

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GARY SUOJA, Individually and as Special Administrator
of the Estate of OSWALD SUOJA, Deceased,

ORDER

Plaintiff,

99-cv-475-slc

v.

OWENS-ILLINOIS, INC.,

Defendant.

In this civil action for damages, plaintiff sought recovery for damages sustained by Oswald Suoja that he alleged were caused by defendant's manufacture of an asbestos-containing pipe insulation called "Kaylo." Following a bench trial, on September 30, 2016 this court concluded that plaintiff could not recover under either theory because plaintiff had failed to prove by the greater weight of the credible evidence that Suoja had been exposed to Kaylo or that any such exposure was a substantial cause of Suoja's mesothelioma. Dkt. 216. Accordingly, the court entered judgment favor of defendant.

Plaintiff now moves under Fed. R. Civ. P. 52(b) for amended or additional findings. Specifically, plaintiff asserts that the court erred when it found: 1) there was no objective evidence showing where, when, by whom and for how long Kaylo was installed at Badger Ordnance; 2) the testimony of Harold Zimmer was not credible; 3) the testimony of George Schlub was not credible; 4) "white line" asbestos products were "virtually distinguishable once out of the box;" 5) Kaylo was a "generic" name for many insulation brands; and 6) Dr. Frank's causation opinion was either inadmissible or entitled to little weight. Dkt. 221.

Rule 52(b) allows the court, in its discretion, to "amend its findings – or make additional findings – and . . . amend the judgment accordingly." To obtain relief under Rule 52(b), a party must "raise questions of substance by seeking reconsideration of material findings of fact or conclusions of law to prevent manifest injustice or reflect newly discovered evidence." 11 Charles

Alan Wright et al., *Federal Practice & Procedure* § 2582 (3d ed. Supp. 2016). Rule 52(b) does not provide an opportunity to relitigate a case, to present new evidence that could have been presented before, or to advance a new legal theory. *Id.* See also *United States ex rel. Russo v. Att'y Gen. of Ill.*, 780 F.2d 712, 715 n. 4 (7th Cir. 1986) (“Rule 52(b) and Rule 59 motions may not be used to relitigate issues or to present the party's case under a new legal theory; rather these motions are intended to correct manifest errors of law or fact or to present newly-discovered evidence.”).

I have carefully read and carefully considered plaintiff's motion, just as I carefully read and carefully considered his post-trial brief. Plaintiff has not flagged newly-discovered material evidence, nor has he shown that the court made a manifest error of fact that would warrant amending its findings of fact or conclusions of law. Instead, plaintiff basically re-hashes his post trial brief, urging the court to find his witnesses credible and offering his views on the weight of the evidence. The court already considered these arguments in reaching its conclusions; re-reading them in the context of a Rule 52 motion changes nothing. Plaintiff has not identified any material errors of substance that demand correction or that demonstrate that plaintiff will suffer manifest injustice under the existing judgment.

ORDER

IT IS ORDERED that plaintiff's motion for amended or additional findings pursuant to Rule 52(b), dkt. 221, is DENIED.

Entered this 17th day of November, 2016.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge