

1
2
3
4
5
6
7
8
9
10
11
12
13

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHERRI L. DEEM, individually and as
Personal Representative of the estate of
THOMAS A. DEEM, deceased,

Plaintiff,

v.

AIR & LIQUID SYSTEMS
CORPORATION, et al.,

Defendants.

CASE NO. C17-5965 BHS

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AS
MOOT

14 This matter comes before the Court on Defendant Crosby Valve, LLC's
15 ("Crosby") motion for summary judgment, Dkt. 153, and motion to dismiss, Dkt. 371.

16 The Court has considered the pleadings filed in support of and in opposition to the
17 motions and the remainder of the file and hereby grants the motion to dismiss and denies
18 the motion for summary judgment as moot.

19
20
21
22

I. PROCEDURAL HISTORY

On November 20, 2017, Deem filed a complaint against Defendants Air & Liquid
Systems Corporation, CBS Corporation, Crane Co., Foster-Wheeler Energy Corporation,

1 General Electric Company, IMO Industries, Inc., and Warren Pumps, LLC. Dkt. 1
2 (“*Deem 1*”).

3 On June 28, 2018, Deem filed a second complaint against Defendants
4 Anchor/Darling Valve Company, BW/IP, Inc., Blackmer Pump Company, Clark-
5 Reliance Corporation, Cleaver-Brooks, Inc., Crosby Valve, LLC (“Crosby”), Flowserve
6 Corporation, Flowserve US, Inc., FMC Corporation (“FMC”), Gardner Denver, Inc.,
7 Goulds Pumps, Inc., Grinnell, LLC, Hopeman Brothers, Inc., ITT, LLC, Ingersoll-Rand
8 Company, Jerguson Gage & Valve, John Crane, Inc., McNally Industries, LLC
9 (“McNalley”), Velan Valve Corp., Viad Corp., Viking Pump, Inc., Weir Valves &
10 Controls USA, Inc., and The WM Powell Company. C18-5527-BHS, Dkt. 1 (“*Deem 2*”).

11 On December 13, 2018, the Court granted in part and denied in part Deem’s
12 motion to consolidate the cases. Dkt. 52. The Court consolidated the cases through
13 “disposition of summary judgment or such other time prior to trial as the Court deems
14 appropriate” and denied the motion as to the request to consolidate them for trial. *Id.* at
15 2.

16 On April 25, 2019, the Court granted FMC and McNalley’s motion for summary
17 judgment concluding that Deem’s claim for wrongful death under Washington law was
18 barred by the statute of limitations. Dkt. 105.

19 On May 23, 2019, Crosby filed a motion for summary judgment. Dkt. 153. On
20 June 10, 2019, Deem responded. Dkt. 183. On June 14, 2019, Crosby replied. Dkt. 189.

21 On August 16, 2019, Deem filed an amended complaint asserting claims for
22 wrongful death under maritime law. *Deem 2*, Dkt. 92.

1 On August 29, 2019, Crosby filed a motion to dismiss Deem’s amended
2 complaint. Dkt. 3712. On September 16, 2019, Deem responded. Dkt. 396. On
3 September 20, 2019, Crosby replied. Dkt. 397.

4 II. FACTUAL BACKGROUND

5 Although the majority of the facts are set forth in a previous order, *see* Dkt. 408,
6 the facts relevant to the instant motion are undisputed. On February 20, 2015, Mr.
7 Deem’s physicians diagnosed him with mesothelioma and on July 3, 2015, Mr. Deem
8 died due to that illness. On June 28, 2018, Deem filed a complaint against Crosby.

9 III. DISCUSSION

10 A. Motion to Dismiss

11 Crosby moves to dismiss Deem’s maritime claims arguing that the claims are
12 barred by the statute of limitations. Dkt. 371. Under maritime law “a civil action for
13 damages for personal injury or death arising out of a maritime tort must be brought
14 within 3 years after the cause of action arose.” 46 U.S.C. § 30106. A cause of action
15 accrues when plaintiff “ha[s] a reasonable opportunity to discover his injury, its cause,
16 and the link between the two.” *Crisman v. Odeco, Inc.*, 932 F.2d 413, 415 (5th Cir.
17 1991). The clock starts ticking for purposes of the statute of limitations for claims under
18 general maritime law when a plaintiff knew or should have known of his or her injury
19 and its causes. *See White v. Mercury Marine*, 129 F.3d 1428 (11th Cir. 1997).

20 In this case, the question is whether the statute of limitations for wrongful death
21 claims begins when the injury is discovered or when the person dies from that injury. In
22 the most straightforward case, the injury and death occur on the same day with all

1 limitations periods beginning on that day. On the other end of the spectrum, a plaintiff
2 would know of his injury on one date and then pass away someday after the three-year
3 statute of limitations had run. For example, in *Wade v. Clemco Indus. Corp.*, CV 16-502,
4 2018 WL 263231 (E.D. La. Jan. 2, 2018), the injured worker passed away over forty
5 years after he was diagnosed with silicosis. Upon his death, his wife brought a wrongful
6 death action against numerous defendants alleging that they caused the silicosis and
7 eventual death. *Id.* at *2. The court dismissed the claim as time barred concluding that
8 the widow could not bring a claim that her husband could not have brought himself. *Id.*
9 at *3. Specifically, the court stated that the “statute of limitation runs from ‘the date of
10 such wrongful act, neglect or default’ and not from the date of death, and therefore the
11 running of time was determined from the date of the injury.” *Id.* (citing *The Law of*
12 *Maritime Personal Injuries* § 12:13.).

13 Unlike the plaintiff in *Wade*, Mr. Deem’s fatal prognosis involved months instead
14 of years. Deem, however, fails to provide any authority or persuasive argument why Mr.
15 Deem’s death within the statute of limitations for this known injury should reset or start a
16 new statute of limitations for claims based on that alleged wrongful death. The date of
17 knowledge of his injury did not change, and neither did the fatal prognosis. From that
18 date, Mr. Deem had three years to bring this action. Deem fails to submit, and the Court
19 is unaware of, any authority for the proposition that Mr. Deem could not have sought
20 damages for both his past and existing damages as well as future damages related to that
21 fatal prognosis. Sadly, Mr. Deem died within five months of his diagnosis.

1 At that point, the legal terminology changed but the date both he and his wife
2 knew of his injury did not change. On this issue, Deem also fails to cite, and the Court is
3 unaware of any authority, for the proposition that a new claim arose upon his death for
4 damages that could not have been pursued before his death with the knowledge of a fatal
5 prognosis. Thus, the running of the statute of limitations starts at the time of knowledge
6 of the injury and not at the time of death. *Wade*, 2018 WL 263231 at *3. Therefore, the
7 Court grants Crosby's motion to dismiss because Deem's claims are barred by the statute
8 of limitations.

9 **IV. ORDER**

10 Therefore, it is hereby **ORDERED** that Crosby's motion for summary judgment,
11 Dkts. 153, is **DENIED** as moot and motion to dismiss, Dkt. 371, is **GRANTED**.

12 The Clerk shall terminate Crosby.

13 Dated this 6th day of December, 2019.

14 

15 _____
16 BENJAMIN H. SETTLE
17 United States District Judge
18
19
20
21
22