

<b>Conaway v ABB, Inc.</b>
2019 NY Slip Op 33219(U)
October 28, 2019
Supreme Court, New York County
Docket Number: 190332/2018
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ Justice

PART 13

IN RE: NEW YORK CITY ASBESTOS LITIGATION

PRESTON CONAWAY, JR. and GLENDA CONAWAY,

INDEX NO. 190332/2018

Plaintiffs,

MOTION DATE 10/02/2019

- against -

MOTION SEQ. NO. 002

ABB, INC., et al.,

MOTION CAL. NO.

Defendants.

The following papers, numbered 1 to 9 were read on this motion for summary judgment by Champlain Cable Corporation and Hercules, LLC:

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: [ ] Yes [X] No

Upon a reading of the foregoing cited papers, it is Ordered that Defendants Champlain Cable Corporation and Hercules, LLC's (hereinafter referred to as "defendants") motion for summary judgment pursuant to CPLR §3212 to dismiss plaintiffs' complaint and all cross-claims against it, is denied.

Plaintiff, Preston Conaway Jr., was diagnosed with malignant mesothelioma on July 24, 2018 (Mot. Exh. E, Interrogatory 8). Mr. Conaway was deposed over the course of three days on September, 24, 25 and 26, 2018, and his de bene esse testimony was given on December 6, 2018 (Mot. Exh. F and Opp. Exhs. A and B). It is alleged that Mr. Conaway's exposure to asbestos was from being in the vicinity of workers sawing and fitting defendants' encapsulated anthophyllite asbestos containing Haveg pipe during his work as an electrician at the Olin Corporation's chemical plant in New Jersey for three or four years in the early 1970's, and at the Pennwalt Corporation's chemical plant in New Jersey for one or two years in the mid-1970's (Mot. Exh. F, pgs. 130-132, 135, 138-139, 141-143, 317 and 321).

Mr. Conaway testified that he worked as the only electrician employed at the Olin Corporation. He stated he was responsible for the control room, specifically maintaining, cleaning and repairing controllers and taking care of a boiler. Mr. Conaway testified that he believed he was exposed to asbestos at the Olin Corporation from the plastic Haveg pipe that was designed to withstand acid and chemicals, which was always being cut to fit. Although he did not personally cut the pipe, Mr. Conaway claimed he was exposed to asbestos by being near others using big saws to cut the Haveg pipe (Opp. Exh. A, pgs. 131-136).

He stated that at Pennwalt Corporation he started working as an instrumentation man until the company's electrician was killed, and he took over that job as well. Plaintiff claims that he worked both job titles instrumentation and electrician responsible for maintaining controllers for pumps, motors and switch gears. Mr. Conaway testified that he was exposed to asbestos at Pennwalt Corporation from the controllers and from workers using big saws to cut asbestos containing Haveg pipe. Mr. Conaway stated he was told Haveg pipe had asbestos in it from the workers at the Olin Corporation as they were installing it. He stated the workers at both the Olin Corporation and the Pennwalt Corporation used big saws, circular saws, and band saws, and the sawing would create dust that he walked around in. Mr. Conaway testified that they were always cutting pipe and that this was not an everyday occurrence but that it happened frequently (Opp. Exh. A, pgs. 134-135, 138-144 and 320-321, and Opp. Exh. B, pg. 47-48).

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

Mr. Conaway testified that the pipe was manufactured by Haveg, that he was not referring to it generically because he remembered the name from either the packaging or the delivery truck. He testified that the packaging had the word "Haveg" and a triangle and that the pipes were banded. He described Haveg pipe as "awful hard" with plastic and asbestos in it. He claimed it was heat and chemical resistant. Mr. Conway stated that most of the Haveg pipe at the Olin Corporation was about four to six inches around, cut with a circular saw, and connected to the top of the pumps. He stated that the pipes were about ten feet in length. He remembered the exterior of the pipe came in one of two colors, either black or white with a rough texture. He later recalled the pipes as being dark, and either brown or black (Opp. Exh. A, pgs. 319-326 and Opp. Exh. B, pgs. 46-47). Mr. Conaway remembered seeing the same Haveg pipe at the Pennwalt Corporation and that it was generally the same in appearance as he had observed at the Olin Corporation. He recalled that the pipes at Pennwalt Corporation were treated and about six inches in diameter (Opp. Exh. A, pg. 328 and Opp. Exh. B, pgs. 47-48).

