STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 13, 2017)

BRENDA HINKLEY, Personal Representative of the Estate of RUDOLPH ALLEN, Deceased and DOROTHY ALLEN, His Wife, in her own right,	:	
Plaintiffs,	:	
v.	:	**C.A. No. PC-15-1722**
A.O. SMITH CORPORATION, et al.,	:	
Defendants.	:	

DECISION

GIBNEY, P.J. The Defendant Crane Co. (the Defendant or Crane) seeks summary judgment in the above-entitled personal injury matter brought by Plaintiffs Brenda Hinkley, Personal Representative of the Estate of Rudolph Allen, and Dorothy Allen, the Decedent's wife (Plaintiffs). The Defendant brings this motion under Maine Law, to which both parties agreed to in a Notice of No Opposition, dated November 16, 2016. The Defendant argues that there are no genuine issues of material fact remaining for trial. Additionally, the Defendant contends that the Plaintiffs have not offered, and have no reasonable expectation of offering, evidence that the Decedent was exposed to an asbestos-containing Crane product. Plaintiffs object to the motion, arguing that there are genuine issues of material fact. Further, the Plaintiffs maintain that their claims against the Defendant are viable because the use of asbestos products in relation to Crane's valves was foreseeable to the Defendant and, under a negligence theory, the Defendant failed to warn of associated hazards. This Court exercises jurisdiction pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

The Decedent, Rudolph Allen (Mr. Allen or the Decedent), and his wife, Dorothy Allen, filed this instant action on April 27, 2015 after the Decedent was diagnosed with mesothelioma on March 11, 2015. The Plaintiffs allege that Mr. Allen worked as a plumbing-heating tradesman from 1949 to 1959 and subsequently worked as a plumber-pipefitter from 1960 to the late 1970s. Plaintiffs allege that Mr. Allen, while at work, inhaled, absorbed, and came into contact with asbestos and asbestos-containing products.

Mr. Allen was born in Maine, where he lived the majority of his life, with the exception of the two and one-half years that he served in the Navy beginning in 1943 and the nine years that he lived on Long Island, New York. Following his time in the Navy, Mr. Allen worked in New York and Maine on various jobs which included plumbing, boiler and heating equipment installation, and finally as a union pipefitter from 1963 through retirement. Mr. Allen's exposure allegations in the present motion involve his employment at Dave Collins, Robert Ford, Agingo, and his career as a union pipefitter working at twelve different paper mills, the majority of which were located in Maine. In his deposition testimony, Mr. Allen testified to repacking Crane valves at various paper mills in Maine. However, Mr. Allen could not testify as to which company manufactured the interior packing that he removed from the Crane valves, nor could he testify as to which company manufactured the replacement packing that he subsequently installed in the Crane valves.

Mr. Allen died in Auburn, Maine on October 10, 2015. Subsequently, Mr. Richard R. Ouellette (Mr. Ouellette), a co-worker of the Decedent, was deposed on July 6, 2016. Mr. Ouellette worked with Mr. Allen for eight months beginning in November of 1977 through June of 1978 at International Paper in Jay, Maine. During part of this time, Mr. Ouellette was

employed as a pipefitter, and the Decedent was a foreman. Mr. Ouellette testified that he worked with Mr. Allen to install new pipes in a power plant and that he also installed new valves, some of which were manufactured by the Defendant, during the course of the construction project. However, Mr. Ouellette testified that Crane did not supply the gaskets that were used in the new Crane valves; rather, Garlock manufactured the gaskets used in the Crane valves that Mr. Ouellette and Mr. Allen installed. Finally, Mr. Ouellette stated that at a pulp digester job, which lasted a few months, he witnessed Mr. Allen personally remove gaskets or packing from what he believed was a Crane valve. However, he did not know which company manufactured the packing that he removed from the Crane valve, i.e. whether it was an original Crane product or had subsequently been replaced with another company's product.

II

Parties' Arguments

The Defendant contends that it is entitled to summary judgment under Maine law because there is no evidence of exposure to an asbestos-containing product or component manufactured, sold, or supplied by Crane. Crane states that under Maine law, a manufacturer cannot be held liable for injuries caused by defective products that were manufactured, sold, or supplied by third parties. Crane maintains that liability cannot stem from anything other than an original asbestos-containing Crane product, and that it is not liable for products produced by other companies that might have been used in conjunction with a Crane product when Crane did not recommend doing so. The Defendant points to an alleged lack of evidence provided by the Plaintiffs to demonstrate that neither the Defendant nor the witness, Mr. Ouellette, could testify to Mr. Allen's exposure to an asbestos-containing Crane product.

