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

IN RE ASBESTOS LITIGATION:	)	
	)	
ROBERT MCGHEE and	)	
CHARLOTTE MCGHEE	)	C.A. No. N10C-12-114 ASB
	)	
Limited to: Weil-McLain	)	

ORDER

Plaintiff, Robert McGhee, alleges asbestos exposure from Defendant Weil McLain's boilers among other defendant's products. Defendant moves for summary judgment as to product nexus, replacement parts[1], and punitive damages.[2] Based on the reasoning below, the court finds Plaintiff has not made a *prima facie* case for product nexus with Defendant's original asbestos-containing parts or replacement parts. Accordingly, summary judgment is **GRANTED.**

FACTS

Plaintiff worked at times as a boiler maker, and he may have been exposed to asbestos while installing boilers. Through the boiler installation process he may have been exposed to asbestos. The process included working with gaskets, asbestos rope, and insulation. Plaintiff is the only witness who

[1] Plaintiffs allege exposure from boiler installation, not from ongoing maintenance to Defendant's boilers and work with non-original parts, therefore the court need not address the replacement parts argument.
[2] This argument is mooted by the court's granting of summary judgment on product nexus grounds.

testified that he worked on Defendant's boilers. He thinks he "probably" worked on its boilers three times. He installed a Weil-McLain boiler in 1969 at the BellSouth plant in Wilmington, North Carolina. During the installation process he believes he could have been exposed to asbestos by forming gaskets, cutting asbestos rope, and mixing cement or insulation that contained asbestos. Plaintiff spoke of the boiler insulation containing asbestos and coming in 25 pound bags. However, when he was asked if he personally knew if the insulation contained any asbestos, he responded "No, I don't."[3] It also appears Plaintiff may have installed one or two other of Defendant's boilers at Burlington Mills facilities. Aside from this he could not specially recall where any other work on Defendant's boilers took place or describe the work.

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."[4] The question of whether a legal duty exists "is a question of law for the Court to determine."[5]

[3] Rober McGhee Discovery Deposition March 17, 2011, at 134:3.
[4] *Bantum v. New Castle County Co-Tech Educ. Ass'n*, 21 A.3d 44, 48 (Del. 2011) (citations omitted).
[5] *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 court is not aware of any North Carolina Supreme Court decision delineating the product nexus standard in North Carolina. However, the parties both refer the court to a Fourth Circuit decision applying North Carolina law,[6] wherein the court of appeal found that under North Carolina law "the plaintiff must present 'evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.'"[7]

Viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could infer that Plaintiff installed one of Defendant's boilers in a manner that exposed him to asbestos dust and may have worked on two other boilers in some manner. Given Plaintiffs' inability to recall the work he did on those other two boilers, the jury would have to speculate to conclude he was exposed to asbestos in that work.

The installation of one boiler in a manner that likely exposed Plaintiff to asbestos is not exposure on a regular basis over an extended period of time. The alleged exposure is insufficient under North Carolina law to survive summary judgment. Accordingly, summary judgment is **GRANTED.**

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[6] *Jones v. Owens-Corning Corp.*, 69 F.3d 712 (4th Cir. 1995).

[7] *Id.* at 716 (quoting *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162 (4th Cir. 1986)).

IT IS SO ORDERED.

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John A. Parkins, Jr.
Superior Court Judge

Dated: May 31, 2012

oc: Prothonotary
cc: All counsel via e-file