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 Triple A Machine Shop (Doc. No. 269) 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 Triple A Machine Shop, Inc. ("Triple A") leased and operated shipyards and was identified by Decedent as a contractor that worked with and near him removing insulation. The alleged exposure arising from work performed by Defendant Triple A occurred during the following periods of Decedent's work:

- RAM Enterprises - 1974 (or 1975) to Sept. 1976 - work as an outside machinist (on land)

- PacOrd - Sept. 1976 to 1980 - work as an outside machinist (on land except for one instance of a job performed on a ship)

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, negligent failure to warn claims. Defendant Triple A has moved for summary judgment, arguing that (1) there is insufficient product identification to support a finding of causation with respect to (a) work performed by Triple A or (b) its role as a premises owner, and (2) a 2010 order from the Bankruptcy Court precludes Plaintiffs from maintaining or pursuing a claim for punitive damages. Triple A asserts that California law applies.

Plaintiffs contend that summary judgment is not warranted because (1) there is sufficient circumstantial evidence to support a finding of causation with respect to (a) work performed by Triple A and (b) its role as a premises owner. Plaintiffs (2) 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

The parties have agreed that California substantive law applies. Therefore, this Court will apply California law in deciding Triple A'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. Causation in Asbestos Cases Under California Law

Under California law, a plaintiff need only show (1) *some* threshold exposure to asbestos attributable to defendant 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 (or conduct) 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 Triple A's Motion for Summary Judgment

A. Defendant's Arguments

Causation

Defendant Triple A argues that there is insufficient evidence that Decedent was exposed to asbestos on Triple A's premises or as a result of Triple A's work (there or elsewhere) to support a finding of causation with respect to Triple A or work done by its employees.

Punitive Damages Claim

Defendant Triple A argues that summary judgment on Plaintiffs' punitive damages claim is appropriate because there is a Bankruptcy Court order dated November 10, 2010 that precludes Plaintiffs from maintaining or pursuing a claim for punitive damages against it.

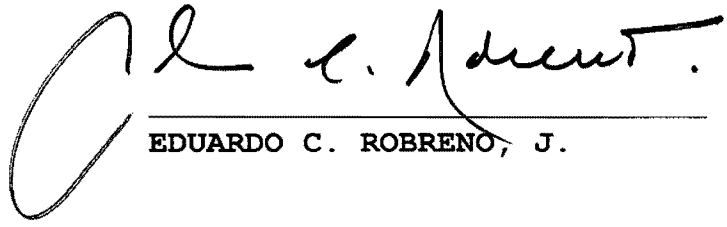
B. Plaintiffs' Arguments

Causation

Plaintiffs assert that there is sufficient circumstantial evidence to support a finding of causation with respect to work performed by Triple A and/or on its premises. In support of this claim, Plaintiffs cite to:

- Deposition Testimony of Decedent Mr. Floyd - Decedent testified that he worked around Triple A workers on some occasions

AND IT IS SO ORDERED.



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- Discovery Responses of Defendant from Another Action - Plaintiffs cite to discovery responses from a 1998 action that indicate that some of Triple A's work aboard ships involved asbestos-containing gaskets and packing

Punitive Damages Claim

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

There is evidence that Decedent worked around Triple A employees on occasion and that he may have worked at Triple A's facility. There is also evidence that Triple A's work sometimes involved asbestos-containing products. However, there is no evidence that the work performed by Triple A in the presence of Decedent - either at a shipyard or on Triple A's premises - involved any asbestos-containing product. Accordingly, no reasonable jury could conclude from the evidence that Decedent was exposed to asbestos as a result of work performed by Triple A or as a result of being on Triple A's premises. Therefore, summary judgment in favor of Triple A is warranted.

In light of this ruling, the issue of punitive damages is now moot.