

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

<u>IN RE ASBESTOS LITIGATION:</u>	)	
	)	
THOMAS MILSTEAD	)	C.A. No. N10C-09-211 ASB
	)	
Limited to: Jerguson Gage	)	
& Valve Co.	)	

**MEMORANDUM OPINION**

*Appearances:*

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**JOHN A. PARKINS, JR., JUDGE**

Plaintiff, Thomas Milstead, worked in the United States Navy as a machinist mate from 1965-1969. He alleges asbestos exposure stemming from boiler gage glasses manufactured by Defendant, Jerguson Gage & Valve Co. Defendant moves for summary judgment on product nexus grounds and asserts it did not owe a duty to Plaintiff for asbestos-containing replacement parts added to its products after sale. This motion therefore comes down to two issues: (1) whether product nexus is met for the original asbestos-containing parts of Defendant's products, and (2) whether Defendant owes a duty for asbestos-containing replacement parts added to its gage glasses after sale. The court finds that Plaintiff has not made a *prima facie* case for product nexus with original asbestos-containing parts manufactured by Defendant and under Maryland law a manufacturer does not owe a duty to warn for asbestos-containing replacement parts. Therefore, the motion for summary judgment is **GRANTED.**

### **FACTS**

Plaintiff served in the navy from 1965-1969 and served onboard the USS *Independence*. He stood watch over the machinery in main machine room number one and repaired broken machinery. At the time the ship was commissioned it contained a few of Defendant's boiler gage glasses in main machine room number one. There were two valves for each gage glass and each valve contained two asbestos gaskets.

There is no direct evidence that Plaintiff worked on those gage glasses. Plaintiff alleges that circumstantial evidence exists to establish Plaintiff likely was exposed to asbestos emanating from Defendant's gage glasses because he worked in the same room where they were located. Plaintiffs' expert, Captain William Lowell, estimated that the asbestos-containing gaskets and packing associated with Defendant's gages glasses would have been changed at least twice a year. The *Independence* was commissioned in 1959 and Plaintiff first boarded it in 1965; therefore, any asbestos exposure from Defendant's gage glasses would have come from replacement parts. There is no evidence in the record establishing Defendant as the manufacturer or seller of the asbestos-containing replacement parts for the gage glasses in question.

### **STANDARD OF REVIEW**

In considering a motion for summary judgment the court views the facts in the light most favorable to the nonmoving party and will only grant summary judgment when "the moving party has demonstrated that there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law."<sup>1</sup> The question of whether a legal duty exists "is a question of law for the Court to determine."<sup>2</sup>

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<sup>1</sup> *Bantum v. New Castle County Co-Tech Educ. Ass'n*, 21 A.3d 44, 48 (Del. 2011) (citations omitted).

<sup>2</sup> *Riedel v. ICI Americas Inc.*, 968 A.2d 17, 20 (Del. 2009) (citing *New Haverford P'ship v. Stroot*, 772 A.2d 792, 798 (Del. 2001)).

## PRODUCT NEXUS ANALYSIS

The Maryland Court of Appeals recently provided the product nexus standard in asbestos cases in *Reiter v. Pneumo Abex, LLC*.<sup>3</sup> The court explained:

Whether the exposure of any given bystander to any particular supplier's product will be legally sufficient to permit a finding of substantial-factor causation is fact specific to each case. The finding involves the interrelationship between *the use of a defendant's product* at the workplace and the activities of the plaintiff at the workplace. This requires an understanding of the physical characteristics of the workplace and of the relationship between the activities of the direct users of the product and the bystander plaintiff. Within that context, the factors to be evaluated include the nature of the product, the frequency of its use, the proximity, in distance and in time, of a plaintiff to the use of a product, and the regularity of the exposure of that plaintiff to the use of that product.<sup>4</sup>

Viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could infer that Plaintiff worked in the same room as Defendant's gage glasses and that they had asbestos-containing parts and packing in/around them. However, there is no evidence in the record to support a finding that Plaintiff was exposed to an original asbestos-containing part manufactured or supplied by Defendant. Plaintiffs' own expert estimated the asbestos-containing parts in question were changed at least twice a year. Therefore, the original parts would have been removed and changed out at least eleven more times before Plaintiff ever boarded the ship. Therefore,

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<sup>3</sup> 8 A.3d 725, 732 (Md. 2010).

<sup>4</sup> *Id.* (quoting *Eagle-Picher Indus. v. Balbos*, 604 A.2d 445, 460 (Md. 1992)) (internal citation omitted) (emphasis added).

summary judgment is **GRANTED** on product nexus grounds for Defendant's original asbestos-containing parts.

### **REPLACEMENT PARTS ANALYSIS**

The court considered this issue in another opinion in this case issued the same day as this opinion.<sup>5</sup> Namely, whether under Maryland law a manufacturer is liable for asbestos-containing replacement parts added to its products after sale. The court found, "liability does not attach for replacement parts under a failure to warn theory in strict liability and negligence as well as strict liability design defect theory."<sup>6</sup> For the reasons stated in that opinion, summary judgment is **GRANTED** as to replacement parts.

### **CONCLUSION**

The court finds Plaintiff has not produced evidence that Plaintiff was exposed to asbestos from original asbestos-containing parts manufactured or supplied by Defendant, and under Maryland law Defendant does not owe a duty to warn for asbestos-containing replacement parts. Accordingly, Defendant's motion for summary judgment is **GRANTED**.

**IT IS SO ORDERED.**

Dated: June 1, 2012

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Judge John A. Parkins, Jr.

<sup>5</sup> *In re asbestos litig. Milstead v. Superior-Lidgerwood-Mundy Corp.*, C.A. No. N10C-09-211 ASB (Del. Super. May 31, 2012) (Parkins, J.).

<sup>6</sup> *Id.* at 9.