Plaintiffs commenced this action on August 15, 2018 to recover for injuries resulting from Mr. Conaway's exposure to asbestos (Mot. Exh. A and NYSCEF Doc. # 1). Champlain Cable Corporation filed its Verified Answer with cross-claims on October 8, 2018 (Mot. Exh. B). On April 25, 2019 plaintiffs filed the Fourth Amended Verified Complaint adding Hercules LLC as a defendant (Mot. Exh. C). On May 9, 2019 Hercules LLC filed a Verified Answer (Mot. Exh. D).

Defendants now move for summary judgment pursuant to CPLR §3212 to dismiss plaintiffs' complaint and all cross-claims against it. Defendants argue that plaintiffs failed to proffer any expert opinion or other evidence establishing general and specific causation.

To prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (*Alvarez v. Prospect Hospital*, 68 NY 2d 320, 501 NE 2d 572, 508 NYS 2d 923 [1986]). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Jacobsen v. New York City Health and Hospitals Corp.*, 22 NY 3d 824, 11 NE 3d 159, 988 NYS 2d 86 [2014]). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party (*Vega v. Restani Construction Corp.*, 18 NY 3d 499, 965 NE 2d 240, 942 NYS 2d 13 [2012] and *De Lourdes Torres v. Jones*, 26 NY 3d 742, 47 NE 3d 747, 27 NYS 3d 468 [2016]).

Defendants argue that the January 26, 2019 letter report of plaintiffs' expert, Dr. David Y. Zhang, M.D., Ph.D., M.P.H., a physician specializing in pathology and occupational medicine (Mot. Exh. G), does not establish general and specific causation, or that their asbestos containing Haveg pipe product, caused Mr. Conaway's mesothelioma. Dr. Zhang's report summarizes Mr. Conaway's pathology reports, reviews slides and determines with a reasonable degree that "Mr. Conaway has malignant mesothelioma." (Mot. Exh. G). Defendants claim that Dr. Zhang's expert report is hearsay and does not contain references, studies or other reliance materials linking asbestos exposure to the development of mesothelioma.

A defendant cannot obtain summary judgment simply by "pointing to gaps in plaintiffs' proof" (*Ricci v. A.O. Smith Water Products*, 143 A.D. 3d 516, 38 N.Y.S. 3d 797 [1<sup>st</sup> Dept. 2016] and *Koulermos v. A.O. Smith Water Products*, 137 A.D. 3d 575, 27 N.Y.S. 3d 157 [1<sup>st</sup> Dept., 2016]). Regarding asbestos, a defendant must make a prima facie showing that its product did not contribute to the causation of plaintiff's illness (*Comeau v. W.R. Grace & Co. - Conn. (Matter of New York City Asbestos Litigation)*, 216 A.D. 2d 79, 628 N.Y.S. 2d 72 [1<sup>st</sup> Dept., 1995] citing to *Reid v. Georgia - Pacific Corp.*, 212 A.D. 2d 462, 622 N.Y.S. 2d 946 [1<sup>st</sup> Dept., 1995], *Di Salvo v. A.O. Smith Water Products (In re New York City Asbestos Litigation)*, 123 A.D. 3d 498, 1 N.Y.S. 3d 20 [1<sup>st</sup> Dept., 2014] and *O'Connor v. Aerco Intl., Inc.*, 152 A.D. 3d 841, 57 N.Y.S. 2d 766 [3<sup>rd</sup> Dept., 2017]). Defendants must unequivocally establish that Mr. Conaway's level of exposure to their asbestos containing Haveg pipe products was not sufficient to contribute to the development of his mesothelioma (*Berensmann v. 3M Company (Matter of New York City Asbestos Litigation)*, 122 A.D. 3d 520, 997 N.Y.S. 2d 381 [1<sup>st</sup> Dept., 2014]).

