

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

IN RE: ASBESTOS LITIGATION)
)
JAMES SECATELLO and MARY)
SECATELLO, his wife,) C.A. No. 07C-12-187 ASB
)
Plaintiffs,)
)
v.)
)
ARVINMERITOR, INC., et al.,)
)
Defendants.)

Submitted: November 21, 2008
Decided: December 2, 2008

On Defendant Motion Control's Motion for Summary Judgment
GRANTED

ORDER

Ian Conner Bifferato, Esquire, David W. Deruin, Esquire, Bifferato Gentilotti
LLC., Wilmington, Delaware, Attorneys for Plaintiffs

Neal C. Glenn, Esquire, Daniel P. Daly, Esquire, Kelley, Jasons McGowan
Spinelli & Hanna, L.L.P., Wilmington, Delaware, Attorneys for Defendant Motion
Control Industries, Inc., a wholly owned subsidiary of Carlisle Corporation

JOHNSTON, J.

1. Defendant Motion Control Industries, Inc., a wholly-owned subsidiary of Carlisle Corporation, moved for summary judgment on the grounds that plaintiff James Secatello has failed to identify any competent evidence that he was exposed to any asbestos-containing product associated with Motion Control.

2. Plaintiff argues that he has established a *prima facie* case through his testimony that while employed as a heavy truck mechanic from 1951 to 1991, he was exposed to, inhaled, ingested and otherwise absorbed asbestos fibers emanating from brakes on large trucks, trailers, and axles. The manufacturers include Fruehauf. Motion Control allegedly supplied asbestos-containing brakes to Fruehauf. Other evidence relied upon by plaintiff consists of: the deposition testimony that Carlisle sold asbestos-containing friction linings to Fruehauf during the relevant period; and plaintiff's employment history form which lists Carlisle brakes as one of several "Asbestos Products and/or Materials Used During Employment."

3. The substantive law of New Jersey governs this case. Plaintiff must establish "frequency, regularity and proximity." Exposure must be more than casual or minimal. To survive a summary judgment motion, plaintiff must "produce evidence from which a fact-finder, after assessing the proof of frequency and intensity of plaintiff's contacts with a particular manufacturer's friable

asbestos, could reasonably infer toxic exposure.”¹ Viewing the evidence in the light most favorable to plaintiff, a reasonable juror must be able to infer that plaintiff was exposed to defendant’s friable asbestos frequently, on a regular basis, and in close proximity.²

4. Plaintiff argues that New Jersey courts have interpreted *Sholtis* as requiring less stringent proof for plaintiffs than that demanded in other jurisdictions also applying the frequency, regularity and proximity test. The Court finds plaintiff’s argument to be without merit.

5. New Jersey courts require more than the mere identification of defendant’s product and the assumption of exposure. Through direct or circumstantial evidence, plaintiff must specifically identify defendant’s product, quantify the frequency and regularity of plaintiff’s exposure to defendant’s product, and demonstrate plaintiff’s close proximity to the product.³

¹*Sholtis v. American Cyanamid Co.*, 568 A.2d 1196, 1207 (N.J. Super. 1989).

²*Id.* at 1208.

³See *James v. Bessemer Processing Co., Inc.*, 714 A.2d 898, 910 (N.J. 1998) (plaintiff must demonstrate “exposure of sufficient frequency, with a regularity of contact, and with the product in close proximity”); *Provini v. Asbestospray Corp.*, 822 A.2d 627, 629-30 (N.J. Super. 2003) (jury cannot “assume” exposure); *Kurak v. A.P. Green Refractories Co.*, 689 A.2d 757, 761 (N.J. Super. 1997) (“plaintiff cannot rest on evidence which merely demonstrates that a defendant’s asbestos product was present in the workplace or that he had casual or minimal exposure to it”); *Goss v. American Cyanamid, Co.*, 650 A.2d 1001, 1006 (N. J. Super. 1994) (sufficient exposure demonstrated where plaintiff worked 30% of the time in presence of

(continued...)

6. Viewing the record in the light most favorable to plaintiff, the Court finds that plaintiff has failed to establish *prima facie* evidence of frequency, regularity and proximity to defendant's product. Something more is required than plaintiff's 40-year work history, bare-bones product identification in an interrogatory response, and testimony that defendant's product was sold as one among others for installation on trucks worked on by plaintiff.

THEREFORE, Defendant Motion Control's Motion for Summary Judgment is hereby **GRANTED**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*

The Honorable Mary M. Johnston

³(...continued)
asbestos dust on defendant's premises repairing boilers and cutting insulation); *Dafler v. Raymark*, 611 A.2d 136, 148 (N.J Super. 1992) (sufficient proof where plaintiff worked as a pipefitter in shipyard for several months, in close quarters, using defendant's product 50% of the time).