

1980 or 1981, a position he held for five years.¹ In that role, Gordon supervised the maintenance work done by pipefitters and boilermakers.² Around 1990 or 1991, Gordon was promoted to maintenance supervisor and became responsible for supervising all maintenance in the refinery.³

Armstrong has manufactured steam traps since 1911.⁴ Until 1988, Armstrong manufactured steam traps which included an asbestos-containing gasket.⁵ The gaskets appear to have been manufactured by a company known as Durabla.⁶ The Material Safety Data Sheets (“MSDS”) from the relevant period indicated that the gaskets contained more than eighty percent chrysotile asbestos.⁷ Armstrong’s corporate representative also confirmed at a deposition that any replacement gaskets sold by Armstrong would contain the same amount and type of asbestos.⁸

Gordon and several product identification witnesses offered by Plaintiffs all identified Armstrong as one of two main suppliers of steam traps at the Coffeyville

¹ Melvin C. Gordon Video Dep. Tr., Jan. 12, 2011, at 172: 19-24.

² *Id.* at 173: 17-21.

³ *Id.* at 174: 20-25; 175: 1.

⁴ Thomas Grubka Discovery Dep. Tr., May 29, 2008, at 20: 25; 21: 4-6.

⁵ *Id.* at 40: 5-9.

⁶ Thomas Grubka Discovery Dep. Tr., Dec. 10, 2008, at 40: 19-21.

⁷ *Id.* at 40: 7-10; 40: 19-22.

⁸ *Id.* at 46: 11-13.

refinery.⁹ The witnesses who identified Armstrong as a manufacturer of steam traps recalled seeing the Armstrong name either stamped on the side of the trap itself or on the box that originally contained the traps.¹⁰ Gordon, along with many of the product identification witnesses, believed that the steam traps contained asbestos in the gasket located inside of the trap.¹¹

The steam traps came in a variety of sizes and would be repaired or replaced as needed. Elmer Wayne Moon, a pipefitter at the Coffeyville Refinery in the 1980s, explained that the steam traps were used to remove excess condensate from the steam lines.¹² The steam traps were often turned off in the warmer months and would not be replaced or repaired until they were turned on again in the fall.¹³ Moon estimated that “hundreds” of steam traps would be changed out in the fall, a process which he testified took ten to thirty minutes.¹⁴ Gordon testified that the smaller steam traps were usually replaced because it was not cost-effective to repair them.¹⁵ However, Thurman Medsker, another pipefitter at the Coffeyville Refinery in the 1970s and 1980s, testified that the Armstrong steam traps were

⁹ Melvin C. Gordon Discovery Dep. Tr., Jan. 14, 2011, at 363: 7-9; Thurman Medsker Discovery Dep. Tr., May 4, 2011, at 72: 15-22; Loran Beeson Discovery Dep. Tr., May 3, 2011 at 73: 22-25; Elmer Wayne Moon Discovery Dep. Tr., May 4, 2011, at 125: 18-23, 125: 24-25, 126: 4.

¹⁰ Thurman Medsker Discovery Dep. Tr., July 7, 2011, at 203: 23-25 and 204: 1-11; Beeson Dep. Tr. at 88: 16-24; Moon Dep. Tr. at 140: 4-11.

¹¹ Gordon Jan. 14, 2011 Discovery Dep. Tr. at 366: 5-7; *see also* Beeson Dep. Tr. at 74: 14-19 and Moon Dep. Tr. at 125: 24-25 and 126: 1-4.

¹² Moon Dep. Tr. at 138: 6-9.

¹³ *Id.* at 141: 9-17.

¹⁴ *Id.* at 141: 24-25; 142: 2-10.

