SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
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DEBORAH HAMPTON MILLER, Individually and as Administratrix of the Estate of MYRON WILLIAM MILLER, deceased,

Plaintiff

- against -

A.O. SMITH WATER PRODUCTS CO., et al.,

Defendants

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Index No. 190257/2016

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff seeks damages for the deceased Myron Miller's injury and death suffered after Miller was exposed to equipment and materials containing asbestos while purchasing, refurbishing, and reselling equipment and materials he obtained from factories, plants, mills, and foundries. Plaintiff alleges that Miller was exposed to asbestos when he removed and replaced gaskets and packing material in valves that defendant Jenkins Bros. manufactured.

Plaintiff and Jenkins Bros. do not dispute that Miller moved to Georgia in the 1970s, where he started his business purchasing, refurbishing, and reselling equipment. Plaintiff, Miller's widow, testified at her deposition that from 1980 to 1987 Miller travelled to other states, including New York, to purchase the equipment, including valves, for his business. He then returned to Georgia, where he refurbished these valves by

scraping out the gaskets with a metal tool, removing the packing material around the valves' turning wheels, and using a blower to blow out dust from inside the valves.

Defendant Jenkins Bros. moves for summary judgment dismissing plaintiff's claims and any cross-claims against Jenkins Bros. C.P.L.R. § 3212(b). Jenkins Bros. maintains that Georgia law applies to these claims, since plaintiff alleges that Miller was exposed to asbestos while working in Georgia, and, under Georgia law, plaintiff fails to meet her burden to show that Jenkins Bros. valves contained asbestos, and, in any event, Jenkins Bros. owed no duty to warn Miller about any asbestos in Jenkins Bros. valves. Plaintiff contends that New York law applies because Miller travelled to New York at every opportunity to purchase equipment from large liquidations, and therefore the Jenkins Bros. valves he purchased must have been from New York, where Jenkins Bros. is headquartered. Under New York Law, Jenkins Bros. in moving for summary judgment bears the burden to show that Jenkins Bros. valves did not contain asbestos, and, if they did, Jenkins Bros. owed a duty to warn Miller about that asbestos.

II. NEW YORK LAW DOES NOT CONFLICT WITH GEORGIA LAW.

Since the parties dispute which jurisdiction's law applies, the court first must determine if there is an actual conflict between New York and Georgia laws regarding causation of Miller's injury and defendant's duty to warn Miller. Matter of Allstate Ins. Co. (Stolarz—New Jersey Mfrs. Ins. Co.), 81 N.Y.2d 219, 223

(1993); Isaly v. Devlin, 139 A.D.3d 470, 471 (1st Dep't 2016); TBA Glob., LLC v. Proscenium Events, LLC, 114 A.D.3d 571, 572 (1st Dep't 2014); Elmaliach v. Bank of China Ltd., 110 A.D.3d 192, 202 (1st Dep't 2013). An "actual conflict" arises when the two states' laws prescribe different substantive rules and will significantly affect the outcome. TBA Glob., LLC v. Proscenium Events, LLC, 114 A.D.3d at 572; Elmaliach v. Bank of China Ltd., 110 A.D.3d at 200. Only if there is an actual conflict between the jurisdictions' laws will the court use an analysis of each jurisdiction's interest in applying its law to determine which jurisdiction's interest is greater. Padula v. Lilarn Props. Corp., 84 N.Y.2d 519, 521 (1994); Elmaliach v. Bank of China Ltd., 110 A.D.3d at 202; Devore v. Pfizer Inc., 58 A.D.3d 138, 140 (1st Dep't 2008). Jenkins Bros., which claims a relevant conflict of laws, bears the burden to show the conflict. Farallon v. Mexvalo, S. de R.L. de C.V., 146 A.D.3d 442, 442 (1st Dep't 2017); Portanova v. Trump Taj Mahal Assoc., 270 A.D.2d 757, 759 (3d Dep't 2000).

