IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MICHAEL FARROW and LIDIA FARROW,	)	
Appellants,	)	DIVISION ONE
	)	No. 62996-4-I
v.	)	(Consol. with No. 63554-9-I)
ALFA LAVAL, INC. (sued individually and as successor-in-interest to THE DELAVAL SEPARATOR COMPANY and SHARPLES CORPORATION); ANCHORD/DARLING VALVE COMPANY; AURORA PUMP COMPANY; BUFFALO PUMPS, INC. (sued individually and as successor-in-interest to BUFFALO FORGE COMPANY); BW/IP INTERNATIONAL, INC. (sued individually and as successor-in-interest to BYRON JACKSON PUMP COMPANY); CLEAVER-BROOKS, INC. f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION (sued individually and as successor-in-interest to DAVIS ENGINEERING COMPANY); COLTEC INDUSTRIES, INC. (sued individually and as successor-in-interest to FAIRBANKS MORSE ENGINE); CRANE CO. (sued individually and as successor-in-interest to COCHRANE	)	UNPUBLISHED OPINION

CORPORATION and CHAPMAN VALVE CO.); CROSBY VALVE, INC.; ELLIOTT TURBOMACHINERY COMPANY a/k/a ELLIOTT COMPANY; FAIRBANKS MORSE PUMP CORPORATION; FLOWSERVE US INC. (sued individually and as successor-in-interest to DURCO INTERNATIONAL, BYRON JACKSON PUMP COMPANY, ALDRICH and EDWARD VALVE & MANUFACTURING); FMC CORPORATION (sued individually and as successor-in-interest to PEERLESS PUMP COMPANY); FRYER-KNOWLES, INC.; FRYER-KNOWLES, INC. A WASHINGTON CORPORATION; GARLOCK SEALING TECHNOLOGIES, L.L.C. (sued individually and as successor-in-interest to GARLOCK, INC.); GOULDS PUMPS, INC.; IMO INDUSTRIES, INC. (sued individually and as successor-in-interest to DELAVAL TURBINE, INC. and C.H. WHEELER); ITT INDUSTRIES, INC. (sued individually and as successor-in-interest to BELL & GOSSETT, KENNEDY VALVE MANUFACTURING CO., KENNEDY VALVE, INC., and KENNEDY VALVE CO.); INVENSYS SYSTEMS, INC. (sued individually and as successor-in-interest to EDWARD VALVE & MANUFACTURING); J.T. THORPE & SON, INC.; JOHN CRANE, INC.; LESLIE CONTROLS, INC.; MCWANE, INC. (sued individually and as successor-in-interest to KENNEDY VALVE MANUFACTURING COMPANY, KENNEDY VALVE, INC., and KENNEDY VALVE COMPANY); METALCLAD INSULATION CORPORATION; SEPCO

FILED: August 8, 2011

CORPORATION; STERLING FLUID SYSTEMS, INC. f/k/a PEERLESS PUMPS CO.; TYCO FLOW CONTROL, INC. (sued individually and as successor-in-interest to THE LUNKENHEIMER COMPANY, and HANCOCK VALVES); WARREN PUMPS, L.L.C. (sued individually and as successor-in-interest to QUIMBY PUMP COMPANY); WEIR VALVES & CONTROLS USA, INC. f/k/a ATWOOD & MORRILL; THE WILLIAM POWELL COMPANY; YARWAY CORPORATION,

Respondents,

BEAIRD CO.; CAMERON INTERNATIONAL CORPORATION f/k/a COOPER CAMERON CORPORATION (sued individually and as successor-in-interest to COOPER-BESSEMER CORPORATION); CARRIER CORPORATION; CLA-VAL CO.; CRANE ENVIRONMENTAL, INC. (sued individually and as successor-in-interest to COCHRANE CORPORATION); EATON HYDRAULICS, INC. (sued individually and as successor-in-interest to VICKERS, INC.); E.J. BARTELLS SETTLEMENT TRUST; GENERAL MOTORS CORPORATION (sued individually and as successor-in-interest to HARRISON THERMAL SYSTEM and HARRISON RADIATOR); HARDIE-TYNES, L.L.C. (sued individually and as successor-in-interest to HARDIE-TYNES MANUFACTURING COMPANY); HOKE INCORPORATED; HOPEMAN BROTHERS, INC.; HOPEMAN BROTHERS MARINE INTERIORS,

L.L.C. a/k/a HOPEMAN BROTHERS, INC.; M. SLAYEN AND ASSOCIATES, INC.; METROPOLITAN LIFE INSURANCE COMPANY; PLANT INSULATION COMPANY; RAPID-AMERICAN CORPORATION (sued as successor-in-interest to PHILIP CAREY MANUFACTURING CORPORATION); SB DECKING, INC. f/k/a SELBY BATTERSBY & CO.; SYD CARPENTER, MARINE CONTRACTOR, INC.; THOMAS DEE ENGINEERING CO., INC.; TRIPLE A MACHINE SHOP, INC., and DOES 1-450 INCLUSIVE,

Defendants.

