locality test and a connection test. Id. at *5-8 (discussing Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995)). The locality test requires that the tort occur on navigable waters or, for injuries suffered on land, that the injury be caused by a vessel on navigable waters. Id. In assessing whether work was on "navigable waters" (i.e., was sea-based) it is important to note that work performed aboard a ship that is docked at the shipyard is sea-based work, performed on navigable waters. See Sisson, 497 U.S. 358 (1990). By contrast, work performed in other areas of the shipyard or on a dock, (such as work performed at a machine shop in the shipyard, for example, as was the case with the Willis plaintiff discussed in Conner) is land-based work. The connection test requires that the incident could have "'a potentially disruptive impact on maritime commerce,'" and that "'the general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'" Grubart, 513 U.S. at 534 (citing Sisson, 497 U.S. at 364, 365, and n.2).

Locality Test

If a service member in the Navy performed some work at shipyards (on land) or docks (on land) as opposed to onboard a ship on navigable waters (which includes a ship docked at the shipyard), "the locality test is satisfied as long as some portion of the asbestos exposure occurred on a vessel on navigable waters." Conner, 2011 WL 3101810 at *9. If, however, the worker never sustained asbestos exposure onboard a vessel on navigable waters, then the locality test is not met and state law applies.

Connection Test

When a worker whose claims meet the locality test was primarily sea-based during the asbestos exposure, those claims will meet the connection test necessary for the application of maritime law. Id. at 9-10. But if the worker's exposure was primarily land-based, then, even if the claims could meet the locality test, they do not meet the connection test and state law (rather than maritime law) applies. Id.

In instances where there are distinct periods of different types (e.g., sea-based versus land-based) of exposure, the Court may apply two different laws to the different types of exposure. See, e.g., Lewis v. Asbestos Corp., Ltd., 10-64625, doc. no. 81 (E.D. Pa. Aug. 2, 2011)(Robreno, J.)(applying Alabama state law to period of land-based exposure and maritime law to period of sea-based exposure).

(i) Exposure During Decedent's Navy Service (Maritime Law Applies)

It is undisputed that the alleged exposure to Defendant IMO's products during Decedent's service in the Navy occurred in the course of work aboard a naval ship. Thus, Decedent's alleged exposure during his Navy service was during sea-based work. See Sisson, 497 U.S. 358. Therefore, IMO Industries has satisfied its burden in establishing that maritime law is applicable to the claims against it that arise from alleged exposure during Decedent's Navy service. See Conner, 2011 WL 3101810, at *5.

(ii) Exposure During Decedent's Post-Navy Work (California Law Applies)

It is undisputed that the alleged exposure to Defendant IMO's products during Decedent's post-Navy work occurred in the course of work on land. Thus, Decedent's alleged exposure during his post-Navy work was during land-based work. See Sisson, 497 U.S. 358. Therefore, California law is applicable to the claims against Defendant IMO that arise from alleged exposure during Decedent's post-Navy work. See Conner, 2011 WL 3101810, at *5.

C. Bare Metal Defense Under Maritime Law

This Court has recently adopted the so-called "bare metal defense" under maritime law, holding that a manufacturer has no liability for harms caused by - and no duty to warn about hazards associated with - a product it did not manufacture or distribute. Conner v. Alfa Laval, Inc., No. 09-67099, - F. Supp. 2d -, 2012 WL 288364 (E.D. Pa. Feb. 1, 2012)(Robreno, J.).

D. Bare Metal Defense Under California Law

The Supreme Court of California recently held that, under California law, a product manufacturer generally is not liable in strict liability or negligence for harm caused by a third party's products. O'Neil v. Crane Co., No. S177401, 2012 WL

88533 (Cal. Jan. 12, 2012). There, O'Neil, who formerly served on an aircraft carrier, brought products liability claims against Crane Co. and Warren Pumps, which manufactured equipment used in the ship's steam propulsion system. Pursuant to Navy specifications, asbestos insulation, gaskets, and other parts were used with the defendant manufacturer's equipment, some of which was originally supplied by the defendants. O'Neil, however, worked aboard the ship twenty years after the defendants supplied the equipment and original parts. There was no evidence that the defendants made any of the replacement parts to which O'Neil was exposed or, for that matter, that the defendants manufactured or distributed asbestos products to which O'Neil was exposed.

The court firmly held that the defendant manufacturers were not liable for harm caused by asbestos products they did not manufacture or distribute. O'Neil, 2012 WL 88533, at *5. With regard to the plaintiff's design-defect claim, the court noted that "strict products liability in California has always been premised on harm caused by deficiencies in the defendant's own product." Id. And that the "defective product . . . was the asbestos insulation, not the pumps and valves to which it was applied after defendants' manufacture and delivery." Id. at *7.

