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

IN RE: ASBESTOS LITIGATION	:	
	:	
Limited to:	:	
Olson, Arland	:	C.A. No. 09C-12-287 ASB

UPON DEFENDANT CBS CORPORATION'S
MOTION FOR SUMMARY JUDGMENT
GRANTED
UPON DEFENDANT CRANE CO.'S
MOTION FOR SUMMARY JUDGMENT
GRANTED

This 18th day of January, 2011, it appears to the Court that:

1. Plaintiffs instituted this action alleging that Arland Olson ("Olson") developed mesothelioma as a result of exposure to asbestos-containing products manufactured, sold, or distributed by various defendants. Plaintiffs allege that Olson experienced occupational exposures while he was employed at an Amalgamated Sugar Co. ("Amalgamated Sugar") processing plant in Idaho. Olson worked in various capacities at the Amalgamated Sugar facility from 1958-2003.

2. Defendants Crane Co. ("Crane") and CBS Corp., f/k/a Westinghouse Electric Corp. ("Westinghouse"), each moved for summary judgment on the grounds that Plaintiff had not offered evidence that he was exposed to asbestos-containing products they had manufactured or distributed, and that Idaho law would not render them responsible for other manufacturers' asbestos-containing

products. According to Olson's deposition testimony, during the course of his employment, he replaced gaskets on a Westinghouse generator and Crane metal valves, and applied insulation to Crane valves. He also recalled being in proximity to others performing work on Crane valves. Olson testified that he believed all of these activities exposed him to asbestos dust.[1] Although he assisted in occasional inspection, cleaning, and repair of the internal components of the Westinghouse generator, he did not identify any asbestos associated with its internal parts; rather, he testified that the external suction, discharge, flanges, and line insulation contained asbestos.[2] Plaintiffs have offered no evidence to suggest that the asbestos-containing parts and components Olson identified were original parts or replacements supplied by the original manufacturers. Thus, Plaintiffs' claims against Westinghouse and Crane are viable only if they can be deemed liable for products manufactured and supplied by other companies. The parties are in agreement that this question has not been settled under Idaho law, which applies to Plaintiffs' claims.

3. Contrary to Plaintiffs' position, it appears that the majority of courts to address the issue have refused to impose liability upon manufacturers of non-asbestos-containing products for the dangers associated with asbestos-containing

[1] Arland Olson Dep. (Apr. 14, 2010), at 22:3-25:16; Arland Olson Discovery Dep. vol. 1 (Apr. 14, 2010), at 129:15-131:6.

[2] Arland Olson Discovery Dep. vol. 1, at 286:13-24.

components or replacement parts manufactured, sold, and distributed by other entities.[3] Under existing Idaho law, which offers little guidance, the question could be a close one. In *Sliman v. Aluminum Co. of America*, the Supreme Court of Idaho held that the manufacturer of a bottle-cap that caused a "blow-out" injury was subject to a duty to warn end users of the hazards associated with its product where the distributor of the bottled soda into which the cap was incorporated as a component could not reasonably be relied upon to provide an adequate warning, even though the cap was not inherently defective in design or manufacture and was hazardous only when end users opened the sealed cap with an implement.[4] The *Sliman* opinion, as Plaintiffs note, includes broad language emphasizing that the manufacturer of a product has a duty to warn of hazards arising from known and foreseeable uses of the product, even if the product poses no risk in its intended use. In addition, the Idaho Products Liability Act supports imposing a duty to warn upon product sellers for dangers arising from reasonably anticipated "alteration or modification" of their products.[5] Nevertheless, the Court concludes

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[3] *See, e.g.*, *Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488 (6th Cir. 2005); *Niemann v. McDonnell Douglas Corp.*, 721 F. Supp. 1019 (S.D. Ill. 1989); *Taylor v. Elliott Turbomachinery Co.*, 90 Cal. Rptr. 3d 414 (Ct. App. 2009); *Braaten v. Saberhagen Holdings*, 198 P.3d 493 (Wa. 2008).

[4] 731 P.2d 1267 (Idaho 1986).

