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

IN RE ASBESTOS LITIGATION:	)	
	)	
Reed Grgich	)	
	)	C.A. No. N10C-12-011 ASB
	)	
Limited to: Crane Co.	)	

MEMORANDUM OPINION

Appearances:

A. Dale Bowers, Esquire
Law Office of A. Dale Bowers P.A.
Newport, Delaware
Counsel for Plaintiff Reed Grgich

Francis C. Gondek, Esquire
Nicholas E. Skiles, Esquire
Swartz Campbell LLC
Wilmington, Delaware
Counsel for Defendant Crane Co.

JOHN A. PARKINS, JR., JUDGE

Plaintiff, Reed Grgich, worked in various capacities at International Smelting and Refining ("International") in Tooele, Utah from 1963-1973. Plaintiff alleges asbestos exposure from Defendant's, Crane Co. ("Crane"), valves. Defendant moves for summary judgment on product nexus grounds and asserts the "component parts defense" as grounds for not owing a duty to Plaintiff for asbestos-containing parts added to its products after market. Based on the reasoning below summary judgment is **DENIED IN PART** as to product nexus with original asbestos-containing parts and **GRANTED IN PART** as to component parts not supplied by Crane because the court finds Crane is not liable under Utah law for the asbestos-containing component parts added to its products after sale.

FACTS

Plaintiff worked as a laborer, machinist, and foreman at International in Tooele, Utah from 1963-1973. He identified Crane as one of several manufactures of valves on which he worked in both machinist and foreman capacities. He worked on the insulation and the packing of the valves which he contends exposed him to asbestos dust. The valves were installed at International before Plaintiff began working there. He did not know the prior maintenance history of the valves or whether he ever did work on original manufacturer's parts. He also did not know the manufacturer of the packing, gaskets, or insulation he removed and replaced.

Plaintiffs point to some documentation that indicates at least some of Defendant's valves contained asbestos, and Defendant admits as much in its discovery responses. Plaintiffs also point to two catalogues that they contend support their position that Crane recommended asbestos containing parts for its products. One of the catalogues is dated June 1923—forty years before Plaintiff started working at International. Another catalogue is undated. Plaintiff does not connect either catalogue to the actual valves on which Plaintiff worked at International. Plaintiff also points to transcripts of depositions of Crane corporate representatives in which they discuss the use of Crane replacement parts, but again those statements are not connected to the specific valves in this case. The record contains no evidence of the specific types of valves on which Plaintiff worked. Plaintiff does not direct the court to any document or testimony in which Defendant requires or recommends asbestos containing replacement parts for the valves on which Plaintiff actually worked.

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."[1] The question of whether a legal duty exists "is a question of law for the Court to determine."[2]

There was considerable discussion during oral argument about how the burden should be applied to establishing that Plaintiff came in contact with original asbestos-containing parts attributable to Crane valves. Judge Slights examined the burden issue for Asbestos cases in *In re Abestos Litigation: Helm.*[3] The moving party bears the initial burden that the facts not in dispute support its claims.[4] In a properly supported motion, the burden then shifts to the non-moving party to show genuine issues of material fact.[5]

In assessing the non-moving party's burden the court considers, "'Whether a reasonable juror could find by a preponderance of the evidence that the plaintiff is entitled to a verdict-whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed.'"[6] Judge Slights further explained:

> The presumption afforded the non-moving party in the summary judgment analysis is not absolute. The Court must decline to draw an inference for the non-moving party if the record is devoid of facts upon which the inference reasonably can be based. Where there is no precedent fact, there can be no inference; an inference cannot flow from the nonexistence of a fact, or from a complete absence of evidence as to the particular fact. Nor can an inference

---

[1] *Bantum v. New Castle County Co-Tech Educ. Ass'n*, 21 A.3d 44, 48 (Del. 2011) (citations omitted).
[2] *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)).
[3] *Helm*, 2007 WL 1651968 (Del. Super).
[4] *Id.* at *16 (citing *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979); *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1963)).
[5] *Helm*, 2007 WL 1651968, at *16 (citing *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995)).
[6] *Helm*, 2007 WL 1651968, at *16 (quoting *Anderson v. Livery Lobby, Inc.*, 477 U.S. 242, 252 (1986) (internal citations omitted) (emphasis in original)).

> be based on surmise, speculation, conjecture, or guess, or on imagination or supposition.[7]

Where, as here, a motion for summary judgment is premised on an assumption that the plaintiff did not work on original asbestos-containing parts, the moving party must offer evidence supporting a reasonable inference that the original asbestos parts were no longer on the valve at the time the plaintiff worked on it. The mere age of the device, without more, is insufficient to support such an inference for purposes of summary judgment.

PRODUCT NEXUS ANALYSIS

Special Master Boyer held Utah law is the governing substantive law in this case.[8] There does not appear to be any published Utah state cases considering causation in the asbestos context. Judge Robreno considered product nexus under Utah law in *Anderson v. Ford Motor Company.*[9] He considered Utah cases holding that substantial factor is the general standard in negligence cases[10] and an unpublished trial court decision looking at the issue in the asbestos context.[11]

> [P]laintiffs have the burden of proving that plaintiff has or has an asbestos related injury, that plaintiff was exposed to an asbestos containing product manufactured by defendant, and that the exposure to the asbestos containing product was a substantial factor in causing the injury. The applicability of the Lohrmann

[7] *Helm*, 2007 WL 1651968, at *16 (citations omitted) (internal quotations omitted).
[8] *In re Asbestos Grgich*, C.A. 10C-12-011 ASB, at 21 (Del. Super. Mar. 14, 2012) (Boyer, S.M.).
[9] C.A. No. 2:09-69122 (E.D. Pa. April 29, 2011).
[10] *Id.* at 3 (citations omitted).
[11] *Anderson*, C.A. No. 2:09-69122, at 3 (citing *Sortor v. Asbestos Defendants*, No. 040909899 (Utah 3d Dis. Mar. 12, 2006)).

> considerations in the substantial factor analysis depends upon the facts in evidence and, presumably, will vary from case to case.[12]

The *Sortor* court later clarified in a subsequent opinion in the same case that it did not and would not set "a dosage or exposure requirement" for a plaintiff to meet the substantial factor test.[13]

Viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could infer that Plaintiff worked on Crane valves, which contained asbestos-containing parts when sold to International. The issue is whether those were original parts. Plaintiff has the burden at trial of establishing that Plaintiff worked with original asbestos-containing products manufactured by Defendant and was thus exposed to asbestos. However, at this stage the initial burden rests with Defendant to show the undisputed facts support a finding in its favor as a matter of law.[14] The court has already found for purposes of this motion that at least some of Defendant's valves originally contained asbestos and Plaintiff came in contact with those valves years later. Defendant suggests the valves original parts must have been changed in the intervening time, but do not offer sufficient facts in this record to support that claim. In considering a motion for summary judgment Defendant's are not entitled to that inference. The court has held today that Defendant bears the burden of showing that the original asbestos-containing parts were removed prior to Plaintiff's exposure to the valves. The absence of proof to the contrary

---

[12] *Anderson*, C.A. No. 2:09-69122, at 3 (quoting *Sortor*, No. 040909899, at 4).
[13] *Anderson*, C.A. No. 2:09-69122, at 3 (citing *In re: Asbestos Litig.*, No. 01090083 (Utah 3d. Dis. Sept. 6, 2007)).
[14] *Helm*, 2007 WL 1651968 at *16 (citing *Moore*, 405 A.2d at 680; *Ebersole*, 180 A.2d at 470).

by Plaintiff is therefore not pertinent here. Accordingly, summary judgment is **DENIED** on product nexus grounds.

DUTY ANALYSIS

Utah courts have not addressed the specific issue before the court—whether Crane owes a duty to Plaintiff for asbestos-containing products added to its products after sale. Therefore, the court must predict how the Utah Supreme Court would rule on this issue.

The court recently discussed several cases and found the majority trend is that generally product manufacturers do not owe a duty for asbestos-containing products added to its products after sale.[15] Plaintiffs offered no argument as to why Utah would not follow the majority trend.[16] The court finds two recent decisions in which Crane was the defendant as particularly persuasive in this case.