Defendants attempt to “point to gaps” in plaintiffs’ evidence, fails to establish a prima facie basis for summary judgment. The initial burden of proof rests with the Defendants. It is only after defendants tender sufficient evidence to make a prima facie showing of lack of causation that the burden shifts back to the plaintiffs to provide evidence-including their experts’ reports- to raise any issues of fact (See *Alvarez v. Prospect Hospital*, 68 NY 2d 320 at 324).

Defendants submit the May 24, 2019 report of Dr. Jennifer Pierce, M.S., Ph.D., a doctor of Industrial Hygiene with a masters degree in toxicology as evidence in support of their prima facie case on causation (Mot. Exh. H).

Plaintiffs in opposition provide an additional expert report dated July 18, 2019 of Dr. Jacqueline Moline, M.D., M.Sc., F.A.C.P., F.A.C.O.E.M., an internal and occupational medicine specialist, to establish causation (Opp. Exh. E). Defendants argue that plaintiffs provided Dr. Moline’s expert report for the first time in opposition to this motion and they were unable to address the report in its arguments. Defendants would first have to make a prima facie case before addressing alleged defects in Dr. Moline’s report. Defendants argue that the report was not exchanged prior to the filing of this summary judgment motion or as part of the plaintiffs’ CPLR §3101(d) expert witness discovery. Plaintiffs’ failure to exchange Dr. Moline’s report earlier, is not fatal to the opposition of this summary judgment motion. Furthermore, defendants fail to show any prejudice because they annexed Dr. Pierce’s supplemental expert report to the reply papers (Reply Exh. A) (see CPLR §3212(b) and *Johnson v. 675 Coster Street Housing Development Fund*, 161 AD 3d 635, 77 NYS 3d 406 [1<sup>st</sup> Dept., 2018]).

Defendants argue that summary judgment is warranted under *Parker v Mobil Oil Corp.*, 7 NY3d 434, 824 NYS2d 584, 857 NE2d 1114 [2006] and *In the Matter of New York City Asbestos Litigation (Juni)*, 32 N.Y. 3d 1116, 116 N.E. 3d 75, 91 N.Y.S. 3d 784 [2018], because plaintiffs are unable to establish general and specific causation. Defendants contend that the expert reports of Dr. Pierce are sufficient to establish lack of causation (Mot. Exh. H and Reply Exh. A).

#### General Causation:

In toxic tort cases, expert opinion must set forth (1) a plaintiff’s level of exposure to a toxin, and (2) whether the toxin is capable of causing the particular injuries plaintiff suffered to establish general causation (*Parker v. Mobil Oil Corp.*, 7 NY3d 434, 448, supra).

Defendants argue that unlike amphibole asbestos, no causal relationship exists between the encapsulated anthophyllite asbestos in their Haveg pipe products and the development of Mr. Conaway’s mesothelioma, eliminating any general causation.

Dr. Pierce’s May 24, 2019 report states that there is no causal relationship between encapsulated anthophyllite asbestos in defendants’ Haveg pipe products and Mr. Conaway’s mesothelioma. She claims that the chemical and physical properties and dimensions of asbestos mineral fibers greatly influence asbestos-related disease, and cites to a 2003 United States Environmental Protection Agency (EPA) workgroup as concluding that chrysotile asbestos fibers have far less carcinogenic potential than amphibole asbestos fibers like amosite and crocidolite, or mixed exposure. Dr. Pierce cites to private studies as showing that the low iron content of anthophyllite asbestos fibers results in less likelihood of mesotheliogenic potency, which makes it similar to chrysotile fibers, when compared to iron rich crocidolite and amosite (Mot. Exh. H., pgs. 14-15). Dr. Pierce cites to a 2002 expert panel from the Agency for Toxic Substances and Disease Registry (ATSDR) as determining that fibers shorter than 5µm are unlikely to cause cancer in humans. She cites to a 2001 EPA determination that the width of asbestos fiber impacts respirability and the ability to “penetrate the aveolar region upon inhalation.” Dr. Pierce states that it is well established that anthophyllite fibers have a width that exceeds other asbestos fiber types, which is a critical factor influencing its relative potency (Opp. Exh. H, pgs. 16-18 and 20). She concludes that “the weight of scientific evidence supports that the mesotheliogenic potency of anthophyllite exceeds that of chrysotile, but is lower than that of other amphiboles”(Opp. Exh. H, pg. 20).



Dr. Pierce states that the 1971 Occupational Safety and Health Administration (OSHA) standards for Permissible Exposure Limit (PEL) as 12 f/cc as an 8 hour Time Weighted Average (TWA). She states that in 1972 OSHA made 5 f/cc the permanent PEL and 10 f/cc the ceiling concentration. Dr. Pierce claims that more recently OSHA adopted 0.1 f/cc as an 8 hour TWA for asbestos, with an incursion limit of 1.0 f/cc for a 30 minute exposure duration (OSHA 1994 and 1999). She cites to OSHA's 1972 standards for low release of fibers from gaskets and exemption applying to encapsulated products from asbestos labeling requirements "under the condition that the product will not release fibers during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation," and states that a similar exemption exists today (Opp. Exh. H, pgs. 21-22). Dr. Pierce concludes that Mr. Conaway's actual exposure to asbestos over his working lifetime from encapsulated anthophyllite asbestos in defendants' Haveg pipe products is between 173 and 1,500 fold below the cumulative occupational limit that is acceptable in the united States under OSHA standards. She further concludes that Mr. Conaway's mesothelioma is most likely caused by exposure to amphibole containing insulation products (Opp. Exh. H, pgs. 29 and 32).

Plaintiffs in opposition rely on Dr. Moline's July 18, 2019 affidavit and report. Dr. Moline states that privately conducted epidemiological studies and reports establish that all asbestos fiber types can cause mesothelioma. Dr. Moline specifically cites to The World Health Organization (WHO), the EPA, the ATSDR and OSHA as establishing that all asbestos fiber types - including anthophyllite - can cause mesothelioma. Dr. Moline states that multiple periods, types or sources of asbestos exposure occurring approximately ten years or more before the date of diagnosis of mesothelioma contributes to the total dose and risk of developing mesothelioma. Dr. Moline also states that the OSHA PEL of 0.1 f/cc is not a "safe level" below which mesothelioma will not occur. She cites to OSHA estimates that even at exposures below 0.1 f/cc an excess of 3.4 deaths per 1000 will occur, mostly from cancer in the chest, including malignant mesothelioma. Dr. Moline also cites to Champlain Cable interrogatories stating that Haveg plastic pipe contained a resin layer of 50% anthophyllite asbestos by weight or 40% crocidolite asbestos by weight (in Chemtite) and that both forms of asbestos are more potent in terms of carcinogenicity. Dr. Moline refers to private studies assessing the release of asbestos fibers from work-place simulations of Haveg pipe and other manufacturer's asbestos containing pipe products. Dr. Moline concludes that Mr. Conaway's exposure to dust from work performed on defendants' asbestos containing Haveg pipe products constituted a dose capable of causing malignant mesothelioma (Opp. Exh. E).

Defendants argue that Dr. Pierce established a prima facie case as to general causation under *Parker v. Mobil Oil Corp.*, 7 NY3d 434, 824 NYS2d 584, 857 NE2d 1114 [2006] by stating generally accepted standards within the relevant community, of scientists and scientific organizations, and establishing no causal connection between anthophyllite asbestos fibers in defendants' Haveg pipe products and Mr. Conaway's mesothelioma. Defendants claim that Dr. Moline failed to raise any issue of fact or specifically identify anthophyllite asbestos fibers as causing mesothelioma as part of the evaluation of Mr. Conaway's hypothetical risk. Defendants submit Dr. Pierce's supplemental report dated August 8, 2019, with the reply papers (Reply Exh. A). Dr. Pierce's August 8, 2019 report does not change her conclusions or the determinations stated in her May 24, 2019 report and merely points to flaws in Dr. Moline's report, challenging the private studies Dr. Moline relies on. Dr. Moline's report relies on some of the same scientists and scientific organizations, such as OSHA and the EPA, as Dr. Pierce in support of the arguments on general causation.

Summary judgment is a drastic remedy that should not be granted where conflicting affidavits cannot be resolved (*Millerton Agway Cooperative v. Briarcliff Farms, Inc.*, 17 N.Y. 2d 57, 268 N.Y.S. 2d 18, 215 N.E. 2d 341 [1966] and *Ansah v. A.W.I. Sec. & Investigation, Inc.*, 129 A.D. 3d 538, 12 N.Y.S. 3d 35 [1<sup>st</sup> Dept., 2015]). Conflicting testimony raises credibility issues that cannot be resolved on papers and is a basis to deny summary judgment (*Messina v. New York City Transit Authority*, 84 A.D. 3d 439, 922 N.Y.S. 2d 76 [2011]).

Defendants' expert Dr. Jennifer Pierce relies on recognized studies and reports to establish that there is no causal relationship between anthophyllite asbestos in their Haveg pipe products and mesothelioma. Plaintiffs' expert, Dr. Jacqueline Moline, M.D. also relies on studies and reports in part from the same scientific organizations, OSHA, EPA and the WHO, to establish that Mr. Conaway's exposure to anthophyllite asbestos fibers can cause mesothelioma. These conflicting affidavits raise credibility issues, and issues of fact on general causation.

#### Specific Causation:

Defendants argue that Mr. Conaway's second hand exposure to dust from workers sawing their anthophyllite asbestos containing Haveg pipes products did not produce breathable dust to a level sufficient to cause Mr. Conaway's mesothelioma, and plaintiffs are unable to establish specific causation.

The Court of Appeals has enumerated several ways an expert might demonstrate specific causation. For example, "exposure can be estimated through the use of mathematical modeling by taking a plaintiff's work history into account to estimate the exposure to a toxin;" "[c]omparison to the exposure levels of subjects of other studies could be helpful, provided that the expert made a specific comparison sufficient to show how the plaintiff's exposure level related to those of the other subjects" (Parker v. Mobil Oil Corp., 7 NY3d 434, 448, 824 NYS2d 584, 857 NE2d 1114 [2006]). In toxic tort cases, an expert opinion must set forth "that the plaintiff was exposed to sufficient levels of the toxin to cause such injuries" to establish special causation (see Parker v. Mobil Oil Corp., 7 NY3d 434, supra at 448]). In turn, In re New York City Abestos Litigation, 148 AD3d 233, 48 NYS3d 365 [1st Dept. 2017] states that the standards set by *Parker* and *Cornell* are applicable in asbestos litigation.

In making a comparative exposure analysis, Dr. Pierce assesses Mr. Conaway's occupational history and his exposures to various asbestos containing products, including defendants' anthophyllite asbestos Haveg pipe products. Her report identifies similarities between chrysotile asbestos fibers and anthophyllite asbestos fibers, and distinguishes the anthophyllite fibers from amphibole asbestos fibers. She states that Haveg products manufactured between 1940 and 1979 "reportedly" contained 50% acid-digested anthophyllite asbestos filler by weight that was "completely encapsulated in furfuryl alcohol resin." (Mot. Ex. H, pgs.19). She cites to private studies that determined the potency of anthophyllite asbestos fibers to be less than crocidolite, amosite and tremolite, but more potent than chrysotile. She also cites to private studies finding that there is lower causation of asbestos disease from encapsulated products. Dr. Pierce identifies two published studies evaluating potential exposures associated with manipulation of the moset resins, the first involves grinding - using a power driven hand grinder with an abrasive disk - and the second involved band sawing, belt sawing, drilling press and sweep clean-up of encapsulated chrysotile asbestos fibers (Mot. Ex. H, pg. 23).

Dr. Pierce provides a table reflecting reported fiber concentrations associated with the manipulation of encapsulated asbestos containing phenolic molded products (Mot. Ex. H, pg. 25). She refers to studies evaluating bystander exposures for people starting at 1-5 feet away from the source with airborne concentrations at approximately 50%, reducing to 35% at five to ten feet, and less than 10% for ten to thirty feet away. Dr. Pierce determined that Mr. Conaway did not personally cut the Haveg pipe and that he was occasionally in the vicinity of others which would result in far lower exposure than the workers directly performing work. Using formulas that incorporated factors such as intensity, duration and frequency of exposure, Dr. Pierce estimates Mr. Conaway's upper-bound and lower exposure. Dr. Pierce concludes that Mr. Conaway's total hypothetical exposure to asbestos fibers associated with defendants' Haveg products is between 0.003 f/cc-years and 0.026 f/cc-years which is far below that associated with OSHA PEL and cumulative exposure levels associated with increased risk of mesothelioma. She further concludes that to the extent Mr. Conaway's mesothelioma is associated with asbestos exposure it is more likely than not due to exposure to amphibole containing asbestos insulation products he was exposed to during service in the United States Navy and during employment as a shipyard electrician (Mot. Ex. H)