In addition, the Defendant contends that—even if Maine law allowed liability for third-party component products—the Plaintiffs have failed to provide prima facie evidence that any

products manufactured or supplied by Crane even contained asbestos. Finally, the Defendant claims that the Plaintiffs are not entitled to recovery on their remaining two claims—loss of consortium and conspiracy—since both claims are derivative of the personal injury claims, which Defendant contends fail under Maine law.

The Plaintiffs contend that there are genuine issues of material fact that should be resolved by a jury. Plaintiffs argue that Crane is liable to the Plaintiffs under a strict liability theory because the use of asbestos products in relation to Crane's valves was foreseeable to the Defendant and, under a negligence theory, the Defendant failed to warn of the hazards of asbestos. The Plaintiffs contend that there is ample evidence of the Decedent's exposure to Crane products; namely, the Plaintiffs point to Mr. Ouellette's deposition testimony that he saw the Decedent working on a Crane valve. However, they do acknowledge that Mr. Ouellette did not know who produced the gaskets and packing that was removed from the Crane valve or the maker of the gaskets or packing that was subsequently installed in the Crane valve.

Additionally, the Plaintiffs contend that Maine courts employ a "substantial factor" analysis to determine issues of causation in tort actions. The Plaintiffs maintain that their claims should survive summary judgment because they have presented sufficient evidence to establish that the Defendant's products were a substantial factor in the Decedent's injuries. The Plaintiffs maintain that the Defendant's argument—namely, that defendants in Maine are immune from third-party product liability—does not consider the Supreme Judicial Court of Maine's holding that manufacturers like Crane are not relieved of liability, despite substantial changes by a third party, if those changes were foreseen.

The Plaintiffs assert that Crane has admitted it sold asbestos-containing valves from 1858, and that it only discontinued asbestos-containing products in the mid-1980s. Further, the Plaintiffs claim that the Defendant was negligent and breached its duty when it failed to warn of

the dangers of asbestos in either its own products or products used in conjunction with Crane valves. Under Maine law, therefore, the Plaintiffs assert that their claim for Loss of Consortium should also survive summary judgment because the underlying tort claim is legally viable.[1]

III

Standard of Review

Maine Rule of Civil Procedure 56(c) provides that summary judgment is warranted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, . . . show that there is no genuine issue as to any material fact[.]" M.R. Civ. P. 56(c). For purposes of summary judgment, a "material fact is one having the potential to affect the outcome of the suit." Burdzel v. Sobus, 750 A.2d 573, 575 (Me. 2000). "A genuine issue of material fact exists when there is sufficient evidence to require a fact-finder to choose between competing versions of the truth at trial." Lever v. Acadia Hosp. Corp., 845 A.2d 1178, 1179 (Me. 2004). If ambiguities in the facts exist, they must be resolved in favor of the nonmoving party. Beaulieu v. Aube Corp., 796 A.2d 683, 685 (Me. 2002).

In Arrow Fastener Co. v. Wrabacon, Inc., the Maine court observed that "although summary judgment is no longer an extreme remedy, it is not a substitute for trial. It is, at base, 'simply a procedural device for obtaining judicial resolution of those matters that may be decided without fact-finding.'" 917 A.2d 123, 127 (Me. 2007) (internal citation omitted). If facts material to the resolution of the matter have been properly placed in dispute, summary judgment based on those facts is not available except in those instances where the facts properly proffered would be flatly insufficient to support a judgment in favor of the nonmoving party as a matter of law. Id. (citations omitted) (quoting Curtis v. Porter, 784 A.2d 18, 21-22 (Me. 2001)).

[1] The Plaintiffs do not oppose the application of Maine law and do not oppose the Defendant's Motion for Summary Judgment against Plaintiffs' conspiracy claim. Therefore, the Court will not analyze any arguments regarding Plaintiffs' Count III claim for Conspiracy. See Pls.' Br. n.1.

Moreover, the party opposing a summary judgment motion is given the benefit of any inferences which might be reasonably drawn from the evidence. See Curtis, 784 A.2d at 22. However, neither party can rely on unsubstantiated denials, but '"must identify specific facts derived from the pleadings, depositions, answers to interrogatories, admissions and affidavits to demonstrate either the existence or absence of an issue of fact."' Kenny v. Dep't of Human Servs., 740 A.2d 560, 562 (Me. 1999) (quoting Vinick v. Comm'r of Internal Revenue, 110 F.3d 168, 171 (1st Cir. 1997)). Additionally, the plaintiff must establish a prima facie case for each element of the cause of action at issue in order to survive a defendant's motion for summary judgment. See Champagne v. Mid-Maine Med. Ctr., 711 A.2d 842, 845 (Me. 1998); Barnes v. Zappia, 658 A.2d 1086, 1089 (Me. 1995).

