Hanley v A.O. Smith Water Prods. Co.
2018 NY Slip Op 33307(U)
December 21, 2018
Supreme Court, New York County
Docket Number: 190341/15
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ, Justice — PART 13

MICHAEL J. HANLEY and CAROL HANLEY,

Plaintiff

- against-

A.O. SMITH WATER PRODUCTS CO., et al.,

Defendants.

INDEX NO. 190341 /15

MOTION DATE 12-12-2018

MOTION SEQ. NO. 002

MOTION CAL. NO.

The following papers, numbered 1 to 5 were read on this motion by defendant ROCKWELL AUTOMATION, INC., for summary judgment.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-2
Answering Affidavits — Exhibits	3-4
Replying Affidavits	5

Cross-Motion: Yes X No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Upon a reading of the foregoing cited papers, it is ordered that this motion for summary judgment by defendant ROCKWELL AUTOMATION, INC.,(hereinafter "Rockwell") as successor in interest to Allen-Bradley Company, LLC (hereinafter "Allen-Bradley), dismissing all claims and cross-claims against it as pre-empted under the Federal Safety Appliance Act (49 U.S.C. §20301) and the Locomotive Inspection Act (49 U.S.C. §20701) is granted. All claims and cross-claims asserted against the defendant Rockwell are severed and dismissed.

Plaintiffs bring this action to recover for injuries sustained by Michael J. Hanley as a result of his alleged exposure to asbestos for over three decades (1970s to 2000s) during, as is relevant here, his career as an electrician for the Long Island Railroad at various locations throughout Long Island and New York City. Mr. Hanley was diagnosed with lung cancer on October 9, 2015 and shortly thereafter commenced this asbestos-related personal injury action. Mr. Hanley passed way on March 29, 2018 at age 75.

At his deposition Mr. Hanley testified about the work he did as an electrician for the Long Island Railroad wherein he was exposed to asbestos from Allen-Bradley products. Mr. Hanley stated that he started working with the Long Island Railroad at the Richmond Hill storage yard from 1971-1974. In 1974 he was assigned to the Long Island City passenger yard until 1976. From 1976 through 1979 he split his duties between the Richmond Hill yard and the Port Jefferson Yard. From 1979 to 1981 he worked solely at the Port Jefferson yard. From 1981 to 1982 he worked at the Richmond Hill yard. From 1982 to 1987 he worked at the Morris Park Yard. From 1987 to 1990 he worked at the Dunton Yard. From 1990 or 91 to 2001 he worked at the

Hillside yard. In 2001 Mr. Hanley retired (see Hanley deposition Pages 143 Line 15 to Page 301 Line 5).

Mr. Hanley was a full mechanic doing electrical maintenance work on 2700s, 2800s and 2900s diesel haul train cars. These cars have a motor and a generator in them. The 2700s and 2800s Mr. Hanley called "push-pull" cars because at one end the car has a diesel engine for power to move the train and at the other the car has a "power-pack" for electricity for the lights, heat, and air-conditioning. Mr. Hanley stated that the electrical maintenance work- which he performed throughout his entire career at the Long Island Railroad- involved maintaining the lights, heat and air-conditioning system in each individual car, working on the diesel engines, motors, compressors, alternators, and performing inspections. He stated that his duties included heat and generator change-outs, alternator change-outs, and changing the control panels, control boards, resistors, fuses and circuit breakers. While at the Ronkonkoma yard he worked on the train cars' braking system, changing the metal shoe which was made in part of asbestos. Most of the components he worked on were contained in the engineer's room next to the diesel engine.

Mr. Hanley stated that he believes he was exposed to asbestos from defendant's products while performing his duties for the Long Island Railroad. He stated he believed the Arc chutes, circuit boards, conductors and relays contained asbestos and that he was exposed to this asbestos. He stated that these products were manufactured by a number of companies, including Allen-Bradley.

Rockwell moves for summary judgment dismissing all claims and cross-claims asserted against it on the grounds that these claims are preempted under the Federal Safety Appliance Act (49 U.S.C. §20301) and the Locomotive Inspection Act (49 U.S.C. §20701). In support of its motion Rockwell cites to Mr. Hanley's deposition testimony wherein he states the years when, and the sites where, he worked for the Long Island Rail Road, and the duties his job entailed. It is apparent from a reading of his deposition testimony that he was exposed to asbestos while working on diesel engines and train cars with engines (push-pull cars).

Plaintiff opposes the motion and argues that plaintiffs' claims are not based solely and entirely upon Mr. Hanley's exposure to asbestos from locomotives or the equipment of locomotives. That he worked on other parts of the train, that these parts are not part of the locomotive and that therefore his claims are not preempted.

