

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7  
8 CHARLOTTE WINELAND, Individually,  
and SUSAN WINELAND, as Personal  
9 Representative of the Estate of JOHN DALE  
WINELAND, deceased,

10 Plaintiffs,

11 v.

12 AIR & LIQUID SYSTEMS  
13 CORPORATION, *et al.*,

14 Defendants.

Cause No. C19-0793RSL

ORDER GRANTING  
ROBERTSHAW CONTROL'S  
MOTION FOR SUMMARY  
JUDGMENT (DKT. # 311)

15 This matter comes before the Court on the "Amended Motion for Summary Judgment of  
16 Defendant Robertshaw Controls Company." Dkt. # 311. Plaintiffs' decedent, John Dale  
17 Wineland, worked aboard a series of Navy ships and in Navy offices between 1963 and 1984.  
18 Plaintiffs allege that Mr. Wineland was exposed to asbestos contained in Robertshaw Controls  
19 products while aboard the USS ESTEEM, the USS PLEDGE, and the USS TUSCALOOSA.<sup>1</sup>  
20 Although his job titles changed through the years, Mr. Wineland worked primarily in the engine  
21 rooms of the ships to which he was assigned, repairing and maintaining machinery and  
22 equipment such as diesel engines, pumps, air compressors, and valves. Mr. Wineland developed  
23  
24

25  
26 <sup>1</sup> Products for which Robertshaw Controls is responsible include those sold under the name  
27 Fulton Sylphon.

1 mesothelioma, an asbestos-related disease, and died in 2018. Plaintiffs assert that Robertshaw  
2 Controls is liable for Mr. Wineland’s illness and death under theories of negligence and strict  
3 liability. Robertshaw Controls seeks summary dismissal of all of plaintiffs’ claims. Robertshaw  
4 Controls argues that, under Washington law,<sup>2</sup> plaintiffs have failed to produce admissible  
5 evidence from which a jury could reasonably conclude that Mr. Wineland was exposed to  
6 asbestos from Robertshaw Controls products or that the non-existent exposure was a substantial  
7 contributing factor in his illness and death.  
8

9       Having reviewed the memoranda, declarations, and exhibits submitted by the parties<sup>3</sup> and  
10 taking the evidence in the light most favorable to plaintiffs, the Court finds as follows:  
11

#### 12 **A. Summary Judgment Standard**

13       Summary judgment is appropriate when, viewing the facts in the light most favorable to  
14 the nonmoving party, there is no genuine issue of material fact that would preclude the entry of  
15 judgment as a matter of law. The party seeking summary dismissal of the case “bears the initial  
16 responsibility of informing the district court of the basis for its motion” (*Celotex Corp. v.*  
17 *Catrett*, 477 U.S. 317, 323 (1986)) and “citing to particular parts of materials in the record” that  
18 show the absence of a genuine issue of material fact (Fed. R. Civ. P. 56(c)). Once the moving  
19 party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to  
20 designate “specific facts showing that there is a genuine issue for trial.” *Celotex Corp.*, 477 U.S.  
21 at 324. The Court will “view the evidence in the light most favorable to the nonmoving party . . .  
22  
23

---

24       <sup>2</sup> Robertshaw Controls did not assert that maritime law applies in its motion. Its alternative  
25 choice of law argument, raised for the first time in reply, has not been considered.

26       <sup>3</sup> This matter can be decided on the papers submitted. The parties’ requests for oral argument are  
27 DENIED.

1 and draw all reasonable inferences in that party’s favor.” *Colony Cove Props., LLC v. City of*  
2 *Carson*, 888 F.3d 445, 450 (9th Cir. 2018). Although the Court must reserve for the trier of fact  
3 genuine issues regarding credibility, the weight of the evidence, and legitimate inferences, the  
4 “mere existence of a scintilla of evidence in support of the non-moving party’s position will be  
5 insufficient” to avoid judgment. *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th  
6 Cir. 2014); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Factual disputes whose  
7 resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion  
8 for summary judgment. *S. Cal. Darts Ass’n v. Zaffina*, 762 F.3d 921, 925 (9th Cir. 2014). In  
9 other words, summary judgment should be granted where the nonmoving party fails to offer  
10 evidence from which a reasonable fact finder could return a verdict in its favor. *Singh v. Am.*  
11 *Honda Fin. Corp.*, 925 F.3d 1053, 1071 (9th Cir. 2019).