IV

Analysis

When a defendant moves for summary judgment, the burden first rests on the moving party to show that evidence fails to establish a prima facie case for each element of the plaintiff's cause of action. Budge v. Town of Millinocket, 55 A.3d 484, 488 (Me. 2012). Under Maine law, a claim for negligence requires proof of causation as a main element; namely, that the injury to the plaintiff is proximately caused by a breach of duty owed to the plaintiff by the defendant. See Mastriano v. Blyer, 779 A.2d 951, 954 (Me. 2001). In Grant v. Foster Wheeler, LLC, the Supreme Judicial Court of Maine states that:

> "Evidence is sufficient to support a finding of proximate cause if the evidence and inferences that may reasonably be drawn from the evidence indicate that the negligence played a substantial part in bringing about or actually causing the injury or damage and that the injury or damage was either a direct result or a reasonably foreseeable consequence of the negligence." 140 A.3d 1242, 1246 (Me. 2016).

Therefore, to establish a case in personal injury asbestos litigation, a plaintiff must demonstrate product nexus—which means that the decedent was exposed to the defendant's asbestos-containing product—and also medical causation, i.e. that such exposure was a substantial factor in causing the plaintiff's injury. Id. The court has stated that "[t]he mere possibility of . . . causation" is not enough and that when the matter remains one of "pure speculation or conjecture, or even if the probabilities are evenly balanced," a defendant is entitled to summary judgment. Id.

A

Product Nexus

The Supreme Judicial Court of Maine recently stated that in asbestos personal injury matters, Maine law requires evidence demonstrating that the asbestos containing product originated with the defendant as a prerequisite to product identification and liability. Id. at 1248-49. The court stated that "[p]ursuant to 14 M.R.S. § 221, the seller of a product is liable for injury if the product 'is expected to and does reach the user or consumer without significant change in the condition in which it is sold.'" Id. at 1248. The court goes on to state that based on this rationale, the court will only review a plaintiff's exposure evidence to "asbestos contained in the products' original gaskets and packing." Id.

In that same case, the court granted summary judgment in favor of three defendants based on evidence disputing whether or not the plaintiff came into contact with asbestos-containing gaskets and packing that originated with the defendants' pumps and valves.[2] Id. The court noted

[2] Additionally, the Superior Court of Maine, though not binding precedent, cited extra-jurisdictional cases to adopt the stance that a defendant is not liable for injury-causing materials supplied by a third party that is used in conjunction with a defendant's product. See Rumery v. Garlock Sealing Techs., Inc., 2009 WL 1747857 (Me. Super.) (citing to Braaten v. Saberhagen Holdings, 198 P.3d 493, 498-99 (Wash. 2008); Simonetta v. Viad Corp., 197 P.3d 127, 138 (Wash. 2008)).

that this issue of causation and third-party liability must be addressed by the plaintiff on summary judgment with respect to both negligence and strict product liability claims since causation is a critical element of both.[3] See id.

In the present case, the Plaintiffs allege in their Complaint that the Decedent's exposure arose from his employment at Dave Collins, Robert Ford, Agingo, and as a union pipefitter working at twelve different paper mills in Maine. In his deposition, the Decedent stated that his only alleged contact with Crane equipment occurred in Maine when he repacked Crane valves at various paper mills. Def.'s Ex. A at 89-90. Mr. Allen could not specifically testify as to which company manufactured the packing that he removed from the Crane valves, nor could he testify as to which company manufactured the replacement packing that he then installed into the Crane valves. Id. at 90-91. Further, the Decedent testified that he did not know if the packing that he removed from the Crane valves was original to those valves or if it had been replaced since its original installation. Id. at 90. Additionally, the Decedent acknowledged that the paper mills had been in operation for quite some time prior to his work there. Id.

Mr. Ouellette testified on July 6, 2016 that he worked with the Decedent at International Paper and that the Decedent was present when he worked on a Crane valve during a boiler construction project. Pls.' Ex. B at 51-52. While Mr. Ouellette acknowledged that both he and the Decedent did work on Crane valves, he also testified that the gaskets that were used in the new Crane valves were not Crane products; rather, he explained, Garlock manufactured the gaskets used in the Crane valves and those Garlock gaskets were shipped separately from the

[3] The Plaintiffs in this present motion raise a foreseeability argument. However, Maine courts have rejected foreseeability arguments in relation to the dangers of a third-party product. See Grant, 140 A.3d at 1248-49; see also Rumery, 2009 WL 1747857 (stating as there is "no strict liability for a failure to warn solely of the hazards inherent in another [party's] product, the foreseeability argument regarding the adequacy of warnings is not pertinent.").