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact.(Klein V. City of New York, 89 NY2d 833; Ayotte V. Gervasio, 81 NY2d 1062, Alvarez v. Prospect Hospital, 68 NY2d 320). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues(Kaufman V. Silver, 90 NY2d 204; Amatulli V. Delhi Constr. Corp.,77 NY2d 525; Iselin & Co. V. Mann Judd Landau, 71 NY2d 420). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party(SSBS Realty Corp. V. Public Service Mut. Ins. Co., 253 AD2d 583; Martin V. Briggs, 235 192).

"Under the Supremacy Clause of the United States Constitution, state law may be preempted in three circumstances: (1) through express statutory language; (2) when it regulates conduct in a field that congress intended the Federal Government to occupy; and (3) when it actually conflicts with federal law. Preemption is fundamentally based on Congressional intent, which can be inferred from a 'scheme of federal regulation...so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,' or where an Act of congress 'touches a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject"(Feldman v. CSX Transportation, Inc., 31 A.D.3d 698, 821 N.Y.S.2d 85[2nd. Dept. 2006], quoting English v. General Electric Co., 496 US 72 [1990]; Rice v. Santa Fe Elevator Corp., 331 US 218 [1947]; CSX Transportation, Inc., v. Easterwood, 507 US 658 [1993]).

"In 1911 congress enacted the Boiler Inspection Act (BIA). The BIA made it unlawful to use a steam locomotive unless the boiler of said locomotive and appurtenances thereof are in proper condition and safe to operate without unnecessary peril to life or limb. In 1915 Congress amended the BIA to apply to the entire locomotive and tender and all parts and appurtenances thereof. The BIA as amended became known as the Locomotive Inspection Act (Kurns v. Railroad Friction Products Corporation, 565 US 625, 132 S.Ct. 1261, 182 L.Ed.2d 116 [2012])." The LIA has been interpreted to regulate the entire field of locomotive equipment, which includes the design, construction and the material of every part of the locomotive and tender of all appurtenances (see Kurns, Supra; quoting to Napier v. Atlantic Coast Line R. Co., 272 US 605, 47 S.Ct. 207, 71 L.Ed. 432 [1926]). "Part or appurtenance under the LIA has been judicially defined as 'whatever in fact is an integral or essential part of a completed locomotive, and all part or attachments definitely prescribed by lawful order of the Secretary (see Perry v. A.W. Chesterton, Inc., 985 F. Supp.2d 669 [E.D. Pennsylvania 2013] Quoting South Railway Co., v. Lunsford, 297 US 398, 56 S.Ct. 504, 80 L.Ed. 740 [1936]).

Thus courts have found state claims of exposure to asbestos in brake shoe of rail cars- not in locomotive cars- were covered by the broad scope of LIA preemption (See Perry, Supra; Caradonna v. A.W. Chesterton, Co., 15 Misc.3d 1127(A), 841 N.Y.S.2d 217 [Sup. Ct. N.Y. County 2007]). Similarly products liability and failure to warn claims were preempted by the LIA and the SAA (Caradona, Supra; Feldman v. CSX Transportation, Inc., 31 A.D.3d 698, 821 N.Y.S.2d 85 [2nd. Dept. 2006]).

Rockwell has made a prima-facie case of entitlement to summary judgment finding that the claims against defendant Rockwell are preempted under the Federal Safety Appliance Act (49 U.S.C. §20301) and the Locomotive Inspection Act (49 U.S.C. §20701 . Plaintiffs deposition bears out that he worked on diesel engines and on parts of train cars with engines (push-pull) which were an integral or essential part of a completed locomotive. Plaintiffs have failed to raise an issue of fact requiring a trial of this issue.

Accordingly, it is ORDERED that defendant's motion is granted, and it is further

ORDERED that ROCKWELL AUTOMATION, INC., as successor in interest to Allen-Bradley Company, LLC, is granted summary judgment dismissing all claims and cross-claims against it as preempted under the Federal Safety Appliance Act (49 U.S.C. §20301) and the Locomotive Inspection Act (49 U.S.C. §20701), and it is further

ORDERED that all claims and cross claims asserted against defendant ROCKWELL AUTOMATION, INC., as successor in interest to Allen-Bradley Company, LLC, are severed and dismissed, and it is further

ORDERED that the clerk of court enter judgment accordingly.

ENTER:

MANUEL J. MENDEZ
J.S.C.

Dated: December 21, 2018

Manuel J. Mendez
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE