

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

STACEY DOOLIN, as the
Personal Representative of the
Estate of Richard E. Doolin,

Plaintiff,

v.

Case No. 3:16-cv-778-J-34PDB

AMERICAN OPTICAL CORPORATION,
et al.,

Defendants.

ORDER

THIS CAUSE is before the Court on Defendant BorgWarner Morse TEC LLC's Motion to Dismiss Plaintiff's Amended Wrongful Death Complaint and Incorporated Memorandum of Law (Doc. 25; Motion), filed on August 9, 2016. Plaintiff filed a response in opposition to the Motion on August 23, 2016. See Plaintiff's Response to Defendant Borg-Warner Corporation's Motion to Dismiss Plaintiff's Amended Wrongful Death Complaint (Doc. 33; Response). Accordingly this matter is ripe for review.

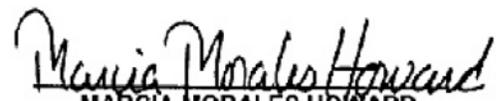
In the Motion, Defendant BorgWarner Morse TEC LLC (Defendant) raises a single basis for dismissal of Plaintiff's Amended Wrongful Death Complaint and Demand for Jury Trial (Doc. 4; Amended Complaint)—that in filing this action, Plaintiff failed to comply with the requirements of Florida's Asbestos and Silica Compensation Fairness Act (the Act). See Motion at 2-3 (citing Fla. Stat. §§ 774.205(3) and 774.207(2)). In response, Plaintiff notes that two jurists within the Middle District of Florida have determined that the procedural requirements of the Act are inapplicable in federal court. See Response at 2

(citing Dugas v. 3M Co., No: 3:14-cv-1096-J-39JBT (M.D. Fla. Apr. 27, 2015) (order on motions to dismiss) and Hughes v. Am. Tripoli, Inc., No. 2:04-cv-485-FtM-29DNF (M.D. Fla. May 30, 2006) (order on motions to dismiss)). Defendant has cited no contrary authority. Indeed, rather than attempt to do so, Defendant filed a motion seeking leave to amend or supplement its Motion to add an additional basis for dismissal or alternatively a request for a more definite statement. See Defendant BorgWarner Morse TEC LLC's Motion for Leave to Amend or Supplement its Motion to Dismiss Plaintiff's Amended Wrongful Death Complaint and Incorporated Memorandum of Law in Support (Doc. 31). In doing so, Defendant appears to acknowledge the inapplicability of the Act's procedural requirements to actions filed in federal court. See id. at 3 (stating "Plaintiff's failure to attach the sworn information form alone may not warrant dismissal of her Amended Complaint in [federal] court . . ."). Persuaded by the reasoning of my colleagues in Dugas and Hughes, the undersigned determines that the Motion is due to be denied. Accordingly, it is

ORDERED:

Defendant BorgWarner Morse TEC LLC's Motion to Dismiss Plaintiff's Amended Wrongful Death Complaint and Incorporated Memorandum of Law (Doc. 25) is **DENIED**.

DONE AND ORDERED in Jacksonville, Florida this 11th day of October, 2016.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:

Counsel of Record