Schindler, J. — Michael Farrow and his spouse Lidia Farrow (Farrow) filed a personal injury lawsuit against a number of manufacturers and suppliers of asbestos-containing products used on United States Navy vessels at the Puget Sound Naval Shipyard (PSNS).[1] In an attempt to avoid removal to federal court, the complaint disclaims "any cause of action or recovery for any injuries caused by exposure to asbestos dust that occurred in a federal enclave, which expressly excludes U.S. Navy vessels." The trial court ruled on summary judgment that the language of the disclaimer was unambiguous and meant that Farrow waived all claims from asbestos exposure that occurred at PSNS. In the linked case, Abbay v. Aurora Pump Co., No. 62399-1-I, we held that because the exact same disclaimer language is ambiguous and

[1] Michael Farrow died in May of 2008. Nonetheless, we refer to the plaintiffs collectively as Farrow. For simplicity and clarity, we refer to the numerous manufacturers and suppliers as the respondents.

susceptible to two reasonable interpretations, the plaintiff was entitled to clarify the meaning of the disclaimer in the written response filed in opposition to summary

judgment. We reverse the dismissal of Farrow's lawsuit, and remand.[2]

FACTS

Michael Farrow initially filed his personal injury lawsuit against numerous manufacturers and suppliers of asbestos-containing products used on U.S. Navy ships at the PSNS in California state court. Common law tort actions arising out of incidents occurring in a federal enclave, places where the federal government has exclusive jurisdiction over the subject matter, are treated as raising federal questions and are therefore subject to removal to federal court. In an attempt to prevent removal to federal court, the complaint contains the following disclaimer:

> Plaintiffs hereby disclaim any cause of action or recovery for any injuries caused by any exposure to asbestos dust that occurred in a federal enclave, which expressly excludes U.S. Navy vessels.

After the California court dismissed the lawsuit based on forum non conveniens, Farrow filed a complaint in King County Superior Court against the same manufacturers and suppliers and included the exact same disclaimer. The lawsuit alleges claims

[2] Two of the respondents in this matter, Garlock Sealing Technologies and Leslie Controls, have filed petitions for relief pursuant to chapter 11 of the federal bankruptcy code. Garlock has initiated bankruptcy proceedings in United States Bankruptcy Court for the Western District of North Carolina, case no. 10-BK-31607; and Leslie has initiated proceedings in the United States Bankruptcy Court for the District of Delaware, case no. 10-12199. "The filing of a bankruptcy petition creates a bankruptcy estate, which is protected by an automatic stay of actions by all entities to collect or recover on claims." In re Palmdale Hills Prop., LLC, 423 B.R. 655, 663 (B.A.P. 9th Cir. 2009) (citing 11 U.S.C. §§ 541(a) and 362(a)). In addition, the United States Bankruptcy Court for the Western District of North Carolina has issued an order of preliminary injunction staying all pending litigation against Garlock pursuant to 11 U.S.C. section 362(a). See In re Garlock Sealing Techs LLC, Ch. 11 Case No. 10-BK-31607, Adversary Proceeding No. 10-03145, slip op. at 6–10 (W.D.N.C. June 21, 2010). Accordingly, all proceedings in this matter against Garlock and Leslie are stayed. However, the automatic stay provision, 11 U.S.C. section 362(a), does not apply to suits against non-debtors and does not stay proceedings against a debtor's co-respondents and co-defendants in multi-defendant litigation. See In re Matter of Johns-Manville Corp., 99 Wn.2d 193, 196, 660 P.2d 271 (1983); In re Excel Innovations, Inc., 502 F.3d 1086, 1095 (9th Cir. 2007); Ingersoll-Rand Fin. Corp. v. Miller Min. Co., 817 F.2d 1424, 1427 (9th Cir. 1987); In re Related Asbestos Cases, 23 B.R. 523, 528–30 (N.D. Cal. 1982). Therefore, our decision shall take immediate effect against all parties in this matter other than Garlock and Leslie.

under state law for personal injury damages from exposure to asbestos-containing products used when Farrow worked on U.S. Navy ships at PSNS from 1953 to 1974. The respondents did not seek to remove the case to federal court.

Following discovery, the respondents moved for summary judgment. The respondents argued that the relative clause—"which expressly excludes U.S. Navy vessels"—modifies only the antecedent noun "federal enclave." Based on their interpretation of the disclaimer, the respondents claimed that as a matter of law, PSNS, in its entirety, constitutes a federal enclave. In support of the contention that PSNS is a federal enclave, the respondents relied on the statutory scheme governing the federal government's acquisition of certain areas comprising PSNS and submitted numerous exhibits to show PSNS was a federal enclave.