Similarly, the Court rejected the plaintiff's claim that the defendants are strictly liable for failure to warn of the hazards of the release of asbestos dust surrounding their products. The plaintiff asserted that the defendants were under a duty to warn because it was reasonably foreseeable that their products would be used with asbestos insulation. Nevertheless, the court held, "California law does not impose a duty to warn about dangers arising entirely from another manufacturer's product, even if it is foreseeable that the products will be used together." Id. at *16. Accordingly, the Court refused to hold the defendants strictly liable. Id. at *17.

And the O'Neil court conducted a similar analysis to the plaintiff's claim based on the defendants' negligent failure to warn. The court concluded that "expansion of the duty of care as urged here would impose an obligation to compensate on those whose products caused the plaintiffs no harm. To do so would exceed the boundaries established over decades of product liability law." Id. at *19. Thus, as a matter of law, the court refused to hold the defendants liable on the plaintiff's strict liability or negligence claims.

E. Product Identification/Causation Under Maritime Law

In order to establish causation for an asbestos claim under maritime law, a plaintiff must show, for each defendant, that "(1) he was exposed to the defendant's product, and (2) the product was a substantial factor in causing the injury he suffered." Lindstrom v. A-C Prod. Liab. Trust, 424 F.3d 488, 492 (6th Cir. 2005); citing Stark v. Armstrong World Indus., Inc., 21 F.App'x 371, 375 (6th Cir. 2001). Substantial factor causation is determined with respect to each defendant separately. Stark, 21 F.App'x. at 375.

A mere "minimal exposure" to a defendant's product is insufficient to establish causation. Lindstrom, 424 F.3d at 492. "Likewise, a mere showing that defendant's product was present somewhere at plaintiff's place of work is insufficient." Id. Rather, the plaintiff must show "'a high enough level of exposure that an inference that the asbestos was a substantial factor in the injury is more than conjectural.'" Id. (quoting Harbour v. Armstrong World Indus., Inc., No. 90-1414, 1991 WL 65201, at *4 (6th Cir. April 25, 1991)). The exposure must have been "actual" or "real", but the question of "substantiality" is one of degree normally best left to the fact-finder. Redland Soccer Club, Inc. v. Dep't of Army of U.S., 55 F.3d 827, 851 (3d Cir. 1995). "Total failure to show that the defect caused or contributed to the accident will foreclose as a matter of law a finding of strict products liability." Stark, 21 F.App'x at 376 (citing Matthews v. Hyster Co., Inc., 854 F.2d 1166, 1168 (9th Cir. 1988) (citing Restatement (Second) of Torts, § 402A (1965))).

F. Product Identification/Causation Under California Law

Under California law, a plaintiff need only show (1) *some* threshold exposure to the defendant's asbestos-containing product and (2) that the exposure "in reasonable medical probability was a substantial factor in contributing to the aggregate dose of asbestos the plaintiff or decedent inhaled or ingested, and hence to the risk of developing asbestos-related cancer." McGonnell v. Kaiser Gypsum Co., Inc., 98 Cal. App. 4th 1098, 1103 (Cal. Ct. App. 2002); see also, Rutherford v. Owens-Illinois, 16 Cal. 4th 953, 977 n.11, 982-83 (Cal. Ct. App. 1997) ("proof of causation through expert medical evidence" is required). The plaintiff's evidence must indicate that the defendant's product contributed to his disease in a way that is "more than negligible or theoretical," but courts ought not to

place "undue burden" on the term "substantial." Jones v. John Crane, Inc., 132 Cal. App. 4th 990, 998-999 (Cal. Ct. App. 2005).

The standard is a broad one, and was "formulated to aid plaintiffs as a broader rule of causality than the 'but for' test." Accordingly, California courts have warned against misuse of the rule to preclude claims where a particular exposure is a "but for" cause, but defendants argue it is "nevertheless. . . an insubstantial contribution to the injury." Lineaweaver v. Plant Insulation Co., 31 Cal. App.4th 1409, 1415 (Cal. Ct. App. 1995). Such use "undermines the principles of comparative negligence, under which a party is responsible for his or her share of negligence and the harm caused thereby." Mitchell v. Gonzales, 54 Cal. 3d 1041, 1053 (Cal. 1991).

In Lineaweaver, the California Court of Appeals for the First District concluded that "[a] possible cause only becomes 'probable' when, in the absence of other reasonable causal explanations, it becomes more likely than not that the injury was a result of its action. This is the outer limit of inference upon which an issue may be submitted to the jury.'" 31 Cal. App.4th at 1416. Additionally, "[f]requency of exposure, regularity of exposure, and proximity of the asbestos product to plaintiff are certainly relevant, although these considerations should not be determinative in every case." Id.

