



his employer at the time.<sup>1</sup> Plaintiff further testified that he performed significant repair work on the two buses, including two clutch replacements and two brake replacements on each bus.<sup>2</sup> Plaintiff admitted that he did not know whether the brakes or the clutches used on the Greyhound buses contained asbestos.<sup>3</sup> Plaintiff also testified that he did front-end work on both buses, although he could not say whether he had been exposed to asbestos as a result of this work.<sup>4</sup> Additionally, Plaintiff testified that he had done work in the ceiling compartments, air conditioning, and blower housings on the buses and that asbestos might have been used in the cooling chambers.<sup>5</sup> Plaintiff testified that he was the person responsible for ordering replacement parts when he worked at O’Neal’s,<sup>6</sup> and that the replacement brakes and clutches were purchased through Greyhound.<sup>7</sup>

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<sup>1</sup> See Frank Edminsten Dep. Tr., Sept. 13, 2010, at 274: 12-17. Edminsten’s testimony regarding the buses is confusing and somewhat equivocal. He initially testified that the buses were purchased in 1955 (“Q: I know you said they were 1957 buses. What year did O’ Neal’s buy them? A: That had to be in ’55, I would say.”) *Id.* at 273: 22-24. Upon further examination, he subsequently testified that the year on the chassis on the buses was 1957 and that the buses were purchased in 1965 (“They bought them in 1965, and they were 1957 – was the year of the chassis. I think that’s what you told me earlier.”). *Id.* at 274: 14-16.

<sup>2</sup> *Id.* at 209: 11-16; 18-24.

<sup>3</sup> *Id.* at 210: 7-15.

<sup>4</sup> *Id.* at 211: 1-3.

<sup>5</sup> *Id.* at 211: 6-17.

<sup>6</sup> *Id.* at 273: 6-8.

<sup>7</sup> *Id.* at 208: 20-24. This portion of the transcript gives the impression that Edwards does not have a clear recollection of the buses’ provenance. When asked if he knew who manufactured the clutch that he removed from the Greyhound bus, Edminsten responded, “No, just a regular Greyhound company in Raleigh, North Carolina.” *Id.* at 208: 5-6. In response to further questioning, Edminsten then admitted that Greyhound’s operation in Raleigh, North Carolina was a bus terminal. *Id.* at 208: 7-9. He then speculated that the buses themselves may have been purchased in Georgia. *Id.* at 208: 13-19. Similarly, in response to a leading question regarding the origins of the brakes, Plaintiff could only say that they had been purchased in North Carolina.

3. Plaintiff presented product-identification testimony from Roger O’Neal, who worked with Edminsten at O’Neal’s. In his deposition, O’Neal testified that the replacement brakes “[a]bsolutely” contained asbestos, though he admitted that he was not a mechanic.<sup>8</sup> O’Neal confirmed that Edminsten was responsible for ordering parts, subject to approval from O’Neal’s brother.<sup>9</sup> O’Neal then testified that the company ordered replacement brakes and clutches for coach buses from the now-defunct Brake Equipment Company, a local trucking and bus equipment company, and added, “[b]asically that was pretty much it.”<sup>10</sup> During his deposition, O’Neal discussed several coach buses owned by the bus service in his transcript, including several GMC coaches and two Eagle coaches that had been purchased used from Carolina Trailways, but he did not specifically mention any Greyhound coaches.<sup>11</sup> O’Neal explained that they occasionally ordered replacement parts for their coaches from a GM facility in New Jersey and testified

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*Id.* at 209:6-10. It is also unclear whether the buses would have had their original brakes and clutches by the time they came to O’Neal’s. Elsewhere in the transcript, Edminsten testified that the buses “had a million miles on them” and then clarified that the buses “actually had that many miles.” *Id.* at 274: 3-8.

<sup>8</sup> Roger O’Neal Dep. Tr., Mar. 28, 2011, at 26:18-20. (“Q: Did the replacement brakes used on coaches at O’Neal’s Bus Service contain asbestos? [...] A: Absolutely. Sure. I mean, me, in that time there, I wasn’t a mechanic. But I know they were.”). Similarly, O’Neal also testified that the replacement clutches used at O’Neal’s contained asbestos (“Q: And did the replacement clutches also contain asbestos? [...] A: I’d say so, yep. I mean, you know, as far as my knowledge, I’d say so, because I didn’t work on them coach buses. I didn’t work on them. I drove them. That’s all I did. As far as I know, they probably did.”). *Id.* at 27:10-17.

<sup>9</sup> *Id.* at 21: 20-22 and 22: 1-11.

<sup>10</sup> *Id.* at 22: 17.