¹⁵ Gordon Jan. 14, 2011 Dep. Tr. at 366: 19-25.

large enough that they could be disassembled and repaired.¹⁶ Similarly, Loran Beeson, who also worked under Gordon as a pipefitter, recalled that the pipefitters would remove old gaskets from the ten-inch steam traps and replace them with new ones.¹⁷

Gordon described himself as a hands-on manager who “tried to make the rounds at least once a week routinely and visit all the shops and all the people.”¹⁸ The pipefitters who worked under Gordon’s supervision in the maintenance shop all confirmed Gordon’s description of his management style. For example, Medsker testified that if Gordon “walked through the shop he was going to get involved, he was going to do something.”¹⁹ Medsker also recalled Gordon “working on pieces of equipment with his hands” as foreman.²⁰ However, Moon characterized Gordon’s efforts as verbal discussions about the work and testified that union rules would have prevented Gordon from handling the equipment himself.²¹

The record leaves room for doubt as to whether Gordon was ever in the area when workers were opening up one of the steam traps for repair work. Gordon himself testified that he personally worked on Armstrong steam traps, though he

¹⁶ Medsker Dep. Tr. May 4, 2011 at 72: 15-22.

¹⁷ Beeson Dep. Tr. at 74: 9-19.

¹⁸ *Id.* at 175: 4-8; 175: 18-25; 176: 2-10.

¹⁹ Thurman Medsker Discovery Dep. Tr., May 4, 2011, at 50: 2-7.

²⁰ *Id.* at 50: 8-10.

²¹ Moon Dep. Tr. at 73: 7-14.

could not remember a specific number of times that he replaced an Armstrong unit, nor could he recall personally opening an Armstrong steam trap.²² Gordon also testified that he had been in the area when others had opened up a steam trap, though he did not recall specific details about when or how many times this might have occurred.²³ The testimony presented by Gordon's co-workers does not conflict with Gordon's own recollection. For example, Medsker could not recall Gordon having tested or working on a steam trap himself.²⁴ However, Moon testified that Gordon would have "been around" if he came into the shop when he was working on Armstrong steam traps.²⁵ Moon also did not recall seeing Gordon work on a steam trap himself.²⁶

Parties' Contentions

In its motion for summary judgment, Armstrong argues that Plaintiffs cannot establish that Gordon was exposed to asbestos from Armstrong steam traps on a regular basis over an extended period of time as required by Kansas law, which the parties agree is applicable to this case. Armstrong characterizes Plaintiffs' allegations of exposure as overly vague and urges that Plaintiffs must show more than its products were present at the Coffeyville Refinery during Gordon's employment there. In essence, Armstrong argues that Plaintiffs' showing does not

²² Gordon Dep. Tr. Jan. 14, 2011, at 367: 18-25; 368: 8-10.

²³ *Id.* at 368: 11-14.

²⁴ Medsker Dep. Tr. July 7, 2011 at 211: 2-9.

²⁵ Moon Dep. Tr. at 126: 13-18.

²⁶ *Id.* at 136: 8-12.

meet the requirement of “more than a casual or minimum contact with the product” as required under the well-known *Lohrmann* “frequency, regularity, proximity” test.²⁷

Plaintiffs respond that they have established that Gordon worked with or around Armstrong steam traps as a maintenance supervisor at the Coffeyville refinery, and that such evidence is sufficient to meet their burden of proving causation in a mesothelioma case under Kansas law. In particular, Plaintiffs rely on a number of non-Kansas cases holding that the *Lohrmann* standard should be relaxed in mesothelioma cases because of the scientific evidence finding that even brief exposure to asbestos can be sufficient to cause the development of mesothelioma.²⁸ Plaintiffs argue that this line of cases is consistent with Kansas statutory law, which imposes a heavier burden of proof with regard to causation in non-mesothelioma asbestos cases.

Standard of Review

When considering a motion for summary judgment, the Court examines the record to ascertain whether genuine issues of material fact exist and to determine

²⁷ *In re Asbestos Litig. (Bowser)*, C.A. No. N10C-05-104, 2011 WL 2239803, *3 (Del. Super. Jun. 3, 2011); *see also Lohrmann v. Pittsburgh Corning Corp.*, 792 F.2d 1156 (4th Cir. 1986).

