

Nosroc moves for summary judgment on the basis that Plaintiff has not established product nexus, *i.e.*, Plaintiff has not offered any evidence establishing that Truitt was exposed to any asbestos-containing BEH or Keene product distributed by Nosroc. In response, Plaintiff argues that Nosroc was the exclusive distributor in the Delaware Valley of BEH and Keene products, some of which contained asbestos, that Truitt recalled outside contractors working with insulation in his work area, that the deposition testimony of several of Truitt's co-workers at the DuPont Seaford plant establishes that products supplied by Nosroc were used at the Seaford plant and that those products created dust to which other employees of the plant would have been exposed. Plaintiff submits that there is therefore an issue of material fact as to whether Truitt's alleged asbestos-related illnesses were proximately caused by his exposure to products supplied by Nosroc while he worked at the DuPont Seaford plant.

Truitt has been deposed on numerous occasions in connection with his employment at the DuPont Seaford plant. In 1999, Truitt testified that in 1962, as an operator in the textile department, he witnessed "outside contractors" installing and removing insulation at the plant.¹ Plaintiffs also rely on the deposition testimony of five "product nexus" witnesses – Larry Persinger, William Brannock,

¹ Dep. Tr. of Robert J. Truitt, Dec. 7, 1999, at 40:12-16; *see also id.* at 41:2-11. Truitt discussed other possible asbestos exposures in 1999 (*see id.* at 43:10-13), but he does not specifically identify any products distributed by Nosroc. Nosroc indicated in its Answers to Interrogatories that it distributed products marketed as Thermalite, Thermasil, Mono-block, Monospray, and 7M Brand Asbestos. Def.'s Answers to Interrog. at 3.

Randy Meadows, William Farrall, and Edward Lavelle, all of whom worked at the DuPont Seaford plant as DuPont employees or as outside contractors – as evidence that Nosroc-supplied products were in use at the DuPont Seaford plant and that employees would have been exposed to ambient dust from those products.²

Summary judgment is appropriate where the record presents no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.³ Initially, the burden is placed upon the moving party to demonstrate that its legal claims are supported by the undisputed facts.⁴ If the proponent properly supports its claims, the burden “shifts to the non-moving party to demonstrate that

² Plaintiffs contend that each of these product nexus witnesses specifically recalled working with Nosroc-supplied products at the DuPont Seaford plant. For example, Larry Persinger testified that he worked with BEH calcium silicate at Seaford. Dep. Tr. of Lawrence Persinger, May 22, 1985, at 550:20-22. However, Persinger could not identify the years when he worked with BEH calcium silicate at Seaford, nor could he remember who worked with his product with him at the DuPont Seaford Plant. *Id.* at 551: 5-7; 551: 14-17. Similar problems appeared with regard to Persinger’s identification of other Keene and BEH products. *See, e.g., id.* at 586: 7-10; Dep. Tr. of Lawrence Persinger, Jan. 23, 1985, at 132: 16-23. The other product identification witnesses are no more helpful in establishing that Truitt would have been exposed to asbestos-containing Keene or BEH products at the DuPont Seaford plant. William Brannock, who worked at the DuPont Seaford plant from 1963 to 1992 as an outside contractor, testified about various products, including Ehret covering and Ehret 85% Mag, Thermalite pipe covering. Dep. Tr. of William C. Brannock, Nov. 19, 1986, at 337:3-24; 371: 12-24. Randy Meadows testified about using Thermasil covering and Monospray insulation. Dep. Tr. of Randle J. Meadows, May 13, 1987, at 40: 25; 43:17-20; *see also* Dep. Tr. of Randle J. Meadows, Jun. 17, 1987, at 266: 12-24. William Farrall, a Local 42 who worked on insulation at the DuPont Seaford plant, testified that he did not know the names of any of the DuPont employees who were nearby while he was working at the plant from 1965-68. Dep. Tr. of William Farrall, Apr. 24, 1986, at 29: 15-21. Farrall did, however, identify Keene Corporation as the manufacturer of pipe covering used at the DuPont Seaford plant. *Id.* at 77: 11-22. Edward Lavelle testified that overhaul projects resulted in the removal of flooring from the fifth floor and the sixth floor, resulting in “a dust flow that, that goes from the fourth floor to the sixth floor,” to which regular employees in the same work area would have been exposed. Dep. Tr. of Edward Lavelle, 35: 7-21; 47: 11-12.

³ Super. Ct. Civ. R. 56(c).

⁴ *E.g., Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879 (Del. Super. 2005).

there are material issues of fact for resolution by the ultimate fact-finder.”⁵ Summary judgment will only be granted if, after viewing the evidence in the light most favorable to the non-moving party, no material factual disputes exist and judgment as a matter of law is appropriate.⁶

In the context of an asbestos claim, Delaware law requires a plaintiff to demonstrate that “a particular defendant’s asbestos-containing product was used at the job site and that the plaintiff was in proximity to that product at the time it was being used.”⁷ This Court has repeatedly held that it is not sufficient for a plaintiff to establish “the mere presence of a defendant’s asbestos-containing product at a large job site; rather, the plaintiff must also proffer evidence that he ‘was in proximity to that product at the time it was being used.’”⁸

For the reasons set forth in Nosroc’s motion and reply, Plaintiffs have failed to satisfy Delaware’s product nexus standard.⁹ Plaintiffs have not shown that Truitt was exposed to any BEH or Keene product in this case. While it is clear from the record that Truitt worked at the DuPont Seaford plant, and that Keene and BEH products were in use at the DuPont Seaford plant at the time that Truitt worked there, these facts, without more, are insufficient to support a reasonable

⁵ *Id.* at 880.

⁶ *Id.* at 879-80.

⁷ *In re Asbestos Litig.*, 509 A.2d 1116, 1117 (Del. Super. 1986) (citation omitted).

⁸ *In re Asbestos Litig. (DuHadaway)*, C.A. No. 08C-08-285 ASB (Del. Super. Jan. 18, 2011) (quoting *Nutt v. A.C. & S. Co., Inc.*, 517 A.2d 690, 692 (Del. Super. 1986)); *see also In re Asbestos Litig.*, 509 A.2d 1116, 1117-18 (Del. Super. 1986).

⁹ *Id.*