In the written response in opposition to summary judgment, Farrow asserted that the relative clause beginning with "which" does not refer only to the antecedent noun "federal enclave," but instead refers to the entire antecedent phrase or clause. Citing to the trial court's memorandum decision in Abbay noting that the wording of the disclaimer is ambiguous, Farrow argued that he was entitled to clarify the meaning of the disclaimer. Farrow then clarifies that the language "which expressly excludes U.S. Navy vessels" excludes causes of action from his exposure to asbestos while working on Navy ships in dry dock or moored at PSNS. The brief states, in pertinent part, "all causes of action for injuries caused by asbestos exposure occurring in a federal enclave except those causes of action for injury caused by asbestos exposure that

occurred onboard naval vessels docked or moored at a federal enclave." Farrow also explained that "removal to federal court would have substantially delayed plaintiffs' claim, but would not have been fatal to the claim. That is because the claim would still exist in federal court."[3]

The trial court ruled that the disclaimer was unambiguous and because PSNS in its entirety is a federal enclave, the court dismissed the lawsuit.[4] Farrow appeals.

We review a trial court's order granting summary judgment de novo. Margola Assocs. v. City of Seattle, 121 Wn.2d 625, 634, 854 P.2d 23 (1993). Accordingly, our review is confined to "the evidence—and only that evidence—in the record before the trial court when the summary judgment motion and any responsive memoranda were filed." Boguch v. Landover Corp., 153 Wn. App. 595, 608, 224 P.3d 795 (2009).

The moving party "bears the burden of demonstrating there is no genuine dispute as to any material fact." Versuslaw, Inc. v. Stoel Rives, L.L.P., 127 Wn. App. 309, 319, 111 P.3d 866 (2005).[5] In determining whether a genuine issue of material fact exists, we "must view all facts and reasonable inferences in the light most favorable to the nonmoving party." Versuslaw, 127 Wn. App. at 320. Thus, "[t]he moving party is held to a strict standard. Any doubts as to the existence of a genuine issue of material fact is resolved against the moving party." Atherton Condo. Apartment-Owners Ass'n

[3] Consistent with the clarification in the brief, Farrow's attorney also submitted a declaration clarifying the meaning of the disclaimer.

[4] The final judgment of dismissal incorporates the trial court's memorandum decision in the Abbay case.

[5] The respondents contend that Farrow bears the burden of showing that the disclaimer does not apply to all possible causes of action. We disagree. As the moving parties on summary judgment, the respondents had the burden of showing that the disclaimer applied as to all of Farrow's causes of action.

Bd. of Dirs. v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

Farrow contends that the trial court erred in concluding the disclaimer was unambiguous and disregarding the clarification he made in his written pleadings as to the meaning of the disclaimer. We agree.

Preliminarily, Farrow and the respondents disagree about the use of the word "which" in the disclaimer. Both parties rely on dictionary explanations. However, those explanations support Farrow's contention that the disclaimer is unclear. For example, Webster's Third New International Dictionary 2603 (Unabridged ed. 1993) explains that the word "which" is used to "introduce a nonrestrictive relative clause and to modify a noun in that clause and to refer together with that noun to a word or word group in a preceding clause or to an entire preceding clause or sentence or longer unit of discourse."[6] The rules of grammar do not require interpreting the relative clause "which expressly excludes U.S. Navy vessels" as applying only to the last antecedent noun, "federal enclave," as opposed to the disclaimer itself. Accordingly, we conclude the disclaimer is ambiguous.

As the trial court noted in Abbay, the disclaimer can be read to mean that either (1) Farrow is claiming that exposure to asbestos that occurred on a vessel cannot be considered as having occurred in a federal enclave, or (2) that the scope of the disclaimer does not apply to claims from asbestos exposure while working on Navy ships. Because the words used in the disclaimer are susceptible to two reasonable interpretations, Farrow was entitled to clarify the intended meaning of the disclaimer.

[6] (Emphasis added.)

"[I]nitial pleadings which may be unclear may be clarified during the course of summary judgment proceedings." State v. Adams, 107 Wn.2d 611, 620, 732 P.2d 149 (1987); see also Adams v. King County, 164 Wn.2d 640, 657–58, 192 P.3d 891 (2008) (reaffirming principle permitting clarification of unclear pleadings). Language is ambiguous, and therefore unclear, if it is "'susceptible to two or more reasonable interpretations.'" Cf. Homestreet, Inc. v. Dep't of Revenue, 166 Wn.2d 444, 452, 210 P.3d 297 (2009) (quoting State v. Hahn, 83 Wn. App. 825, 831, 924 P.2d 392 (1996)).

