

**Zachman v A.C. and S., Inc.**

2014 NY Slip Op 33617(U)

November 25, 2014

Supreme Court, New York County

Docket Number: 013282/89

Judge: Sherry Klein Heitler

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

PRESENT: HON. SHERRY KLEIN HEITLER  
*Justice*

PART 30

Index Number : 013282/1989  
ZACHMAN, MARTHA  
vs  
A.C.AND S.,  
Sequence Number : 001  
SUMMARY JUDGMENT

INDEX NO. 013282/89  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001

*(CRANE)*

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 11.25.14.**

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

## FILED

DEC 03 2014

NEW YORK  
COUNTY CLERKS OFFICE

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Dated: 11.25.14

*[Signature]*, 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  
MARTHA ZACHMAN, Individually and as Executrix for  
the Estate of WILLIAM ZACHMAN,

Index No. 013282/1989  
Motion Seq. 001

Plaintiffs, **FILED** DECISION & ORDER

- against -

DEC 03 2014

A.C. & S., Inc., et al.,

**NEW YORK**  
**COUNTY CLERKS OFFICE**  
Defendants.

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**SHERRY KLEIN HEITLER, J.:**

In this asbestos personal injury action, defendant Crane Co. (“Crane”) moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all other claims asserted against it on the ground that it is not responsible for any asbestos-containing insulation plaintiffs’ decedent William Zachman<sup>1</sup> allegedly encountered while working as an insulator during the 1970’s. Plaintiffs’ position is that Crane knew or should have known that asbestos-containing insulation would be applied to its valves for their intended use and had a duty to warn Mr. Zachman of the hazards associated with same.

John Simmons, the decedent’s former co-worker, was deposed in this matter on June 27, 2013.<sup>2</sup> In general Mr. Simmons testified that Mr. Zachman personally applied asbestos-containing insulation to products and equipment such as pipes, valves, and pumps at several New York City work sites. With respect to the defendant, Mr. Simmons testified that both he and Mr.

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<sup>1</sup> Mr. Zachman suffered from pleural disease and esophageal cancer.

<sup>2</sup> Mr. Zachman was deposed in 1991 but did not implicate the defendant as a source of his injuries.

Zachman insulated Crane valves at Consolidated Edison's Ravenswood Powerhouse in 1974.

Crane argues that there is no evidence to show that it manufactured, supplied, or otherwise placed into the stream of commerce any of the insulation at issue or that it specified, recommended, or advised consumers to insulate its valves with asbestos. In opposition plaintiffs rely largely on the First Department's recent decision in *Matter of New York City Asbestos Litig. [Dummit]*, 2014 NY App. Div. LEXIS 4964 (1st Dept July 3, 2014), which this court finds controlling. In *Dummitt*, Crane appealed from a judgment entered against it after trial on several grounds, including that "it had no legal duty pertaining to any asbestos-containing . . . components manufactured and sold by others." *Id.* at \*29. The court explicitly rejected this argument, finding that *Berkowitz v A.C. & S., Inc.*, 288 AD2d 148, 149 (1st Dept 2001) and *Rogers v Sears, Roebuck & Co.*, 268 AD2d 245 (1st Dept 2000), on which the plaintiffs relied, "demonstrate that where a manufacturer does have a sufficiently significant role, interest, or influence in the type of component used with its product after it enters the stream of commerce, it may be held strictly liable if that component causes injury to an end user of the product." *Dummitt, supra*, at \*29. The cases relied on by Crane<sup>3</sup>, on the other hand, "together stand for the rather unremarkable proposition that where there is no evidence that a manufacturer had any active role, interest, or influence in the types of products to be used in connection with its own product after it placed its product into the stream of commerce, it has no duty to warn." *Dummit, supra*, at \*33. Applying this standard, the court determined that "there was sufficient evidence to tie [Crane] directly to the injurious agent." *Id.* at \*34.

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<sup>3</sup> See *Rastelli v Goodyear Tire & Rubber Co.*, 79 NY2d 289 (1992); see also *Matter of Eighth Jud. Dist. Asbestos Litig.*, 92 AD3d 1259 (4th Dept 2012); *Tortoriello v Bally Case*, 200 AD2d 475 (1st Dept 1994); *Surre v Foster Wheeler LLC*, 831 F Supp 2d 797 (SDNY Dec. 20, 2011).

Plaintiffs' submissions in this case demonstrate that Crane designed its valves to operate using asbestos-containing insulation and various other asbestos-containing components. Therefore, as in *Dummitt*, it would be "entirely appropriate for the jury to find that Crane had the burden of warning workers . . . of the hazards of asbestos exposure." *Id.* at \*36.

Accordingly, it is hereby

ORDERED that Crane Co.'s motion for summary judgment is denied.

This constitutes the decision and order of the court.

DATED: 11.25.14

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

**FILED**  
DEC 03 2014  
NEW YORK  
COUNTY CLERK'S OFFICE