## 14 **B. Causation**

15 To prevail on their negligence and strict liability claims, plaintiffs “must demonstrate,  
16 among other things, that [Mr. Wineland’s] injuries were caused by exposure to asbestos that was  
17 attributable to [Robertshaw Controls’s] conduct.” *McIndoe v. Huntington Ingalls Inc.*, 817 F.3d  
18 1170, 1174 (9th Cir. 2016). *See also Lockwood v. AC & C, Inc.*, 109 Wn.2d 235, 245 (1987)  
19 (“Generally, under traditional product liability theory, the plaintiff must establish a reasonable  
20 connection between the injury, the product causing the injury, and the manufacturer of that  
21 product.”). In *Lockwood*, the Washington Supreme Court reviewed a jury verdict based on the  
22 following theory of causation: “[i]f you find two or more causes combine to produce a single  
23 result, incapable of division on any logical or reasonable basis, and each is a substantial factor in  
24 bringing about harm, each is charged with responsibility for the harm.” The court found that the  
25  
26  
27

1 “substantial factor” requirement could be satisfied by “evidence that exposure to asbestos causes  
2 asbestosis; that once asbestos dust is released, it can remain in the air and drift with air currents  
3 for a long period of time; and that [defendant’s] product was located at shipyards where  
4 [plaintiff] was employed during the period when he worked there.” *Id.* at 243.<sup>4</sup> Recognizing that  
5 “it is extremely difficult to determine if exposure to a particular defendant’s asbestos product  
6 actually caused plaintiff’s injury” in light of the “peculiar nature of asbestos products and the  
7 development of disease due to exposure to such products,” the state Supreme Court directed  
8 courts to consider a number of factors when determining whether there is sufficient evidence to  
9 survive summary judgment on the issue of causation. The relevant evidence includes to  
10

- 11 ● evidence of the decedent’s proximity to defendant’s products when the exposure  
12 occurred;
- 13 ● the expanse of the work site where the asbestos fibers were released;
- 14 ● the length of time of exposure to asbestos dust from defendant’s products;
- 15 ● the types of asbestos products to which the decedent was exposed and how they were  
16 handled in order to evaluate the relative risks posed by defendant’s products;
- 17 ● medical causation evidence regarding how asbestos inhalation causes injury and  
18 plaintiff’s particular disease; and
- 19 ● evidence as to other possible causes of the decedent’s particular disease process.

20 *Id.* at 248-49. In *Lockwood* itself, there was no direct evidence of contact with defendant’s  
21 products. Rather, a triable issue of fact regarding causation was raised by evidence that  
22

---

23  
24 <sup>4</sup> At a later point in the decision, the state Supreme Court reiterates that this evidence “creates a  
25 reasonable inference that plaintiff was exposed to [defendant’s] products. When this is combined with  
26 expert testimony that all exposure to asbestos has a cumulative effect in contributing to the contraction  
27 of asbestosis,” a reasonable jury could conclude that the exposure to defendant’s product was a  
28 proximate cause of plaintiff’s injury. *Id.* at 247-48.

1 defendant's asbestos-containing product was used on a large liner conversion on which plaintiff  
2 worked (*Id.* at 247) and that plaintiff had significant exposure to asbestos dust at his various  
3 workplaces (*Id.* at 238).<sup>5</sup>

4  
5 There is evidence that Fulton Sylphon temperature regulating valves were installed on the  
6 ESTEEM during or before 1955 (Dkt. # 396-8 at 47-48), that Fulton Sylphon 1.5" temperature  
7 regulators and temperature regulating valves were installed on the PLEDGE during or before  
8 1955 (Dkt. # 396-6 at 38 and 62), and that Robertshaw Controls 5" diameter bronze temperature  
9 regulating valves were installed on the TUSCALOOSA (Dkt. # 396-2 at 20). There is also  
10 evidence that the Fulton Sylphon valves the Navy tested and approved for use on its vessels  
11 contained asbestos gaskets and packing (Dkt. # 396-14 at 2-3) and that the way these products  
12 were repaired would invariably create asbestos dust (Dkt. # 396-2 at 9). There is ample evidence  
13 to support a finding that Mr. Wineland was exposed to significant levels of asbestos dust while  
14 working in the engine rooms of the ESTEEM, the PLEDGE, and the TUSCALOOSA.<sup>6</sup>

15  
16  
17 <sup>5</sup> "When moving heavy equipment, [Lockwood] used a fall chain [which would] rub against and  
18 cut into asbestos insulation which covered pipes overhead, creating asbestos dust which would fall on  
19 the riggers." *Id.* at 238. He would also sometimes work in areas where old asbestos insulation had  
20 recently been removed and new insulation installed. *Id.* During Lockwood's 20 years at Lake Union  
Drydock, asbestos was stored in a compartment next to the lunch room, and "[a]sbestos dust from the  
compartment entered the eating area and was present while he ate." *Id.*

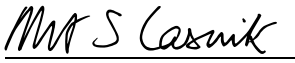
21 <sup>6</sup> Based on his extensive experience in the Navy and at naval shipyards, including the supervision  
22 of enginemen during the relevant time frame aboard the USS BRUMBY and the USS  
23 NEWPORT NEWS, Captain Arnold Moore opines that Mr. Wineland repaired, assisted with the repair,  
24 observed the repair or cleaned up after the repair of the major machinery and many of the valves in the  
25 engine rooms of the ESTEEM, the PLEDGE, and the TUSCALOOSA. Dkt. # 396-2 at 8. Captain Moore  
26 describes how these repairs would be carried out, including activities which would invariably create  
27 asbestos dust, including the removal of old, dried packing and gaskets and the cutting and installation of  
new packing and gasket materials Dkt. # 396-2 at 9. Plaintiffs' industrial hygienist, Steven Paskal,  
similarly opines that "it is virtually certain that [Mr. Wineland], and/or others in close  
proximity and/or in shared, enclosed airspaces, would have routinely removed and replaced gaskets and

1           The problem is that the jury would have to speculate to conclude that the asbestos to  
2 which Mr. Wineland was exposed came from a Robertshaw Controls product. Plaintiffs have not  
3 provided any evidence suggesting that the Robertshaw Controls products were installed in the  
4 engine rooms where Mr. Wineland worked. Where there is evidence of the products' location, it  
5 was not in Mr. Wineland's alleged work spaces. *See* Dkt. # 396-8 at 47-48. Nor have plaintiffs  
6 provided evidence that Mr. Wineland worked on valves outside the engine rooms, that he was  
7 nearby when others performed such work, that he was exposed to asbestos dust outside the  
8 engine rooms, or that the configuration of the ESTEEM, the PLEDGE, and/or the  
9 TUSCALOOSA would give rise to a reasonable inference that work performed on Robertshaw  
10 Controls valves would contribute to the aerosol to which he was exposed. Absent evidence from  
11 which one could reasonably infer that Mr. Wineland was exposed to asbestos from this  
12 defendant's products, there can be no basis for a finding of a causal connection between  
13 Robertshaw Controls products and his injuries even under Washington law. *See Lockwood*, 109  
14 Wn.2d at 247-28 (finding that, where evidence creates a reasonable inference that plaintiff was  
15 exposed to defendant's products, the addition of "expert testimony that all exposure to asbestos  
16 has a cumulative effect in contributing to the contraction of" asbestos-related disease creates a  
17 triable issue of fact).

18  
19  
20  
21  
22  
23 stem/shaft packing associated with . . . valves." Dkt. # 396-11 at 5. These activities would have exposed  
24 Mr. Wineland to an asbestos-containing aerosol that would remain suspended in air streams for extended  
25 periods of time at concentrations that ranged from hundreds to millions of times ambient pollution  
26 levels. Dkt. # 396-11 at 2-3 and 6. Gregory Bullinger, a shipmate of Mr. Wineland on the  
27 TUSCALOOSA, confirms that "work on the equipment in the engine room was regular, ongoing, and  
28 routine. We all removed and replaced packing and gaskets on the various equipment, including the  
valves, pumps, and ALCO diesel engines." Dkt. # 396-9 at 3.

1 For all of the foregoing reasons, Robertshaw Controls’s motion for summary judgment  
2 (Dkt. # 311) is GRANTED. Plaintiffs’ motion for summary judgment on Robertshaw Controls’  
3 affirmative defenses (Dkt. # 370) is DENIED as moot.  
4

5  
6 Dated this 17th day of May, 2021.

7   
8 Robert S. Lasnik  
9 United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27