Absent a significant conflict, the court will apply New York law. TBA Glob., LLC v. Proscenium Events, LLC, 114 A.D.3d at 572; SNS Bank, N.V. v. Citibank, N.A., 7 A.D.3d 352, 354 (1st Dep't 2004); Excess Ins. Co. Ltd. v. Factory Mut. Ins. Co., 2 A.D.3d 150, 151 (1st Dep't 2003), aff'd, 3 N.Y.3d 577 (2004). The court also applies New York procedural law regardless of any conflict of laws analysis. Davis v. Scottish Re Group Ltd., 30 N.Y.3d 247, 257 (2017); Tanges v. Heidelberg N. Am., 93 N.Y.2d

48, 53 (1999).

A. Jenkins Bros. Fails to Identify Any Conflict Between New York and Georgia Substantive Laws

Jenkins Bros. fails to address if and how the relevant substantive laws of New York and Georgia conflict, which is fatal to Jenkins Bros.' claim that Georgia law applies. Farallon v. Mexvalo, S. de R.L. de C.V., 146 A.D.3d at 442; Portanova v. Trump Taj Mahal Assoc., 270 A.D.2d at 759. The only conflict of laws presented in Jenkins Bros.' analysis is between the burdens that New York and Georgia law impose to obtain summary judgment. Under Georgia law, Jenkins Bros. need not produce any evidence and need only point to an absence of evidence supporting an element of plaintiff's claim. Cartersville Ranch, LLC v. Dellinger, 295 Ga. 195, 199, 758 (2014); Cowart v. Widener, 287 Ga. 622, 623 (2010); Harris v. City of Atlanta, 2018 WL 1081590, at *1 (Ga. Ct. App. Feb. 28, 2018); Hoffman v. AC&S, Inc., 248 Ga. App. 608, 610 (Ga. Ct. App. 2001). New York law, on the other hand, imposes a heavier burden: Jenkins Bros. must show that its product did not contribute to the decedent's injury, Matter of New York City Asbestos Litig., 146 A.D.3d 700, 700 (1st Dep't 2017); Matter of New York City Asbestos Litig., 122 A.D.3d 520, 521 (1st Dep't 2014), and will fail to meet its burden by merely pointing to deficiencies in plaintiff's evidence. Ricci v. A.O. Smith Water Prods. Co., 143 A.D.3d 516, 516 (1st Dep't 2016); Koulermos v. A.O. Smith Water Prods., 137 A.D.3d 575, 576 (1st Dep't 2016).

This conflict is irrelevant to the court's conflict of laws

analysis, however, because Jenkins Bros.' burden upon its motion for summary judgment is a question of procedural law. E.g., Karaduman v. Newsday, Inc., 51 N.Y.2d 531, 544 (1980). The conflict of laws analysis is limited to conflicts in substantive laws, as New York courts always apply New York procedural law. Davis v. Scottish Re Group Ltd., 30 N.Y.3d at 257); Tanges v. Heidelberg N. Am., 93 N.Y.2d at 53. Therefore the conflict between New York and Georgia law regarding this burden is irrelevant to the court's choice of law and application of New York's burden on Jenkins Bros. for it to obtain summary judgment. Davis v. Scottish Re Group Ltd., 30 N.Y.3d at 257. Even if the court finds an actual conflict between New York and Georgia substantive law and applies Georgia law to the issues of causation and failure to warn, the court still applies New York procedural law to the parties' burdens when defendant has moved for summary judgment. Karaduman v. Newsday, Inc., 51 N.Y.2d at 544.

B. There Is No Applicable Conflict Between New York and Georgia Law.

Georgia law requires plaintiff to show that Miller was exposed to asbestos in Jenkins Bros. valves and that exposure to that asbestos in the valves caused Miller's injury. Fouch v. Bicknell Supply Co., 326 Ga. App. 863, 868 (Ga. Ct. App. 2014); Butler v. Union Carbide Corp., 310 Ga. App. 21, 25 (Ga. Ct. App. 2011). See Toole v. Georgia-Pac., LLC, 2011 WL 7938847, at *8 (Ga. Ct. App. Jan. 19, 2011); Small v. Amgen, Inc., 2018 WL 501354, at *3 (11th Cir. Jan. 22, 2018); Kilpatrick v. Breg,