The California Supreme Court recently followed the majority trend.[17] The court held "that a product manufacturer may not be held liable in strict liability or negligence for harm caused by another manufacturer's product unless the defendant's own product contributed substantially to the harm, or the defendant participated substantially in creating a harmful combined use of

[15] *In re Asbestos Litig.: Wolfe*, 2012 WL __, C.A. No. N10C-08-258 ASB, at 6-12 (Del. Super Feb. 28, 2012).
[16] Plaintiffs brief in response to summary judgment provided argument as to Nevada law. The Special Master's decision establishing Utah substantive occurred after briefing, but before oral arguments. Plaintiffs did not offer argument as to Utah law on this issue during oral arguments or request leave to subsequently brief the issue. The court's independent research confirms Defendant's assertion this is a matter of first impression in Utah.
[17] *O'Neil v. Crane Co.*, 266 P.3d 987, 991 (Cal. 2012).

the products."[18] The court explained "[i]t is fundamental that the imposition of liability requires a showing that the plaintiff's injuries were caused by an act of the defendant or an instrumentality under the defendant's control."[19] The products in question here had long been outside of Crane's control by the time Plaintiff came in contact with them.

This court previously examined this issue under a design defect cause of action in *In re Asbestos Litigation Wesley K. Davis*[20] on a record similar to the case at hand. Judge Ableman concluded, "case law decided under both maritime and other sources of law strongly suggests that the plaintiff proceeding upon such a theory must show more than that the use of asbestos-containing parts was merely foreseeable or that the manufacturer's product originally incorporated asbestos parts."[21] She recognized an argument could be made "'that a *design* defect claim might exist, if the defective attachments manufactured by others were part of the . . . design and were rendered unsafe due to that design.'"[22] Judge Ableman was presented with a similar set of documents in *Davis* regarding Crane Co. products and she determined

> [t]here is no evidence that Crane specified, required, or even recommended that asbestos-containing packing, gaskets, or insulation be used with its valves aboard the Holder. The catalog pages provided by Plaintiff are irrelevant, as they are undated and

---

[18] *Id.*
[19] *Id.* at 996.
[20] 2011 WL 2462569 (Del. Super) (applying maritime law).
[21] *Id.* at *3.
[22] *Id.* at *4 (quoting *Stark v. Armstrong World Indus., Inc.*, 21 Fed. Appx. 371, 381 (6th Cir. 2001)); *see Kummer v. Allied Signal, Inc.*, 2008 WL 4890175, at *3-4 (W.D. Pa. 2008).

> Davis has provided no evidence that the products they depicted were used on the [the ship in question].[23]

Judge Ableman granted summary judgment.[24]

Similarly, the court finds under Utah law Defendant is not liable under a failure to warn claim for asbestos-containing products added to its products after sale. Plaintiff has not provided evidence in the record that Defendant specified, required, or recommended asbestos-containing products be added to its products on which Plaintiff actually worked. Accordingly, summary judgment is **GRANTED** on the issue of whether Defendant owes a duty to Plaintiff for non-original, asbestos-containing parts added to its products after sale.

CONCLUSION

The court finds here that under Utah law Defendant does not owe Plaintiff a duty for asbestos-containing parts used with or added to its products after sale. Accordingly, summary judgment is **GRANTED IN PART** as to the component parts supplied by other manufacturers. Based on the reasoning above summary judgment is **DENIED IN PART** on product nexus grounds for original asbestos-containing parts.

IT IS SO ORDERED.

Dated: April 2, 2012

Judge John A. Parkins, Jr.

[23] *Davis*, 2011 WL 2462569, at *5; *see Stark*, 21 Fed. Appx. at 381; *In re Asbestos Litigation Parente*, 2012 WL __, C.A. No. N10C-11-140 ASB, at 3 (Del. Super. Mar. 2, 2012) (Parkins, J.) (analyzing similar documents and finding them irrelevant).

[24] *Davis*, 2011 WL 2462569, at *6.