

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

IN RE: ASBESTOS LITIGATION            )  
Limited to:                                    )  
  )  
ROBERT J. TRUITT                            ) C.A. No. N10C-06-072-ASB

UPON DEFENDANT ATLAS-TURNER, INC.’S  
MOTION FOR SUMMARY JUDGMENT  
**GRANTED**

This 6<sup>th</sup> day of October, 2011, it appears to the Court that:

Plaintiff, Robert J. Truitt (“Truitt”), together with his wife, Carolyn A. Truitt, filed this personal injury lawsuit against various suppliers and manufacturers of allegedly asbestos-containing products, claiming that defendant Atlas-Turner, Inc. (“Atlas”) products caused Truitt to contract asbestos and lung cancer. Truitt claims that he was exposed to Atlas’ asbestos-containing product, “Limpet,” during the time that he was employed at the DuPont nylon manufacturing plant in Seaford, Delaware from 1960 until his retirement in 1992. Defendant Atlas has moved for summary judgment on the basis that the testimony of Truitt and the co-workers whom he identified as product identification witnesses were not able to place Truitt at a location or in the vicinity where friable asbestos was present nor were they able to identify a specific date or time when Truitt

would have been exposed to friable asbestos from an Atlas product at the DuPont Seaford plant. The claims against Atlas relate to products it allegedly supplied to DuPont Seaford, specifically “limpet” spray insulation.

### **Facts**

Truitt has been deposed for Delaware asbestos litigation on numerous occasions, both in his own lawsuit and as a product identification witness for other cases involving the DuPont Seaford facility.

Truitt began working for DuPont in February 1960 as a miscellaneous operator in the textile department on the first floor.<sup>1</sup> He described this job as requiring him to transport buggies from textiles to other areas.<sup>2</sup> He was also required to clean up spills using asbestos sweeping compound, which product is not relevant to this motion.<sup>3</sup> In 1962, Truitt became an operator on the first floor of the plant in the “staple” area until 1964 when he became an operator of spinning machines in N16 on the first and second floors where he worked until 1966.<sup>4</sup>

From 1966 until Truitt worked in a separate building away from the main plant in the Waste Recovery Department, a position where he was not

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<sup>1</sup> Robert J. Truitt Dep. Tr., Dec. 7, 1999, at 39: 1-18.

<sup>2</sup> *Id.* at 39: 9-14.

<sup>3</sup> *Id.* at 39: 19-21.

<sup>4</sup> Robert J. Truitt Dep. Tr., July 20, 2010 at 14: 17; 15: 1-3.

exposed to asbestos.<sup>5</sup> In that job, he “pumped sulfuric acid out of tank cars, mixed flake up, unloaded dipit acid cars.”<sup>6</sup> From 1969 until he retired in 1992, Truitt worked for over 20 years as a mechanic in a separate area of the building known as the Powerhouse.<sup>7</sup> Truitt named only one other person, an insulator, Larry Persinger as a co-worker with whom he recalled working since 1969.<sup>8</sup>

Mr. Persinger was a union insulator for Local 42 who worked at the DuPont Seaford Plant on two occasions in 1966.<sup>9</sup> He testified that he sprayed “dipit” acid and diamere tanks that were on the road between the Powerhouse and the nylon building.<sup>10</sup> Since the tanks were outside, the insulators constructed scaffolding and tarps in order to contain the residue from the spraying.<sup>11</sup> The job lasted two or three weeks.<sup>12</sup> During this same period Persinger also sprayed tanks in the “spinning area.”<sup>13</sup>

Immediately after the project of spraying the tanks was completed, Persinger sprayed “limpet” insulation in the Powerhouse area.<sup>14</sup> The only

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<sup>5</sup> Truitt Dep. Tr., Dec. 7, 1999, at 45: 1-13.; 46: 15-18.

<sup>6</sup> *Id.* at 45: 19-21.

<sup>7</sup> *Id.* 47: 7-20; 48: 12-24.

<sup>8</sup> *Id.* at 100: 13-16.

<sup>9</sup> Larry Persinger Dep. Tr., Dec. 13, 1988, at 4: 18-21; 31: 13-17.

<sup>10</sup> *Id.* at 31: 20.

<sup>11</sup> *Id.* at 33: 1-9.

<sup>12</sup> *Id.* at 35: 22-23.

<sup>13</sup> *Id.* at 34: 14-17.

<sup>14</sup> *Id.* at 36: 5-14.

DuPont employee that Persinger identified as assisting him in this effort was Randle Meadows who also recalled observing the spray insulation being applied but could not pinpoint any exact times.<sup>15</sup> Meadows did not identify Truitt as being present during the time the spraying was accomplished. In fact, he recalled only two men, the Terry brothers from Baltimore, as working with him.<sup>16</sup> Persinger testified that they were in a hurry to “get the breaching on” and to spray limpet over it so they used twice as much as was required because it would not always adhere to the hot surfaces.<sup>17</sup> Plaintiff worked in a separate building away from the main plant in waste recovery while this job was being completed.<sup>18</sup>

Two other co-workers designated by Truitt as product identification witnesses, Charles Watts and William Farrell, identified limpet as being sprayed on the tanks and in the Powerhouse “somewhat between 1965 and 1975”<sup>19</sup> or in the late 60’s or early 70’s but neither named Truitt as a co-worker, bystander, or observer of these processes. In essence, no co-worker named by plaintiff testified that plaintiff used limpet spray or that he was in its proximity while the spraying was occurring. Nor did any of these co-

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<sup>15</sup> Randle J. Meadows Dep. Tr., Sept. 4, 1987, at 3: 8-11; 5: 10-15.

