

<b>Seabridge v Kelsey-Hayes Co.</b>
2017 NY Slip Op 33518(U)
May 9, 2017
Supreme Court, Albany County
Docket Number: Index No. 2015-901593
Judge: Richard T. Aulisi
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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY  
ALBANY COUNTY CLERK

TAMMY SEABRIDGE, as Executrix of the Estate  
of ROBERT W. MILES, deceased, and DELORA  
MILES, Individually,

Plaintiffs,

DECISION  
AND ORDER

-vs-

Index # 2015-901593  
RJI #01-16-119546

KELSEY-HAYES COMPANY, et al.,

Defendants.

The plaintiffs, Tammy Seabridge, as Executrix of the Estate of Robert Miles and Delora Miles, commenced the within action to recover damages for personal injuries and the wrongful death of Robert Miles, as a result of his exposure to various asbestos containing products and materials. The plaintiffs commenced this action on or about December 28, 2015, by filing a Summons and Complaint in the Albany County Clerk's Office. Issue was subsequently joined and discovery has been conducted pursuant to an expedited discovery schedule.

Robert Miles was diagnosed with malignant mesothelioma in November of 1015. Mr Miles died on November 23, 2015. He was approximately 74 years of age at the time of his death.

The defendant, Kelsey-Hayes Company (hereinafter the defendant), has now made a motion for summary judgment dismissing the plaintiffs' complaint and all cross-claims asserted against it, pursuant to CPLR Rule 3212. The defendant seeks summary judgment on the theory that the plaintiffs have been unable to identify or prove exposure to any asbestos-containing material or product attributable to the defendant.

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It is alleged that the decedent, Robert Miles, was exposed to asbestos-containing materials while working as a parts person and parts manager for Fruehauf Corporation (Fruehauf) in Albany, New York from 1956 to 1990. Mr. Miles passed away prior to being deposed. A co-worker of his, Joe Hannon, was deposed and offered testimony as to Mr. Miles asbestos exposure. Mr. Hannon was employed by Fruehauf from 1967 to 1992. He testified that Robert Miles was exposed to various types of friction products at Fruehauf, and that these friction products were supplied by Fruehauf's central distribution center in Westerville, Ohio.

The defendant seeks summary judgment alleging that it was never adequately identified in this action. The defendant asserts that at no time during the discovery phase of this action has the name Kelsey-Hayes been mentioned. The defendant further argues that because neither Mr. Miles nor either of his co-workers identified Kelsey-Hayes, the proof is insufficient to impose liability upon it.

A proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact. (Alvarez v. Prospect Hospital, 68 NY2d 320, 324 [1986]). In the context of an asbestos case, the defendant must make a prima facie showing that its product could not have contributed to the causation of plaintiff's injury. ( Comeau v. W.R. Grace & Co., 216 AD2d 79, 80 [1<sup>st</sup> Dept. 1995]); (Reid v. Georgia-Pacific Corporation, 212 AD2d 462 [1<sup>st</sup> Dept. 1995]).

The Court also notes that since this is a summary judgment motion, it must view the evidence in a light most favorable to the non-moving party, drawing all reasonable inferences in favor of the non-moving party. (Salerno v. Garlock, Inc., 212 Ad2d 463, 464 [1<sup>st</sup> Dept. 1995]);

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(Goff v. Clark, 302 AD2d 725 [3<sup>rd</sup> Dept. 2003]).

The defendant, Carlisle Industrial Brake & Friction, Inc. (Carlisle), and the plaintiffs, have both opposed the defendant's summary judgment motion. They both claim that there is sufficient proof in the record to establish the identification of the defendant, Kelsey-Hayes. In particular they point to the defendant Kelsey-Hayes' discovery responses in which it states that Fruehauf Corporation is "now known as the Kelsey-Hayes Company"<sup>1</sup> The plaintiffs assert that the testimony of Mr. Miles two co-workers, coupled with the various documents submitted in opposition to the summary judgment motion, clearly identify the moving defendant was not only a premises owner where Mr. Miles worked, but also a supplier/distributor of the asbestos containing friction materials.

A plaintiff can successfully defeat a summary judgment motion by raising a material issue of fact and, once again, when this standard is applied to asbestos litigation, it has been held that plaintiff need not show the precise causes of his damages but only facts and conditions from which defendant's liability may be reasonably inferred. (Lloyd v. W.R. Grace & Co., 215 AD2d 177 [1<sup>st</sup> Dept 1995]); also see (In Re New York City Asbestos Litigation v. A.C. & S., 7 AD3rd 285 [1<sup>st</sup> Dept. 2004]). (In Re Eighth Judicial District Asbestos Litigation v. Amechem Products, Inc., 32 AD3rd 1268 [4<sup>th</sup> Dept. 2006]).

Based on the record before it, the Court finds that there is a material issue of fact with regard to the defendant's liability and whether it contributed to the causation of injury and subsequent death of the decedent, Robert Miles.

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<sup>1</sup> Exhibit "E" Carlisle's opp. Papers

Defendant's motion for summary judgment is denied, without costs.

This writing shall constitute the Decision and Order of this Court.

Signed this 9<sup>th</sup> day of May 2017, at Johnstown, New York.



HON. RICHARD T. AULISI  
Justice of the Supreme Court

ENTER

