

**Hilpert v Air & Liquid Sys. Corp.**

2013 NY Slip Op 30845(U)

April 22, 2013

Supreme Court, New York County

Docket Number: 190077/11

Judge: Sherry Klein Heitler

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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. SHERRY KLEIN HEITLER

PRESENT: \_\_\_\_\_  
Justice

PART 30

Index Number : 190077/2011  
PISANO, WILLIAM  
VS.  
ABEX CORPORATION  
SEQUENCE NUMBER : 006  
SUMMARY JUDGMENT

INDEX NO. 190077/11  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 006

(CERANE)

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the  
memorandum decision dated April 22, 2013.

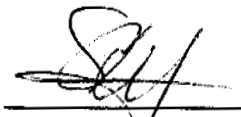
MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

## FILED

APR 23 2013

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 4-22-13



\_\_\_\_\_, J.S.C.  
HON. SHERRY KLEIN HEITLER

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 30

-----X  
DEBRA A. HILPERT, as Administratrix of the Estate of  
WILLIAM PISANO

Index No. 190077/11  
Motion Seq. 006, 007

Plaintiff,

-against-

AIR & LIQUID SYSTEMS CORP., et al.

Defendants.  
-----X

DECISION & ORDER

**FILED**

**APR 23 2013**

NEW YORK  
COUNTY CLERK'S OFFICE

SHERRY KLEIN HEITLER, J:

Motion sequence numbers 006 and 007 are consolidated for disposition herein, in which defendants Crane Co. and Crane Pumps & Systems, Inc. (collectively "Crane") move for summary judgment pursuant to CPLR 3212. For the reasons set forth below, the motion is denied.

Plaintiff's decedent William Pisano commenced this action on or about March 1, 2011 to recover for personal injuries allegedly caused by his exposure to asbestos. Mr. Pisano was deposed over the course of six days in May of 2011. Copies of his deposition transcripts are submitted as plaintiff's exhibits 1, 2, and 3. ("Deposition"). Mr. Pisano testified that he served in the United States Navy ("USN") from 1946 to 1948 as a boiler room fireman's apprentice. During this time period he assisted in the overhaul of the USS Compton (DD-705) and USS Purvis (DD-709). Among other things, Mr. Pisano was charged with standing watch in the boiler room, repairing valves, and maintaining equipment.

The defendants argue they are entitled to summary judgment because Mr. Pisano did not specifically identify any product manufactured or sold by Crane as a source of his exposure. In opposition plaintiff submits Mr. Pisano's testimony that he was exposed to asbestos from valves

and pipes in the boiler rooms of the USS Compton and USS Purvis as well as archived USN ship records to show that Crane valves were utilized on both these ships in the precise areas where Mr. Pisano worked. Plaintiff thus contends that there is sufficient evidence from which Crane's liability can be reasonably inferred.

Summary judgment is a drastic remedy that must not be granted if there is any doubt about the existence of a triable issue of fact. *Tronlone v Lac d'Amiante du Quebec, Ltee*, 297 AD2d 528, 528-529 (1st Dept 2002). To overcome summary judgment in asbestos-related litigation, the plaintiff need only show facts and conditions from which the defendant's liability may be reasonably inferred. *Reid v Georgia Pacific Corp.*, 212 AD2d 462, 463 (1st Dept 1995). All reasonable inferences should be resolved in the plaintiff's favor. *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 205 (1st Dept 1990).

In this case, the Mr. Pisano testified with respect to his asbestos exposure while serving in the USN as follows (Deposition pp. 67-69, 71-72):

- Q. When you were on the Compton, were you a fireman apprentice?
- A. Yes.
- Q. The entire period?
- A. Yes.
- Q. Were you assigned to the boiler room?
- A. Yes
- Q. What were your duties after you left the Brooklyn Navy Yard aboard the Compton?
- A. I had to stand watch in the boiler room.
- Q. Anything else?
- A. I would check all the gauges for the water levels in the water tanks and the water levels in the boiler tanks.
- Q. Anything else?
- A. Stand watch on the fire burners and the boilers.

Q. Do you have any reason to believe you were exposed to asbestos aboard the Compton after you left the Brooklyn Navy Yard?

A. Yes. When I climbed up on the water tanks and checked the water levels, there was a lot of dust up is [sic] there.

Q. Do you know where that dust was coming from?

A. From all over the boiler room. . . .

Q. . . .Did you personally work with any asbestos when you were aboard the Compton?

A. Yes.

Q. What did you work with?

A. All packing the valves when they leaked and any of the asbestos that would break loose from the pipes, re-pack that.

Q. Did you replace the asbestos on the pipes?

A. Yes.

\* \* \* \*

Q. Do you believe you were exposed to asbestos in any other way aboard the Compton other than what we've just talked about?

A. Sometimes on watch I would go to the engine room, and there was asbestos in the engine room.

Q. Where was the asbestos in the engine room?

A. On the pipes, the valves.

\* \* \* \*

Q. After the Compton, did you serve on the Purvis?

A. Yes.

\* \* \* \*

Q. What were your duties aboard the Purvis?

A. They were there for major overhaul. They were doing the same repairs as the Compton did.

\* \* \* \*

Q. During that overhaul, what were you doing?

A. Packing the valves and steam pipes and cleaning up the old material.

Crane argues it is entitled to summary judgment because Mr. Pisano did not specifically identify Crane valves as a source of his exposure and because the blueprints submitted by

plaintiff in opposition (plaintiff's exhibit 5) refer to the USS Barton (DD-722) and the USS Sumner (DD-692), two ships on which Mr. Pisano never served. However, read in their entirety the documents indicate that the Crane valves depicted therein may not have been installed just on the USS Barton and USS Sumner, but on an entire class of destroyers during their initial construction, including the two destroyers Mr. Pisano served on.

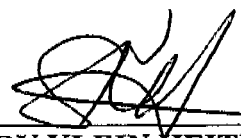
In light of the documentary evidence produced herein, coupled with the testimony, there is a triable issue of fact whether Mr. Pisano was exposed to asbestos from the defendants' products sufficient to preclude summary judgment.

Accordingly, it is hereby

ORDERED that the motions by Crane Co. and Crane Pumps & Systems, Inc. for summary judgment are denied in their entirety.

This constitutes the decision and order of the court.

DATED: 4.22.13



SHERRY KLEIN HEITLER  
J.S.C.

**FILED**

APR 23 2013

NEW YORK  
COUNTY CLERK'S OFFICE