II. Defendant IMO's Motion for Summary Judgment

A. Defendant's Arguments

Bare Metal Defense

Defendant IMO asserts the bare metal defense, arguing that it is immune from liability in this case under the defense as a matter of law and that it is, therefore, entitled to summary judgment.

Product Identification / Causation

Defendant IMO does not dispute that it supplied pumps and other equipment for use aboard various Navy ships. IMO argues, however, that there is no evidence that Decedent worked with or around any asbestos-containing original or replacement component parts supplied by it. Furthermore, Defendant cites to a report of expert James Delaney, who states that (1) the USS Constellation would have undergone one or more overhauls prior to

Decedent's work with it, such that there would have been no original gaskets or packing on it at the time of Decedent's work, and (2) because the USS Ranger was a newly constructed ship to which Decedent reported right at the end of construction, it "would have been thoroughly inspected and tested and would have required a minimum of corrective maintenance during the first few years of operation." (Def. Mem. p.10 (citing Delaney Rep. p.9).)

Miscellaneous Claims (False Representation, Intentional Tort, Loss of Consortium, and Punitive Damages)

IMO argues that summary judgment is warranted with respect to Plaintiffs' false representation, intentional tort, and punitive damages claims because there is no evidence to support these claims.

IMO asserts that Plaintiffs' loss of consortium claim is a derivative claim properly dismissed upon the granting of summary judgment on Plaintiffs' other claims

B. Plaintiffs' Arguments

Bare Metal Defense

Plaintiffs assert that the bare metal defense is not available under maritime law or California law. Furthermore, Plaintiffs assert that, even if the bare metal defense is available, Defendant IMO is liable for original asbestos-containing component parts that were incorporated into and supplied with its products, and to which Plaintiffs assert Decedent was exposed.

During oral argument, Plaintiffs asserted that, even under the California Supreme Court's recent ruling in O'Neil, 2012 WL 88533, Defendant IMO is liable for asbestos-containing component parts that were used with its products but that it did not manufacture or supply because documents pertaining to those products indicate that they required (or "called for") the use of defective (i.e., asbestos-containing) component parts in order to operate. In asserting this argument, Plaintiffs rely upon footnote 6 of O'Neil. See 2012 WL 88533, at *7 n.6.

Product Identification / Causation

Plaintiffs allege that Decedent was exposed to original asbestos-containing component parts (gaskets and packing) that

were supplied by IMO to the Navy in pumps and turbines aboard the USS Ranger, USS Constellation, and various ships serviced by Decedent during his post-Navy work at RAM and PacOrd. In support of these claims, Plaintiffs cite to the following evidence pertinent to the following periods of work:

USS Ranger

- Deposition Testimony of Decedent Mr. Floyd - Decedent testified that he was on this ship as part of its first crew; he testified that he recalled four Delaval fuel oil service pumps in the machinery room on the USS Ranger and that he recalled (1) working on one of these pumps, replacing the radial and thrust bearings, and (2) working frequently on steam control valves associated with a fuel oil service pump

- Expert Report of Arnold P. Moore - Plaintiffs point to a report of expert Arnold Moore, who states that Delaval supplied pumps for the main machinery room of the USS Ranger, as well as a steam turbine; Captain Moore appears to conclude from "Bills of Materials" that Delaval supplied its pumps and pump drivers to the Navy for the USS Ranger with asbestos packing and gaskets already incorporated

USS Constellation

- Deposition Testimony of Decedent Mr. Floyd - Decedent testified that he performed repairs aboard one of three Delaval fuel oil service pumps aboard the USS Constellation, which required stripping the turbine casing and removing lagging from the turbine end of the pump; he testified that, after this, the ship was overhauled, and that he worked nearby the overhaul

- Deposition Testimony of IMO Industries 30b6 Witness Richard Salzmann - Plaintiffs point to deposition testimony of Mr. Salzmann in support of their assertion that Delaval supplied pumps and turbine drivers for the USS Constellation, and that at least four (4) of the pumps were supplied with an asbestos gasket

- Expert Report of Arnold P. Moore - Plaintiffs point to a report of expert Arnold Moore, who states that Delaval supplied pumps for the main machinery room of

the USS Constellation, as well as a steam turbine; Captain Moore appears to conclude from "Bills of Materials" that Delaval supplied its pumps and pump drivers to the Navy for the USS Constellation with asbestos packing and gaskets already incorporated

RAM and PacOrd (Post-Navy)

- Deposition Testimony of Decedent Mr. Floyd - Decedent testified that he worked on "numerous" Delaval pumps during his post-Navy period work, including removing gaskets with scrapers and wire brushes (which created dusty conditions) and "many times" removing packing with his bare hands; he also testified to having performed complete overhauls of Delaval turbines "numerous times" while working at RAM and PacOrd up to until approximately 1980, including removing and replacing various gaskets, and "likely" removing packing (which required scraping with a scribe)

- Expert Report of Arnold P. Moore - Expert Arnold Moore provides testimony that IMO supplied pumps to several ships from which equipment was serviced by Decedent during his post-Navy work at RAM and PacOrd

- Expert Report of William Lowell - Plaintiffs point to deposition testimony of expert William Lowell, who appears to confirm that Delaval equipment was provided to the ships from which equipment was serviced by Decedent during his post-Navy work at RAM and PacOrd

Miscellaneous Claims (False Representation, Intentional Tort, Loss of Consortium, and Punitive Damages)

With respect to the claim for false representation, Plaintiffs assert that, "[u]nder California law, a misrepresentation claim under Section 402B [of the Restatement (Second) of Torts] is 'one of strict liability for physical harm to the consumer, resulting from a misrepresentation of the character or quality of the chattel sold, even though the misrepresentation is an innocent one, and not made fraudulently or negligently'." (Pl. Opp. (Doc. No. 288) at 6.)

Plaintiffs assert that each of the false representation and intentional tort claims turns on a duty on the part of the defendant to warn of or disclose information about the hazards of

asbestos. (Pl. Opp. (Doc. No. 288) at 6-7.) Plaintiffs assert that there is sufficient evidence to create genuine issues of material fact regarding Defendant's liability as to these claims.

Plaintiffs assert that their loss of consortium claim survives summary judgment to the same extent that any other claim does.

Plaintiffs assert that, since this Court has previously ruled that punitive damages claims will be severed, summary judgment is warranted with respect to this claim on grounds of mootness, to be dealt with by the Court at a future date.

C. Analysis

To the extent that Decedent's alleged exposure pertains to asbestos-containing component parts used in connection with pumps and turbines supplied by IMO but not manufactured or supplied by IMO, summary judgment is warranted. However, to the extent that the alleged exposure pertains to original asbestos-containing component parts or asbestos-containing replacement parts supplied by IMO, summary judgment in favor of defendant is not warranted on grounds of the bare metal defense. This is the holding of the so-called bare metal defense recently adopted by this Court under maritime law and recognized and applied by the California Supreme Court. See Conner, 2012 WL 288364 (maritime law); O'Neil, 2012 WL 88533 (California law).

The Court has considered Plaintiffs' argument, made during oral argument on Defendant's motion, that, under California law, Defendant is liable for asbestos-containing component parts that were used with its products but that it did not manufacture or supply because the products it supplied required (or "called for") the use of defective (i.e., asbestos-containing) component parts in order to operate. However, the Court rejects this argument because California law does not provide for such liability, and notes that footnote 6 of O'Neil is dictum.

As this Court has noted, the bare metal defense is more properly understood as a challenge to a plaintiff's prima facie case to prove the duty or causation element of its cause of action. See Conner, 2012 WL 288364, at *1 n.2. Plaintiffs have alleged exposure to asbestos from original gaskets and packing supplied by IMO with pumps and turbines. (They have not alleged that IMO supplied asbestos-containing replacement parts.) The

Court now examines the evidence pertinent to each source of alleged exposure in turn, under the applicable law.

a. USS Ranger (Maritime Law)

It is undisputed that Defendant IMO Industries supplied pumps and turbines to this ship. There is evidence that Defendant's products were provided with original asbestos-containing component parts (gaskets and/or packing). However, there is no evidence that Decedent was exposed to asbestos from original asbestos-containing component parts (gaskets and/or packing) supplied by IMO with those products (as opposed to replacement parts later installed in them after they were supplied to the Navy).