In his brief in opposition to summary judgment, Farrow clarifies that he disclaimed all state law causes of action arising out of asbestos exposure that occurred in a federal enclave except for causes of action arising out of asbestos exposure that occurred in or on vessels, without regard to whether PSNS is a federal enclave.[7]

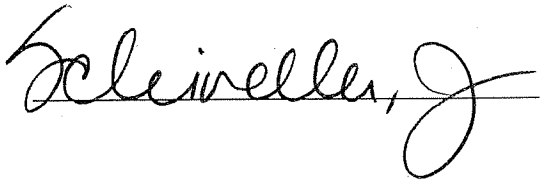
---

[7] In his declaration, Farrow's attorney explained:

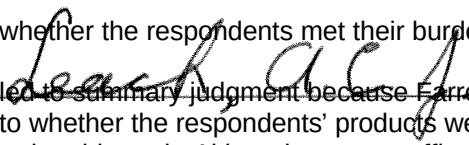
> Prior to reviewing and signing the complaint, I was aware that there was a split of authority, in the asbestos context, as to whether naval vessels being repaired in a federal enclave were part of a federal enclave. I understood that much, but not all of Mr. Farrow's asbestos exposure was aboard ships being repaired at Puget Sound Naval Shipyard ("PSNS"), and I believed a court might concluded that PSNS was a federal enclave.
>
> . . . I was hopeful, but not certain that a court would conclude that naval ships docked at a federal enclave were not part of a federal enclave. My intent in including the first sentence in paragraph 6 to the Farrow complaint was to disclaim all causes of action for injuries caused by asbestos exposure occurring in a federal enclave except those causes of action for injury caused by asbestos exposure that occurred onboard naval vessels docked or moored at a federal enclave. By making such a limited disclaimer, I was intending to reduce (although not eliminate) the likelihood of a successful removal to federal court, while guarding against the possibility that the disclaimer would swallow the plaintiffs' claims if a court determined that naval vessels docked in a federal enclave were part of a federal enclave.
>
> . . . Had that not been my intent, I would not have included the words "which expressly excludes U.S. Navy vessels" as part of the first sentence of paragraph 6 to the complaint in this case. There are two reasons why I would not have included those words simply to convey a legal belief that federal enclaves never include navy vessels. First, I knew that there was some contrary authority, so I was not certain that such a belief would have been correct. Secondly, my belief as to what the law was regarding naval vessels in federal enclaves would not have added anything substantive to the complaint and, as such, would have been superfluous.

Farrow's clarification that the disclaimer does not exclude causes of action for exposure to asbestos when he worked on U.S. Navy vessels at PSNS is within the range of objectively reasonable meanings of the words used in the disclaimer. As clarified, the disclaimer does not preclude Farrow from asserting claims for exposure to asbestos on U.S. Navy vessels at PSNS regardless of whether the ships were located in a federal enclave.[8]

We reverse and remand.[9]



We concur:



[8] Accordingly, we need not address the question of whether the respondents met their burden of establishing that PSNS in its entirety, is a federal enclave.

[9] Various respondents also argue that they are entitled to summary judgment because Farrow has failed to produce evidence creating a genuine issue as to whether the respondents' products were in fact the cause of his alleged injuries as a result of his work in the shipyard. Although we may affirm summary judgment on any basis supported by the record, Snohomish Regional Drug Task Force v. 414 Newberg Road, 151 Wn. App. 743, 758, 214 P.3d 928 (2009), we decline to consider the respondents' arguments in this regard as nothing indicates that the trial court granted summary judgment on this basis.

In addition, various respondents request affirmance of the trial court's dismissal of claims arising out of incidents occurring outside the shipyard. However, no party has appealed from that aspect of the trial court's decision. Accordingly, we have no basis to review or disturb the trial court's ruling on that issue.

Further, specifically with respect to William Powell Co.'s contention that the trial court dismissed Farrow's claims for failure to establish causation and to adequately identify injurious products, we note that William Powell's motion on those issues concerned causes of action arising out of asbestos exposure occurring outside the shipyard. To the extent that William Powell attempts to argue that the trial court dismissed all of Farrow's claims on the alternative ground that Farrow had failed to establish essential elements of his claim, that argument is controverted by the scope of William Powell's motion filed in the trial court. As explained, because no appeal has been taken from the trial court's ruling dismissing claims arising out of exposure outside the shipyard, the trial court order granting William Powell's motion concerning claims unrelated to Farrow's shipyard employment is not before us.

Farrow v. Alfa Laval, Inc., No. 62996-4-I (consol. with No. 63554-9-I)

Dwyer, C. J. (concurring)—Consistent with my concurrence in Abbay v. Aurora Pump Company, No. 62399-1-I, I concur in the majority's determination that the summary judgment dismissal must be reversed.