

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

SUPERIOR COURT

(FILED – NOVEMBER 5, 2007)

JOSEPH LAPOINTE AND  
YVETTE LAPOINTE

v.

3M COMPANY, et al.

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C.A. No. PC 06-2418

**DECISION**

**GIBNEY, J.** Before the Court is defendant Parker Boiler Corporation’s (Parker) Motion for Summary Judgment pursuant to Super. R. Civ. P. 56. The Plaintiffs, Joseph LaPointe (Mr. LaPointe), and his wife, Yvette LaPointe (collectively, “Plaintiffs”), object to the motion.

**Facts/Travel**

On May 3, 2006, Plaintiffs filed a complaint in Providence County Superior Court against various defendants alleging, inter alia, that Mr. LaPointe suffered asbestos-related injuries as a result of his occupational exposure to asbestos and asbestos-containing materials during his career as a boiler and furnace repairman. He alleges that those exposures caused him to develop malignant mesothelioma, which was diagnosed in 2005. Mrs. LaPointe alleges loss of consortium stemming from Mr. LaPointe’s injuries.

The Plaintiffs assert that some of the asbestos-containing products that caused Mr. LaPointe’s injuries were manufactured, distributed, or sold by Parker. Parker contends that Plaintiffs have no reasonable expectation of identifying at trial any asbestos-containing products that it sold, manufactured or distributed. The Plaintiffs object, contending that the motion is

premature; instead, they move the Court to compel Parker to fully respond to the Court-Approved Master Interrogatories and Requests for Production.

Mr. LaPointe worked for forty years as a boiler and furnace repairman. During that period, he serviced both commercial and residential boilers and furnaces, some of which allegedly contained asbestos. Although he recalls many of the locations at which he worked, given the length of his career and the thousands of boilers and furnaces upon which he worked, he is unable to recall all of them. During the course of discovery, Mr. LaPointe obtained the Massachusetts Commercial Boiler Registry (Registry), which details existing boilers located at commercial premises. The Registry does not, however, list the locations of residential boilers. Mr. LaPointe specifically remembers servicing two of the listed commercial premises where Parker boilers were present. Currently, the Parker boilers at these locations do not contain asbestos.

### **Standard of Review**

It is axiomatic that “[s]ummary judgment is a proceeding in which the proponent must demonstrate by affidavits, depositions, pleadings and other documentary matter . . . that he or she is entitled to judgment as a matter of law and that there are no genuine issues of material fact.” Palmisciano v. Burrillville Racing Association, 603 A.2d 317, 320 (R.I. 1992). During a summary judgment proceeding, “the [C]ourt does not pass upon the weight or credibility of the evidence but must consider the affidavits and other pleadings in a light most favorable to the party opposing the motion.” Id. at 320.

Moreover, the Court “must look for factual issues, not determine them. The [court’s] only function is to determine whether there are any issues involving material facts.” Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981). The Court’s purpose during the summary judgment

procedure is always “issue finding, not issue determination.” Glottone v. Ethier, 870 A.2d 1022, 1028 (R.I. 2005).

### **Analysis**

Parker maintains that its motion for summary judgment should be granted because Mr. LaPointe has been unable to identify his contact with any asbestos-containing products that were sold, manufactured or distributed by Parker. The Plaintiffs respond by asserting that they have been unable to discover any such information due to Parker’s failure to fully respond to the Court-Approved Master Interrogatories and Requests for Production.

Super. R. Civ. P. 26 (b) establishes the scope of discovery in a civil action. It provides:

“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Super. R. Civ. P. 26(b)(1).

“Rule 37(d) of the Superior Court Rules of Civil Procedure affords a trial justice wide discretion to enforce its discovery orders . . . .” The Travelers Ins. Co. v. Builders Resource Corp., 785 A.2d 568, 569 (R.I. 2001); see also State v. LaChapelle, 638 A.2d 525, 531 (R.I. 1994) (“The duty to make an honest and candid response to discovery requests should not be diluted by semantic gymnastics.”).

Relying upon the Court-Approved Master Interrogatories, Plaintiffs asked Parker questions such as whether it had manufactured or distributed any products containing asbestos fibers from 1930 to the present, and if so, the trade or brand name of such products, their

chemical composition, and whether they were accompanied by any kind of written health warnings. In its answers, Parker repeatedly responded in the following manner:

“The defendant objects to this Interrogatory on the grounds that it is unduly burdensome and not reasonably likely to lead to the discovery of admissible evidence in view of the facts adduced during discovery, including in particular the plaintiff’s deposition testimony concerning his work with boilers from a variety of manufacturers. In this regard, the plaintiff has testified that he reviewed the Massachusetts Boiler Registry in order to isolate specific locations where he may have serviced boilers throughout his career. The plaintiff recognized two locations, 1068 Slade Street and 994 Jefferson Street, Fall River, Massachusetts as locations where he may have serviced boilers at some point in his career, though he could not provide any information about when he was at these locations. The Massachusetts Boiler Registry indicates that a Parker Boiler Co. boiler is located at these addresses. The plaintiff was unable to confirm whether a Parker Boiler Co. boiler was present when he was at these locations, and has no memory of ever working on or around a Parker Boiler Co. boiler. Moreover, the Parker Boiler Co. boilers that are present at these locations were manufactured in 1986 and 1991 respectively, and neither contain asbestos.”

The Plaintiffs objected on grounds that such answers are limited and unresponsive. The Court agrees, and it grants Plaintiffs time for more discovery.

Mr. LaPointe’s career spanned forty years and involved service calls to both commercial and residential properties. The Registry only lists boilers that currently exist and that are located in commercial properties. It does not list boilers in residential properties, nor does it list boilers in commercial properties that previously have been removed or replaced. It is conceivable that Mr. LaPointe serviced Parker-manufactured boilers that have since been removed from the listed commercial properties, or that he serviced Parker boilers in residential properties. However, Plaintiffs have no way of finding out such information until Parker gives responsive answers to the Court-Approved Master Interrogatories and Requests for Production. See The Travelers Ins. Co. v. Builders Resource Corp., 785 A.2d 568, 569 (R.I. 2001).

### **Conclusion**

In view of the foregoing, the Court concludes that the Motion for Summary Judgment is “premature” and should be denied. The Court orders Parker to provide more responsive answers to the Court-Approved Master Interrogatories and Requests for Production within fourteen days from the filing date of this Decision.

Counsel shall submit an appropriate order for entry.