

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

<u>IN RE ASBESTOS LITIGATION:</u>)	
)	
SUSAN VAUGHN)	C.A. No. N11C-01-263 ASB
)	
Limited to FEDERAL-MOGUL)	
ASBESTOS PERSONAL)	
INJURY TRUST)	

ORDER

Defendant, Federal-Mogul Asbestos Personal Injury Trust (“Fel-Pro”), filed a motion for summary judgment. Defendant argues there is no evidence that Mr. Vaughan was exposed to Defendant’s products and if he was, there is no evidence that the gaskets contained asbestos, he was exposed to respirable asbestos dust, or that the exposure was frequent, regular, and proximate.

The Missouri Supreme Court has not ruled on standard for causation in an Asbestos case. However, the 8th Circuit Court of Appeals applying Missouri law predicted how the Missouri Supreme Court would address this issue. The Court in *Chism v. W.R. Grace & Co.*¹ considered Missouri state cases discussing proximate cause and federal cases applying Missouri law in the Asbestos context.² The Court stated, “[t]he Eighth Circuit and a majority of courts have adopted the frequency, regularity, and proximity standard of proximate causation to determine if a particular defendant’s product is a

¹ 158 F.3d 988 (8th Cir. 1998).

² *See id.* at 990-993.

substantial factor in causing a plaintiff's injury in an asbestos case."³ Similarly, this court will apply that standard.

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 After considering the evidence of Mr. Vaughan's exposures at the Boy Scout Explore Post program and Bill Kennedy's Skelly Station in the late 1960's and viewing the evidence in the light most favorable to Plaintiff, there is genuine issue of material fact as to whether Plaintiff's husband was sufficiently exposed to Defendant's asbestos containing products and the exposure substantially contributed to his death

Defendant argued that it made asbestos and asbestos free gaskets during the relevant time and that Plaintiff could not identify that Mr. Vaughan used the asbestos containing gaskets. Defendant relied on the oft cited *Stigliano v. Westinghouse*⁵, in which Judge Slight ruled:

When the record reveals that a defendant manufactured both asbestos-containing and non asbestos-containing versions of a product during the time period of alleged exposure, in the absence of evidence directly or circumstantially linking the plaintiff to the asbestos-containing product, the Court cannot draw the inference of exposure and summary judgment on product nexus must be granted.⁶

³ *Id.* at 992 (quoting *Kraus v. Celotex Corp.*, 925 F.Supp. 646, 651-52 (E.D.Mo. 1996)) (internal quotations omitted).

⁴ *Bantum v. New Castle County Co-Tech Educ. Ass'n*, 21 A.3d 44, 48 (Del. 2011) (citations omitted).

⁵ C.A. No. 05C-06-263 ASB, Slight, J., (Del. Super. Oct. 18, 2006) (ORDER).

⁶ *Id.* at 2 (citing *Lipsomb v. Champlain Cable Corp.*, 1988 WL 102966 (Del. Super)).

In the supplemental briefing, Defendant appears to have abandoned this argument. In the intervening time, Plaintiff deposed Defendant's corporate representative. Mr. Pearlstein testified during the relevant time that at least 98% of Defendant's head gaskets containing asbestos. The evidence establishes that Plaintiff used Defendant's head gaskets. The fact that 98% of the gaskets contained asbestos circumstantially links Mr. Vaughan to Defendant's asbestos-containing product and therefore the court draws the inference of exposure. Based on the foregoing analysis, Defendant's motion for summary judgment is **DENIED**.

IT IS SO ORDERED.

John A. Parkins, Jr.
Superior Court Judge

Dated: January 20, 2012

oc: Prothonotary
cc: Yvonne Takvorian Saville, Esquire, Wilmington, Delaware, Attorney for Plaintiff
Nicholas Skiles, Esquire, and Joseph S. Naylor, Esquire, Wilmington, Delaware Attorney for Defendant