Inc., 613 F.3d 1329, 1334 n.4 (11th Cir. 2010). New York law requires a similar showing: plaintiff must demonstrate that Jenkins Bros. valves contained asbestos and that Miller's exposure to that asbestos actually did contribute to his injury. Matter of New York City Asbestos Litig., 148 A.D.3d 233, 235-36 (1st Dep't 2017). See Sean R. v. BMW of N. Am., LLC, 26 N.Y.3d 801, 808 (2016); Parker v. Mobil Oil Corp., 7 N.Y.3d 434, 448 (2006); Nonnon v. City of New York, 88 A.D.3d 384, 394 (1st Dep't 2011); Martins v. Little 40 Worth Assoc., Inc., 72 A.D.3d 483, 484 (1st Dep't 2010). Since there is no significant conflict between New York and Georgia law on causation, the court will apply New York law on this issue. TBA Glob., LLC v. Proscenium Events, LLC, 114 A.D.3d at 572; SNS Bank, N.V. v. Citibank, N.A., 7 A.D.3d at 354; Excess Ins. Co. Ltd. v. Factory Mut. Ins. Co., 2 A.D.3d at 151, aff'd, 3 N.Y.3d 577.

Under Georgia law, a manufacturer, distributor, seller, or other supplier of a product owes a duty to warn consumers when the manufacturer, distributor, seller, or supplier knows or reasonably ought to know of a danger arising from the product's use. Certainteed Corp. v. Fletcher, 300 Ga. 327, 330 (2016); Chrysler Corp. v. Batten, 264 Ga. 723, 724 (1994); R & R Insulation Services, Inc. v. Royal Indem. Co., 307 Ga. App. 419, 427 (Ga. Ct. App. 2010); Potts v. UAP-GA AG CHEM, Inc., 256 Ga. App. 153, 158 (Ga. Ct. App. 2002). See Thurmon v. Georgia Pac., LLC, 650 Fed. Appx. 752, 761 (11th Cir. 2016); Gaddy v. Terex Corporation, 2017 WL 3476318, at *5 (N.D. Ga. May 5, 2017). The

duty to warn extends to purchasers, reasonably foreseeable users, and other consumers. Certainteed Corp. v. Fletcher, 300 Ga. at 330; Chrysler Corp. v. Batten, 264 Ga. at 724. Plaintiff must show that defendant's failure to warn of a foreseeable danger from its product caused the claimed injuries. Georgia Cas. & Sur. Co. v. Salter's Indus. Serv., Inc., 318 Ga. App. 620, 626 (Ga. Ct. App. 2012); R & R Insulation Services, Inc. v. Royal Indem. Co., 307 Ga. App. at 427. See Thurmon v. Georgia Pac., LLC, 650 Fed. Appx. at 761; Dietz v. Smithkline Beecham Corp., 598 F.3d 812, 815-16 (11th Cir. 2010); Eberhart v. Novartis Pharmaceuticals Corp., 867 F. Supp. 2d 1241, 1253-54 (N.D. Ga. 2011).

Under New York law, a manufacturer, distributor, seller, or other party that places a product on the market owes a duty to warn of all potential dangers that the manufacturer, distributor, seller, or other party knows or ought to know of resulting from foreseeable uses of its product. Matter of New York City Asbestos Litig., 27 N.Y.3d 765, 787, 790 (2016); Passante v. Agway Consumer Prods., Inc., 12 N.Y.3d 372, 382 (2009); Mulhall v. Hannafin, 45 A.D.3d 55, 58 (1st Dep't 2007); Anaya v. Town Sports Intl., Inc., 44 A.D.2d 485, 487 (1st Dep't 2007). See Rastelli v. Goodyear Tire & Rubber Co., 79 N.Y.2d 289, 297 (1992); Matter of New York City Asbestos Litig., 143 A.D.3d 483, 483-84 (1st Dep't 2016); Peraica v. A.O. Smith Water Prods. Co., 143 A.D.3d 448, 449 (1st Dep't 2016). This duty "extends to the original or ultimate purchasers . . . and to third persons