Plaintiff's expert, Dr. Moline's July 18, 2019 report relies on private studies and reports of testing done using a table saw on Chemtite pipe which contains 40% crocidolite asbestos by weight which had median air concentrations of 11.8 million particles per cubic foot (Opp. Exh. E). She also refers to studies done on Bonstrand pipe, a Haveg competitor pipe, containing a resin layer of 30% crocidolite asbestos by weight that had sawing result in up to 60 fibers/cc in the operator's breathing zone and 3.8 fibers/cc in the area sample, and 2.9 fibers/cc in an area sample measuring ten (10) feet away from the sawing operation. She refers to a private study finding that sawing of fiberglass pipe with a resin layer containing just 2% to 3% asbestos resulted in asbestos air concentrations of 0.1% fibers/cc. Dr. Moline summarizes that all of the studies indicate exposures to amphibole asbestos at levels that are known to be capable of causing mesothelioma were generated on a regular basis. Dr. Moline summarizes that the various studies she cites that assessed the frequency, regularity and duration of the work performed by Mr. Conaway in the immediate presence of the workers who were sawing the defendants' Haveg chemical resistant pipe in the 1970's, are conservatively comparative to the actual exposure. She concludes that Mr. Conaway's dosage to asbestos from defendants asbestos containing Haveg pipe products is capable of causing mesothelioma (Opp. Exh. E).

Dr. Pierce's August 8, 2019 report states that Dr. Moline failed to rely on her cumulative exposure formula and related factors, creating a defect, and that the studies relied on do not specifically address defendants' anthophyllite asbestos containing pipe products but those of other manufacturer's products. However, Dr. Pierce also relied on studies related to other products containing chrysotile asbestos and based her findings, in part, on an exposure study that she conceded did not include the duration of testing on the sample. The sawing in the studies relied on by Dr. Pierce was not exactly the same as Mr. Conaway described in his testimony. Dr. Moline does not have to use the same formula as used by Dr. Pierce under *Parker v. Mobil Oil Corp.*, 7 NY3d 434, supra. Dr. Pierce also claims that Dr. Moline did not assess the differences in the encapsulated natures of the asbestos that was present or the formulation of the resin based binders in the product. However this is not mandated to raise an issue of fact on specific causation (Reply Exh. A).

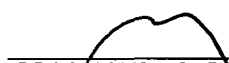
Plaintiffs are not required to show the precise causes of their injury, only "facts and conditions from which defendants' liability may be reasonably inferred." The opposition papers have provided sufficient proof to create an inference as to specific causation from exposure to defendants' asbestos containing Haveg pipe products (*Reid v Ga.- Pacific Corp.*, 212 A.D. 2d 462, 622 N.Y.S. 2d 946 [1st Dept. 1995] and *Oken v A.C. & S. (In re N.Y.C. Asbestos Litig.)*, 7 A.D. 3d 285, 776 N.Y.S. 2d 253 [1st Dept. 2004]).

Mr. Conaway's deposition testimony, when combined with the other admissible evidence provided by plaintiffs, including defendants' responses to interrogatories conceding the existence of encapsulated anthophyllite asbestos in their Haveg pipe products, creates "facts and conditions from which [defendants'] liability may be reasonably inferred" (*Reid v Ga.- Pacific Corp.*, 212 AD 2d 462, supra). Giving the plaintiffs the benefit of all favorable inferences as the non-moving party, they have sufficiently raised issues of fact, warranting denial of summary judgment.

ACCORDINGLY, it is ORDERED that Defendants Champlain Cable Corporation and Hercules, LLC's motion for summary judgment pursuant to CPLR §3212 to dismiss plaintiffs' complaint and all cross-claims against it is denied.

ENTER:

Dated: October 28, 2019

  
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MANUEL J. MENDEZ  
J.S.C. MANUEL J. MENDEZ  
J.S.C.

Check one:  FINAL DISPOSITION     NON-FINAL DISPOSITION  
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