<sup>16</sup> *Id.* at 6: 2-8.

<sup>17</sup> Persinger Dep. Tr. at 37: 23-24; 38: 10-12.

<sup>18</sup> *See* Truitt Dep. Tr. at 45: 1-13.

<sup>19</sup> Charles Watts Dep. Tr., Sept. 4, 1987, at 4: 19-21; 5: 4-5; 5: 12-16; 14: 12-20; 15: 20-21; *see also* William Farrall Dep. Tr., Nov. 4, 1988, 5: 7-18.

workers testify that they knew Truitt or that they worked with him or near him.

Notably, until 1967, J.W. Roberts Ltd, a British company, was the principal -- if not exclusive -- supplier of limpet asbestos spray insulation to the United States.<sup>20</sup> Atlas began distributing limpet in the United States in 1967 and was the primary U.S. distributor of limpet until it was taken off the market in 1973.<sup>21</sup> Some of the employees recall seeing “Product of England” on the burlap limpet bags but did not testify as to the name of the manufacturer.<sup>22</sup>

### **Standard of Review**

When considering a Motion for Summary Judgment, the Court must examine the record to ascertain whether genuine issues of material fact exist and, to determine whether the moving party is entitled to judgment as a matter of law. The burden of proof is initially in the moving party to demonstrate that its legal claims are supported by undisputed facts. If the moving party properly supports its claims the burden then “shifts to the non-moving party to demonstrate that there are material issues of fact for

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<sup>20</sup> *Farrall v. Keene Corp.*, 1981 Del. Super. LEXIS 618, \*3 (Del. Super. Oct. 9, 1981).

<sup>21</sup> *See* Andrew C. Richardson Dep. Tr., May 14, 1997, at 13: 10-13.

<sup>22</sup> *See, e.g.*, *Farrall Dep. Tr.* at 7: 18-24; 8: 1-2.

resolution by the ultimate fact-finder.”<sup>23</sup> Summary judgment will only be granted if, after viewing the evidence in the light most favorable to the non-moving party, no material facts exist and judgment as a matter of law is appropriate.<sup>24</sup>

In a Delaware asbestos case, in order to withstand a motion for summary judgment, a plaintiff is required to show that “a particular defendant’s asbestos-containing product was used at the job site and that the plaintiff was in proximity to that product at the time it was being used.”<sup>25</sup> This Court has consistently held that it is not sufficient for a plaintiff to establish “the mere presence of a defendant’s asbestos-containing product at a large job site; rather, the plaintiff must also offer evidence that he ‘was in proximity to that product at the time it was being used.’”<sup>26</sup>

### **Decision**

Plaintiffs in this case have failed to satisfy Delaware’s product nexus standard as they have not produced sufficient evidence to establish that Truitt was exposed to any product manufactured or supplied by Atlas.

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<sup>23</sup>*Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879 (Del. Super. 2005).

<sup>24</sup> *Id.* at 879-80.

<sup>25</sup> *In re Asbestos Litig.*, 509 A.2d 1116, 1117 (Del. Super. Ct. 1986), *aff’d Nicolet, Inc. v. Nutt*, A.2d 146 (Del. 1987) (quoting *Odum v. Celotex Corp.*, 764 F.2d 1486, 1488 (11<sup>th</sup> Cir. 1985)).

<sup>26</sup> *In re Asbestos Litig. (DuHadaway)*, C.A. No. 08C-08-285 ASB (Del. Super. Jan. 18, 2011) (quoting *Nutt v. A.C. & S. Co., Inc.*, 517 A.2d 690, 692 (Del. Super. 1986)); *see also In re Asbestos Litig.*, 509 A.2d 1116, 1117-18 (Del. Super. 1986).

Although the record reflects that Truitt worked at the DuPont Seaford plant during the two occasions that the evidence shows that limpet was being sprayed, these facts are not sufficient to support a reasonable non-speculative inference that Truitt was exposed to Atlas' limpet asbestos-containing product.

Truitt himself never worked with spray insulation and no co-worker's testimony placed him in the area where they either observed limpet being sprayed or where they used limpet spray. One co-worker, Randle Meadows, saw limpet spray applied but that was in 1967 or 1968 when plaintiff was working in waste recovery, a separate building away from the main plant. Larry Persinger sprayed limpet twice, but on both occasions Truitt was working in waste recovery, away from the Powerhouse area, and not near the tanks in the "spinning area." This latter spraying occurred outside under tents. Charles Watts sprayed tanks "somewhere between 1965 and 1975," but he failed to identify a specific time or place that would have placed Truitt in proximity to the limpet spray. None of the co-workers identified Truitt by name and none of them connected him to any Atlas product being used at the Seaford Plant. Moreover, until 1967, Atlas did not even supply limpet to the United States so that any evidence about spraying that occurred

prior to 1967, such as that described in the testimony from co-workers Farrell and Watts, cannot connect Truitt to an Atlas asbestos product.

Under the circumstances, plaintiffs have not established a sufficient product nexus to present a triable factual issue. Accordingly, summary judgment in defendant Atlas' favor is hereby GRANTED.

**IT IS SO ORDERED.**

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**PEGGY L. ABLEMAN, JUDGE**

cc: All counsel via Lexis Nexis File & Serve