

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LAURENT

CIVIL ACTION

VERSUS

NO: 14-2022

NEW ORLEANS CITY ET AL.

SECTION: "J"(5)

ORDER

Before the Court is Defendant City of New Orleans (the City)'s *Rule 12(b)(6) Motion to Dismiss Wrongful Death Claim*. (**Rec. Doc. 73**) The City argues that the Court should dismiss Plaintiff's wrongful death claim because the Louisiana Workers' Compensation Act (LWCA) is the exclusive remedy for decedent's alleged work-related injury. In response, Plaintiff admits that "the [LWCA] bars his claim for the wrongful death of his father." (Rec. Doc. 75) The Court agrees.

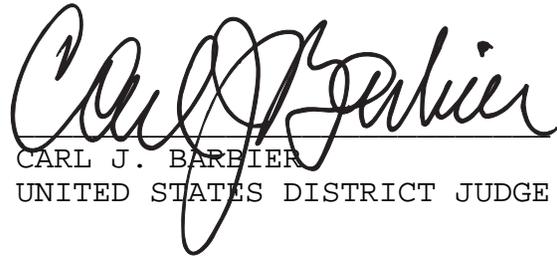
The law in effect at the time of death controls a wrongful death claim. See, e.g., Meredith v. Asbestos Corp., Ltd., 97-2593 (La. App. 4 Cir. 2/18/98), 707 So. 2d 1334, 1336-37. It is alleged that decedent died of mesothelioma in 2013. (Rec. Doc. 73-1) At that time, the LWCA immunized employers against tort actions, including wrongful death actions.¹ Meredith, 707 So. 2d at 1336. Plaintiff consequently fails to state a claim for wrongful death in

¹ Unless the plaintiff alleges the occurrence of an intentional tort, Meredith, 707 So. 2d at 1335, which Plaintiff has not done here.

this case. See Frank v. Shell Oil Co., 828 F. Supp. 2d 835, 847, 851 (E.D. La. 2011)(Fallon, J.). Therefore, for the reasons stated in the City's motion and memorandum and summarized above,

IT IS HEREBY ORDERED that the motion (**Rec. Doc. 73**) is **GRANTED**.

New Orleans, Louisiana this 26th day of May, 2015.


CARL J. BARBIER
UNITED STATES DISTRICT JUDGE