[5] IDAHO CODE ANN. § 6-1405. The Act provides as follows:

> (a) "Alteration or modification" occurs when a person or entity other than the product seller changes the design, construction, or formula of the product, or changes or removes warnings or instructions that accompanied or were displayed

that the Idaho Supreme Court would likely follow those jurisdictions that have refused to find defendants liable for other manufacturers' products. *Sliman* dealt only with the scope of a manufacturer's duty to warn of a danger associated with its *own* product, and the "alteration or modification" provision of the Idaho Products Liability Act does not specifically address a scenario in which a danger arises from a separate product or component not manufactured by the defendant.[6]

4. As the Supreme Court of Washington observed in *Braaten v. Saberhagen Holdings*, "[i]t does not comport with principles of strict liability to impose on manufacturers the responsibility and costs of becoming experts in other

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> on the product. "Alteration or modification" of a product includes the failure to observe routine care and maintenance, but does not include ordinary wear and tear.
> (b) When the product seller proves, by a preponderance of the evidence, that an alteration or modification of the product by the claimant, or by a party other than the claimant or the product seller has proximately caused the claimant's harm, the claimant's damages shall be subject to reduction or apportionment to the extent that the alteration or modification was a proximate cause of the harm.
> This subsection shall not be applicable if:
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> 1. The alteration or modification was in accord with the product seller's instructions or specifications;
> 2. The alteration or modification was made with the express or implied consent of the product seller; or
> 3. The alteration or modification was reasonably anticipated conduct, and the product was defective because of the product seller's failure to provide adequate warnings or instructions with respect to the alteration or modification.

Id. § 6-1405(4).

[6] *Bromley v. Garey*, 979 P.2d 1165 (Idaho 1999), was creatively described by Plaintiffs as a case involving bullets as akin to "components added post-sale," which constituted the instrumentalities "actually inflicting the harm" when a shotgun supplied by the defendant discharged after being dropped from a short height. Pls.' Opp'n to Def. Crane Co.'s Mot. for Summ. J. 13. To their credit, Plaintiffs do not stretch this analogy too far; *Bromley* is of little relevance here because the gun, not the bullet, was the allegedly defective item.

manufacturers' products."[7] Under Restatement (Second) of Torts § 402A, strict liability is premised in part upon placing the burden of accidental injury upon those who market the injury-causing products and can treat the resulting cost as a production cost against which liability insurance can be obtained.[8] Similarly, the duty to warn of a hazardous product in negligence actions, as articulated in the Restatement § 388, is generally imposed only upon those in the chain of distribution of the product.[9]

5. Both Restatement § 388 and § 402A have been adopted in Idaho.[10] In *Peterson v. Idaho First National Bank*,[11] the Idaho Supreme Court discussed strict liability in the context of sellers of used products. Although the *Peterson* decision minimized cost-spreading or enterprise liability as a basis for Idaho's adoption of strict liability, it limited the imposition of strict liability to those in "the original distribution chain of the product," in part because participants in the distribution chain are best-positioned to serve the policies of strict liability by preventing

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[7] 198 P.3d at 502.

[8] *Id.* at 501.

[9] *See Simonetta v. Viad Corp.*, 197 P.3d 127, 132-33 (Wash. 2008) (discussing and collecting cases).

[10] *See Bromley*, 979 P.2d at 1171; *Shields v. Morton Chem. Co.*, 518 P.2d 857 (Idaho 1974). Currently, the Idaho Products Liability Act modifies, but does not eliminate, the principles of Restatement § 402A.

[11] 791 P.2d 1303 (Idaho 1990).

defects and ensuring that warnings are communicated.[12] Given Idaho's existing case law and the persuasive weight of decisions from other jurisdictions declining to impose a duty, the Court concludes that Idaho would likely find that a defendant is not subject to a duty to warn or protect against hazards arising from a product it did not manufacture, distribute, or sell, even if the defendant's product incorporated component parts that posed similar risks and would require replacement.

6. For the foregoing reasons, the Motions for Summary Judgment filed by Crane Co. and CBS Corp. are hereby **GRANTED**.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: All counsel via File & Serve

[12] *Id.* at 1305-1307.