<sup>11</sup> *Id.* at 21:2-13.

that they never ordered replacement parts for the Eagle coaches directly from Eagle because the Eagle coaches had GM engines.<sup>12</sup>

4. Greyhound has presented the affidavit of Ken Ries, an environmental engineer who worked as an Assistant Manager in the Pollution Control Department in the Greyhound general counsel's office from 1971 until 1987. Ries' affidavit states that Greyhound did not manufacture, sell or distribute brakes or clutches.<sup>13</sup>

5. Greyhound argues that it is entitled to summary judgment based upon Plaintiff's failure to provide any evidence that he was exposed to any asbestos-containing products mined, manufactured, distributed, sold, licensed, leased, installed, removed or used by Greyhound. Plaintiff responds by asserting, somewhat conclusorily, that he has presented corroborated evidence that he "sustained exposure to asbestos[-] containing products manufactured and supplied by Greyhound products through his work removing and installing Greyhound clutches and brakes on Greyhound coaches."<sup>14</sup>

6. When considering a motion for summary judgment, the Court examines the record to ascertain whether genuine issues of material fact exist and to determine whether the moving party is entitled to judgment as a matter of law.<sup>15</sup>

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<sup>12</sup> *Id.* at 23: 1-15.

<sup>13</sup> Affidavit of Ken Ries, Aug. 12, 2011, at ¶6.

<sup>14</sup> Pl.'s Mem. in Opp. to Defendant Greyhound Lines Inc.'s and FirstGroup America Inc.'s Mot. for Summary Judgment at 2.

<sup>15</sup> Super. Ct. Civ. R. 56(c).

Initially, the burden is placed upon the moving party to demonstrate that its legal claims are supported by the undisputed facts.<sup>16</sup> If the proponent properly supports its claims, the burden “shifts to the non-moving party to demonstrate that there are material issues of fact for resolution by the ultimate fact-finder.”<sup>17</sup> 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.<sup>18</sup>

7. In Delaware, to survive a motion for summary judgment, a plaintiff must be able 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.”<sup>19</sup> The Court should not “sustain a claim which rests upon speculation or conjecture or on testimony which could not meet the ‘time and place’ standard.”<sup>20</sup> However, this Court previously denied summary judgment to defendants where the policy of the garage where plaintiff was employed as a mechanic, together with the plaintiff’s recollection of cars manufactured by the defendant being serviced by the mechanics, was sufficient to support a circumstantial inference that the plaintiff was exposed to asbestos-

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<sup>16</sup> *E.g.*, *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879 (Del. Super. 2005).

<sup>17</sup> *Id.* at 880.

<sup>18</sup> *Id.* at 879-80.

<sup>19</sup> *In re Asbestos Litig.*, 509 A.2d 1116, 1117 (Del. Super. 1986) (citation omitted).

<sup>20</sup> *Id.* at 1117-18.

containing materials manufactured by the defendant, even though the plaintiff had no specific recollection of working on brakes manufactured by the defendant.<sup>21</sup>

8. Plaintiff must therefore demonstrate that he was exposed to asbestos products from Greyhound to survive summary judgment. Edminsten's uncorroborated and speculative testimony that he was exposed to asbestos while replacing parts on two used coach buses, which he claims were purchased from Greyhound, cannot be the basis for this Court to conclude that his injuries were the result of exposure to Greyhound asbestos-containing products. As noted above, Delaware courts do not permit a plaintiff to proceed based on speculative exposure to a defendant's product.<sup>22</sup> Here, Plaintiff has presented conflicting evidence as to whether he ever came into contact with any Greyhound products at all. Edminsten alone testified that O'Neal's owned two used Greyhound buses and that replacement parts were purchased directly from Greyhound. Roger O'Neal testified that the bus service owned two used Eagle coaches, but it never purchased any replacement parts directly from Eagle. Rather, O'Neal testified that the bus service only purchased replacement parts such as brakes from local vendors or directly from a General Motors facility in New Jersey. While it is true that the Court must make allowances for lapses in witnesses' memories, the conflicting testimony presented by the Plaintiff, as well as the inconsistent and confusing

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<sup>21</sup> See *In re Asbestos Litig. (Pate trial group; Jurgens)*, C.A. No. 05C-04-273.

<sup>22</sup> 509 A.2d 1117-18.

nature of Edminsten's own testimony, leads the Court to conclude that Edminsten's claims that he was exposed to Greyhound products are merely speculative and not evidence of a genuine factual dispute. In contrast to *Jurgens*, the Court finds that there is insufficient evidence here to permit a reasonable fact-finder to draw a circumstantial inference that the plaintiff was exposed to the defendant's asbestos-containing products. Summary judgment is therefore appropriate under Delaware law.

8. Accordingly, Defendant Greyhound Lines Inc.'s Motion for Summary Judgment is hereby **GRANTED**.

**IT IS SO ORDERED.**

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**Peggy L. Ableman, Judge**

cc: All counsel via LexisNexis File & Serve