²⁸ Pls’ Mem. in Opposition to Def. Armstrong’s Mot. for Summary Judgment at 7-8 (discussing *Kurak v. A.P. Green Refractories Co.*, 689 A.2d 757 (N.J. App. Ct. 1997); *Linster v. Allied Signal*, 21 A.3d 220 (Pa. Super. Ct. 2011); *Buttita v. Allied Signal, Inc.*, 2010 WL 1427273 (N.J. Super. Ct. Apr. 5, 2010); *Tragarz v. Keene Corp.*, 980 F.2d 411 (7th Cir. 1992)).

whether the moving party is entitled to judgment as a matter of law.²⁹ Initially, the burden is placed upon the moving party to demonstrate that its legal claims are supported by the undisputed facts.³⁰ 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.”³¹ Summary judgment will not be granted if, after viewing the evidence in the light most favorable to the non-moving party, there are material facts in dispute, or if judgment as a matter of law is not appropriate.³²

Discussion

Upon review of the record and applicable Kansas law, the Court finds that Armstrong’s liability for Gordon’s alleged exposure to asbestos in the gaskets of Armstrong steam traps presents a triable issue. Kansas law requires that a plaintiff in an asbestos case demonstrate that a claimed exposure was a substantial factor in the plaintiff’s injury, as measured by the following:

- (1) The manner in which the plaintiff was exposed.
- (2) The proximity to the plaintiff when the exposure occurred.
- (3) The frequency and length of the plaintiff’s exposure; [and]
- (4) Any factors that mitigated or enhanced the plaintiff’s exposure.³³

²⁹ Super. Ct. Civ. R. 56(c).

³⁰ *E.g., Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879 (Del. Super. 2005).

³¹ *Id.* at 880.

³² *Id.* at 879-80.

³³ KAN. STAT. ANN §60-4907(a)-(b).

The Court was unable to find any Kansas case law interpreting this statute. However, the language of the Kansas statute closely tracks the “frequency, regularity, and proximity” test established in the *Lohrmann* decision.³⁴

The Court finds that there is a triable issue of fact regarding Gordon’s exposure to Armstrong steam traps even without considering Plaintiffs’ argument that the *Lohrmann* standard should be applied less stringently in mesothelioma cases. Plaintiffs have not attempted to show exposure by simply establishing that Armstrong steam traps were in use at the Coffeyville refinery. Rather, Plaintiffs have presented consistent evidence that Armstrong was one of two major suppliers of steam traps to the Coffeyville refinery, that the traps were repaired or replaced with some frequency, and that Gordon was a hands-on manager who was actively involved in the maintenance work done by the employees he supervised. Taken together, Gordon’s testimony and that of his co-workers offers reasonable support for his assertions that he was present when Armstrong steam traps were opened and repaired, even if Gordon and his co-workers cannot recall specific occasions when this occurred.

This Court recently declared that *Lohrmann* does not “require evidence of specific instances or numbers of exposures, and the absence of such precise evidence is often understandable in mesothelioma cases due to the lengthy latency

³⁴ 782 F.2d 1156, 1163 (4th Cir. 1986).

period of that disease.”³⁵ Viewed in the light most favorable to Plaintiffs, the record provides sufficient evidence that Gordon received frequent and regular exposure to asbestos from Armstrong steam traps over an extended period of time to render summary judgment regarding Plaintiffs’ steam trap exposure claims inappropriate. Therefore, Armstrong’s motion for summary judgment is hereby DENIED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman
Peggy L. Ableman, Judge

Original to Prothonotary
cc: All counsel via File & Serve

³⁵ *In re Asbestos Litig. (Bowser)*, C.A. No. N10C-05-104, 2011 WL 2239803, *4 (Del. Super. Jun. 3, 2011).