exposed to a foreseeable and unreasonable risk of harm by the failure to warn." Matter of New York City Asbestos Litig., 27 N.Y.3d at 788-89; McLaughlin v. Mine Safety Appliances Co., 11 N.Y.2d 62, 68 (1962). Plaintiff must show that defendant's failure to warn of its product's dangers caused the claimed injury. Matter of New York City Asbestos Litig., 27 N.Y.3d at 803-804; Glucksman v. Halsey Drug Co., Inc., 160 A.D.2d 305, 307 (1st Dep't 1990). See Matter of New York City Asbestos Litig., 143 A.D.3d at 484; Peraica v. A.O. Smith Water Prods. Co., 143 A.D.3d at 449; Mulhall v. Hannafin, 45 A.D.3d at 60-61. Since there is no significant conflict between New York and Georgia law on these elements of the duty to warn, the court will apply New York law on these issues as well. TBA Glob., LLC v. Proscenium Events, LLC, 114 A.D.3d at 572; SNS Bank, N.V. v. Citibank, N.A., 7 A.D.3d at 354; Excess Ins. Co. Ltd. v Factory Mut. Ins. Co., 2 A.D.3d at 151, aff'd, 3 N.Y.3d 577.

Jenkins Bros. suggests there is a conflict between New York and Georgia law regarding defendant's liability where defendant is not the manufacturer of component parts used in its valves. As discussed further below, Jenkins Bros. fails to show that any such conflict applies here, because Jenkins Bros. never shows that predicate for nonliability as a nonmanufacturer of either the gaskets or packing material that Miller removed from the valves he purchased or the replacement gaskets or packing material that Miller installed in those valves to resell them. Even if Jenkins Bros. did establish that predicate, however,

Jenkins Bros. again fails to demonstrate that Georgia law departs from New York law.

First, Jenkins Bros. concedes that, even if it did not manufacture the gaskets and packing material in its valves, if it distributed, sold, or otherwise supplied them with those components, it owed a duty to warn of the foreseeable dangers of any asbestos in those components from any reasonable intended use of the valves. Georgia law imposes that duty to users on the distributors, sellers, and suppliers of products, R & R Insulation Services, Inc. v. Royal Indem. Co., 307 Ga. App. at 427; Potts v. UAP-GA AG CHEM, Inc., 256 Ga. App. at 158; Thurmon v. Georgia Pac., LLC, 650 Fed. Appx. at 758; Gaddy v. Terex Corporation, 2017 WL 3476318, at *5, as does New York law. Matter of New York City Asbestos Litig., 27 N.Y.3d at 790; Passante v. Agway Consumer Prods., Inc., 12 N.Y.3d at 382; Mulhall v. Hannafin, 45 A.D.3d at 58; Anaya v. Town Sports Intl., Inc., 44 A.D.2d at 487.

Moreover, if a durable product manufacturer recommends that other manufacturers' fungible products be used with its product, or even if the use of those other products with its product is common in the industry, Georgia law imposes a duty on the durable product manufacturer to warn of the foreseeable dangers from the combined use of the durable product with those other components. R & R Insulation Services, Inc. v. Royal Indem. Co., 307 Ga. App. at 428-29. This duty applies even when defendant did not distribute, sell, or supply its original product with those

components. See id. at 429.

Jenkins Bros. insists that Georgia law recognizes the "bare metal defense": that defendant is responsible only for its valves and not any other manufacturers' products used in its product. As the authority on which Jenkins Bros. relies sets forth, however: "No controlling Georgia authority unequivocally recognizes the bare metal defense." Thurmon v. Georgia Pac., LLC, 650 Fed. Appx. at 756. That authority recognizes that, if a manufacturer of valves specifies the use of other manufacturers' components containing asbestos, or those components otherwise are necessary, for the valves to function optimally, the manufacturer may be liable for failing to warn of the dangers of removing and replacing the valves' asbestos components. Id. at 758-59. This duty does not depart significantly from the manufacturer's duty that New York law recognizes: to warn of the danger from reasonably foreseeable use of its product in combination with other manufacturers' products that are necessary to enable its product to function as intended, Matter of New York City Asbestos Litig., 27 N.Y.3d at 793-94; Peraica v. A.O. Smith Water Prods. Co., 143 A.D.3d at 450; Berkowitz v. A.C. & S., Inc., 288 A.D.2d 148, 149 (1st Dep't 2001), or that it sold, marketed, or promoted along with its product. Matter of New York City Asbestos Litig., 143 A.D.3d at 483; Peraica v. A.O. Smith Water Prods. Co., 143 A.D.3d at 449.

III. JENKINS BROS.' MOTION FOR SUMMARY JUDGMENT

To obtain summary judgment, Jenkins Bros. must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence eliminating all material issues of fact. C.P.L.R. § 3212(b); Friends of Thayer Lake LLC v. Brown, 27 N.Y.3d 1039, 1043 (2016); Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP, 26 N.Y.3d 40, 49 (2015); Voss v. Netherlands Ins. Co., 22 N.Y.3d 728, 734 (2014); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012). Only if Jenkins Bros. satisfies this standard, does the burden shift to plaintiff to rebut that prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. De Lourdes Torres v. Jones, 26 N.Y.3d 742, 763 (2016); Nomura Asset Capital Corp. v. Cadwalader Wickersham & Taft LLP, 26 N.Y.3d at 49; Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004). In evaluating the evidence for purposes of Jenkins Bros.' motion, the court construes the evidence in the light most favorable to plaintiff. De Lourdes Torres v. Jones, 26 N.Y.3d at 763; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Cahill v. Triborough Bridge & Tunnel Auth., 4 N.Y.3d 35, 37 (2004).

As set forth above, Jenkins Bros. may not meet its burden by merely pointing to deficiencies in plaintiff's evidence. Ricci v. A.O. Smith Water Prods. Co., 143 A.D.3d at 516; Koulermos v. A.O. Smith Water Prods., 137 A.D.3d at 576. If Jenkins Bros.

fails to meet its initial burden, the court must deny summary judgment despite any insufficiency in plaintiff's opposition. Voss v. Netherlands Ins. Co., 22 N.Y.3d at 734; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Smalls v. AJI Indus., Inc., 10 N.Y.3d 733, 735 (2008); JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d 373, 384 (2005).

A. Causation

In framing a defense based on lack of causation under Georgia law, Jenkins Bros. simply maintains that plaintiff presents no evidence that Miller refurbished Jenkins Bros. valves, that Jenkins Bros. manufactured the gaskets and packing material in the valves that he refurbished, or that the gaskets and packing material contained asbestos. Jenkins Bros.' defense impermissibly shifts to plaintiff its burden upon its motion for summary judgment: Jenkins Bros. first must establish that Miller was not exposed to its valves, or that the valves it manufactured did not contain asbestos, or that the asbestos in the valves could not have caused or did not cause Miller's injury. Katz v. United Synagogue of Conservative Judaism, 135 A.D.3d 458, 462 (1st Dep't 2016); Matter of New York City Asbestos Litig., 123 A.D.3d 498, 499 (1st Dep't 2014); Matter of New York City Asbestos Litig., 122 A.D.3d at 521; Reid v. Georgia-Pacific Corp., 212 A.D.2d 462, 463 (1st Dep't 1995). Any inadequacies in plaintiff's opposition are irrelevant until Jenkins Bros. satisfies this initial burden to make a prima facie showing of its entitlement to summary judgment. Voss v. Netherlands Ins.

Co., 22 N.Y.3d at 734; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Smalls v. AJI Indus., Inc., 10 N.Y.3d at 735; JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d at 384.

Jenkins Bros. produces no evidence that any Jenkins Bros. valves Miller refurbished did not or could not have contained asbestos. Nor does Jenkins Bros. produce any evidence that the valves Miller refurbished did not contain gaskets or packing material manufactured, distributed, or sold by Jenkins Bros. or that the replacement gaskets and packing materials he installed were not manufactured, distributed, sold, or recommended by Jenkins Bros. Instead it simply insists, relying only on plaintiff's deposition, that plaintiff fails to show that the gaskets or packing materials were manufactured by Jenkins Bros., again impermissibly shifting its burden to plaintiff.

In fact, plaintiff testified that Miller was exposed to asbestos when he refurbished Jenkins Bros. valves containing asbestos, testimony that remains uncontroverted by any evidence that Jenkins Bros. presents. Aff. of Peter J. Dinunzio Ex. D, at 88, 91, 387. She specifically testified to Jenkins Bros.' admission in its manuals' advertisements that the valves' component gaskets and packing material contained asbestos and recalled that Jenkins Bros. valves' replacement components were in boxes labelled "asbestos." Id. at 338.

Plaintiff also presents Jenkins Bros. catalogs specifying the use of Jenkins Bros. gaskets and packing material containing asbestos both in Jenkins Bros. valves when originally sold and in

the valves when refurbished to enable their continued functioning, but these catalogs are from 1940 and 1945, are undated, or bear illegible dates. The court need not rely on this rebuttal evidence, however, since Jenkins Bros. in the first instance fails to meet its burden to establish its entitlement to summary judgment on the issue of causation. Katz v. United Synagogue of Conservative Judaism, 135 A.D.3d at 462; Matter of New York City Asbestos Litig., 123 A.D.3d at 498; Matter of New York City Asbestos Litig., 122 A.D.3d at 521; Reid v. Georgia-Pacific Corp., 212 A.D.2d at 463.

B. Jenkins Bros.' Duty to Warn

On Jenkins Bros.' duty to warn Miller, Jenkins Bros. disavows any such duty because Miller was exposed to asbestos while refurbishing salvaged valves, which was not an intended or reasonably foreseeable use of Jenkins Bros. valves. Hockler v. William Powell Co., 129 A.D.3d 463, 465 (1st Dep't 2015). See Rastelli v. Goodyear Tire & Rubber Co., 79 N.Y.2d at 297. Unlike the dismantling of steam systems in vacant buildings and salvaging of scrap metal from them, including recovery of valves, that Hockler v. William Powell Co., 129 A.D.3d at 464-65, held was not an intended or reasonably foreseeable use of the valves, no evidence here indicates that Miller's refurbishing of valves involved ripping, smashing, breaking, or cutting them. Plaintiff testified that Miller purchased valves from liquidations and facility closings, refurbished the valves, replaced their packing, and resold them: a process quite distinct from any

dismantling or salvaging of scrap metal. Dinunzio Aff. Ex. D, at 62-63, 85. Jenkins Bros. presents no other evidence that Miller's refurbishing of valves and his removal and replacement of the gaskets and packing material were not intended or reasonably foreseeable uses. All Craft Fabricators, Inc. v. ATC Assoc., Inc., 153 A.D.3d 1159, 1160 (1st Dep't 2017). The only conceivable reason for purchasing valves from a liquidation or facility closing is to refurbish and resell them.

Even though the Jenkins Bros. catalogs predate Miller's injury by 35-40 years or are of unknown date, the catalogs are more probative of the Jenkins Bros. valves' intended or reasonably foreseeable uses. These catalogs, Exhibits A, B, D, and G to the Affirmation in Opposition of plaintiff's attorney, see Zuckerman v. City of New York, 49 N.Y.2d 557, 563 (1980); Aur v. Manhattan Greenpoint Ltd., 132 A.D.3d 595, 595 (1st Dep't 2015); Sela v. Hammerson Fifth Ave., 277 A.D.2d 7, 7 (1st Dep't 2000), are admissible as ancient documents because they are more than 30 years old, self-identifying as Jenkins Bros. catalogs, and not claimed to be fraudulent or invalid. Essig v. 5670 58 St. Holding Corp., 50 A.D.3d 948, 949 (2d Dep't 2008); Szalkowski v. Asbestospray Corp., 259 A.D.2d 867, 868 (3d Dep't 1999). The catalogs show that Jenkins Bros. intended that its valves' gaskets and packing material be replaced to extend its valves' life. E.g., Aff. in Opp'n of Seth A. Dymond Ex. G, at 32. Again, however, even without this rebuttal evidence, Jenkins Bros.' failure to meet its burden to establish its entitlement to

summary judgment on the issue of compliance with its duty to warn Miller is fatal to the motion in the first instance.

IV. CONCLUSION

For all the reasons explained above, New York law governs defendant Jenkins Bros.' motion for summary judgment, and under New York's standard Jenkins Bros. simply fails to meet its burden to establish that Myron Miller never handled valves' components containing asbestos and manufactured, distributed, sold, or specified by Jenkins Bros. for use in its valves. C.P.L.R. § 3212(b). Therefore the court denies the motion.

DATED: June 5, 2018

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.