

STATE OF NEW YORK : COUNTY OF ERIE  
SUPREME COURT EIGHTH JUDICIAL DISTRICT

In Re: EIGHTH JUDICIAL DISTRICT  
ASBESTOS LITIGATION

GEORGEANN ROSSI, as Executrix of the Estate of  
GEORGE E. PRENATT, Deceased, and  
ANN I. PRENATT, Individually as the Surviving Spouse,

PLAINTIFFS, INDEX #81332/2014

-VS-

DECISION

BEAZER EAST, INC.,  
F/K/A KOPPERS COMPANY, INC.,  
F/K/A THIEM CORPORATION in its own right  
and successor in interest  
to UNIVERSAL REFRACTORIES, INC., et al,

DEFENDANTS,

JOANN GALLAGHER, Executrix of the Estate of  
WILLIAM GALLAGHER, Deceased and Individually  
as the Surviving Spouse of WILLIAM GALLAGHER,

PLAINTIFF, INDEX # 807133/2014

-VS-

BEAZER EAST, INC.,  
f/k/a KOPPERS COMPANY, INC.,  
f/k/a THIEM CORPORATION in its own  
right as successor in interest  
to UNIVERSAL REFRACTORIES, INC., et al,

DEFENDANTS.

50 Delaware Avenue  
Buffalo, New York 14202  
September 21, 2015.

HELD BEFORE: HONORABLE DEBORAH A. CHIMES,  
SUPREME COURT JUSTICE.

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APPEARANCES:

JOHN P. COMERFORD, ESQ.,  
DENNIS HARLOW, ESQ.,  
Appearing for the Plaintiff.

JESSICA CLEMENTE, ESQ.,  
Appearing for Beazer East and Thiem.

DANIELLE CARDAMONE, ESQ.,  
Appearing for Ferro Corporation.

JENNIFER LEONARDI, ESQ.,  
Appearing for Insulation Distributors.

LISA G. PAZDERSKI,  
Supreme Court Reporter.

1           THE COURT: Thank you. All right. The Court  
2 is ready to make its decision. Plaintiff alleges  
3 that decedent was injured during his employment at  
4 Republic Steel from the early 1960s through the  
5 early 1970s. Plaintiff claims that while working  
6 as a laborer, the decedent was exposed to and  
7 injured by asbestos-containing insulation  
8 materials removed and installed by defendant  
9 Insulation Distributors, Inc., and while working  
10 as a crane operator, he was exposed to and injured  
11 by asbestos-containing materials supplied or sold  
12 to Republic Steel by defendants Beazer and Ferro  
13 and used with hot tops.

14           It is noted that the decedent was not deposed  
15 prior to his death, nor was his trial testimony  
16 preserved, and that plaintiff relies, in part, for  
17 proof of exposure on the testimony of co-worker  
18 George Prenatt, and his co-worker and brother,  
19 Robert Gallagher.

20           Defendants Beazer East Insulation  
21 Distributors, Inc. and Ferro Engineering Division  
22 move for summary judgment arguing the plaintiff  
23 failed to prove the decedent was exposed to their  
24 asbestos-containing products. However, it is well  
25 established in asbestos litigation that to be

1 successful with a motion for summary judgment to  
2 dismiss a complaint, a defendant must make a prima  
3 facie showing that its product could not have  
4 contributed to the causation of decedent's illness  
5 or death. See *Refermat versus A.C. and S, Inc.*  
6 *15AD 3d 928*, *Root versus Eastern Refractories*  
7 *Company, Inc.*, *13 AD 3d 1187*, *Matter of 8th*  
8 *Judicial District Asbestos Litigation Takacs,*  
9 *T-A-K-A-C-S.*

10 After review of the papers and attached  
11 exhibits, The Court finds the defendants made no  
12 such showing and the motion for summary judgment  
13 is denied.

14 It is further noted that even if the  
15 defendants met their initial burden, the plaintiff  
16 raised triable issues of fact. Plaintiff is not  
17 required to show the precise causes of the injury  
18 to decedent, but it only required to show facts  
19 and conditions from which defendant's liability  
20 can be reasonably inferred. See *Matter of 8th*  
21 *Judicial District Asbestos Litigation, Reynolds,*  
22 *32 AD3d 1268.* Any inconsistencies in the  
23 testimony or issues of credibility are to be  
24 resolved by the trier of fact, not The Court. See  
25 *Dollas versus W.R. Grace and Company, 225 AD2d*

1           319. Matter of Eighth Judicial District Asbestos  
2           Litigation, Heckel, H-E-C-K-E-L, 269 AD2d 749.

3           Plaintiff is to prepare and submit the order  
4           attaching a copy of this decision to the order and  
5           the order is to be submitted within 30 days.

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10           Certified to be a true and accurate transcript  
11           of the minutes and/or testimony taken herein  
12           transcribed into English text through Computer  
13           Assisted Transcription.

14                                   *Lisa G. Pazderski*

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16                                   Lisa G. Pazderski, Supreme Court Reporter