Although Decedent testified that he (1) was on this ship as part of the first crew when it was originally constructed, (2) worked on one of the Delaval pumps, replacing the radial and thrust bearings, and (3) worked frequently on steam control valves associated with a fuel oil service pump, there is no evidence in the record that this would have resulted in exposure to the gaskets and/or packing. Furthermore, even if this type of work would have resulted in exposure to the gaskets and/or packing (and even assuming this involved disturbance of the products that released airborne asbestos dust), there is no evidence that this work occurred prior to the first replacement of the original gaskets and/or packing. Because Decedent served aboard this ship for approximately five (5) years, it would be speculative to conclude (without evidence to suggest otherwise) that this work was done prior to the first replacement of the gaskets and/or packing. Therefore, no reasonable jury could conclude from the evidence that Decedent's injury was caused by original gaskets or packing supplied by IMO with pumps or turbines aboard the USS Ranger. Accordingly, under maritime law, summary judgment in favor of Defendant IMO is warranted with respect to this alleged exposure. See Lindstrom, 424 F.3d at 492.

b. USS Constellation (Maritime Law)

It is undisputed that Defendant IMO Industries supplied pumps and turbines to which Decedent was exposed during his servicing of these products. There is evidence that the pumps were provided with original asbestos-containing component parts (gaskets and/or packing). However, there is no evidence that Decedent was exposed to asbestos from original asbestos-

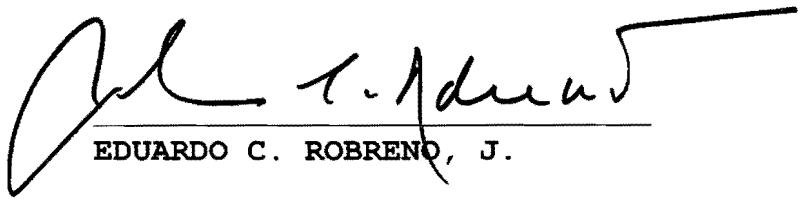
containing component parts (gaskets and/or packing) supplied by IMO with any of those products (as opposed to replacement parts later installed in them after they were supplied to the Navy). Moreover, Defendants have provided evidence in the form of an expert report that the USS Constellation would have undergone one or more overhauls prior to Decedent's work with it, such that there would have been no original gaskets or packing remaining in its products at the time of Decedent's work on the ship. Therefore, no reasonable jury could conclude from the evidence that Decedent's injury was caused by original gaskets or packing supplied by IMO with pumps or turbines aboard the USS Constellation. Accordingly, under maritime law, summary judgment in favor of Defendant IMO is warranted with respect to this alleged exposure. See Lindstrom, 424 F.3d at 492.

c. RAM and PacOrd (Post-Navy) (California Law)

It is undisputed that Defendant IMO Industries supplied pumps and turbines to various Navy ships. There is evidence that Decedent was exposed to these products during his servicing of these products (specifically including changing gaskets and packing on them). A reasonable jury could conclude from the evidence that Decedent was exposed to dust as a result of his work on these products. However, Plaintiffs have identified no evidence that Decedent was exposed to asbestos from this work. Furthermore, even if it could be concluded that there was asbestos exposure from this work, there is no evidence that such asbestos was from original asbestos-containing component parts (gaskets and/or packing) supplied by IMO with those products (as opposed to replacement parts later installed in them after they were supplied to the Navy). Therefore, no reasonable jury could conclude from the evidence that Decedent's injury was caused by original gaskets or packing supplied by IMO with pumps or turbines to which Decedent was exposed during his post-Navy work. Accordingly, under California law, summary judgment in favor of Defendant IMO is warranted with respect to this alleged exposure. See McGonnell, 98 Cal. App. 4th at 1103.

With respect to Plaintiffs' false representation and intentional tort claims, the Court notes that Plaintiffs contend in their briefing that these claims turn on the existence of a duty on the part of Defendant to warn of or disclose the hazards associated with asbestos used in connection with its products. However, the California Supreme Court has made clear that, under California law, IMO cannot be liable for harms caused by - and has no duty to warn about hazards associated with - products it

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

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did not manufacture or supply, or products it manufactured or supplied but for which there is no evidence of exposure of the Decedent. See O'Neil, 2012 WL 88533. This Court has made clear that this same rule applies under maritime law. See Conner, 2012 WL 288364, at *7. Therefore, Plaintiffs' theory of liability on these claims fails under both maritime law and California law, and summary judgment in favor of Defendant IMO is warranted with respect to each of these claims for both Navy and post-Navy exposures.

In light of the Court's rulings herein, Plaintiffs' claims for loss of consortium and punitive damages are now moot.

D. Conclusion

Applying maritime law and California law as applicable to Decedent's alleged exposures, Defendant IMO is not liable for harms arising from any product that it did not manufacture or supply. Plaintiffs have failed to provide evidence from which a reasonable jury could conclude that Decedent was exposed to asbestos-containing component parts for which Defendant IMO could potentially be liable in light of the bare metal defense recently adopted by this Court under maritime law and recognized and applied by the California Supreme Court (i.e., original asbestos-containing component parts). Accordingly, summary judgment in favor of Defendant IMO is warranted on all claims.