Crane valves. Id. In this testimony, Mr. Ouellette stated that at a pulp digester job, he witnessed the Decedent working on a Crane valve. Pls.' Ex. A at 52-53. He testified as follows:

> "Q. [D]id you see [the Decedent] personally remove gaskets or packing from the valve?
> "A. Yes.
> "Q. Can you say that it was a Crane Co. valve that you saw him do that on?
> "A. It was a - - I believe it was Crane valve.
> …
> "Q. Okay. And when he removed gaskets or packing, do you know who made those gaskets and packing that he removed from the valve?
> "A. No, I don't." Pls.' Ex. A at 53.

Although Mr. Ouellette could not testify as to the manufacturer of the packing or gaskets that were installed, he stated that he was aware of the manufacturer of the valve itself—which he identified as Crane—because the manufacturer's name was either on a plate on the valve or embossed on the valve housing itself. Id. at 25.

After careful review of the facts and testimony presented, this Court finds that the Defendant has met its summary judgment burden by demonstrating through witness testimony and other evidence that the Plaintiffs have not alleged sufficient exposure to an original asbestos-containing Crane product. See Grant, 140 A.3d at 1248-49; Def.'s Exs. A, B; Pls.' Ex. A. In the Grant case, the Supreme Judicial Court of Maine stated that a plaintiff must provide sufficient evidence of product nexus in order to survive summary judgment. 140 A.3d at 1248-49. The court went on to define product nexus as 1) a defendant's asbestos-containing product, 2) at the site where the plaintiff worked or was present, and 3) where the plaintiff was in proximity to that product at the time it was being used. Id. The court went further to state that a plaintiff must not only prove that the asbestos product was used at the worksite, but also that the employee inhaled the asbestos from the defendant's product. Id.

In Grant, the court dismissed exposure evidence as being only speculative or conjecture and clarified that a defendant cannot be held liable for asbestos contained in anything short of original gaskets or packing tied to the particular defendant. Id. Here, too, testimony in the present case demonstrates that the Plaintiffs cannot meet the shifting burden to demonstrate with evidence that the Decedent was exposed to an original Crane product, whether it be an asbestos-containing product, gasket, packing, or replacement. See Arrow Fastener, 917 A.2d at 127; Champagne, 711 A.2d at 845; Def.'s Exs. A, B; Pls.' Ex. A.

Ordinarily, after product nexus is established, a court will review medical causation to determine if a plaintiff's exposure to a defendant's original product was a substantial factor in the plaintiff's injuries. See Spickler v. York, 566 A.2d 1385, 1390 (Me. 1989); Wing v. Morse, 300 A.2d 491, 495-96 (Me. 1973). However, evidence of a mere possibility of exposure to a potential asbestos-containing product is not enough to overcome summary judgment, and courts have declined to proceed with such an analysis when a plaintiff cannot make a threshold showing of product nexus. See Grant, 140 A.3d at 1248-49. Therefore, this Court will not conduct such an analysis since the Plaintiffs have not met their burden on product nexus and have not provided sufficient evidence of an original Crane product in order to survive summary judgment. See Spickler, 566 A.2d at 1390; Wing, 300 A.2d at 495-96.

B

Loss of Consortium

The Defendant also moves for summary judgment on Plaintiffs' Loss of Consortium claim, alleging that when an underlying personal injury claim fails, a loss of consortium claim fails as well. The Plaintiffs have provided no specific argument in opposition. The Supreme Judicial Court of Maine has recently stated that although a loss of consortium claim and personal injury claim may be brought separately and also settled separately, both claims are subject to the

same defenses since both claims arise from the same set of facts, and the spouse's loss of consortium injury derives from the other spouse's bodily injury. See Steele v. Botticello, 21 A.3d 1023, 1027-28 (Me. 2011); see also Hardy v. St. Clair, 739 A.2d 368 (Me. 1999); Brown v. Crown Equip. Corp., 960 A.2d 1188 (Me. 2008); Parent v. E. Me. Med. Ctr., 884 A.2d 93 (Me. 2005). In the instant case, this Court has granted summary judgment to the Defendant in the underlying personal injury claims, and therefore, the Plaintiffs' claim for Loss of Consortium must also fail. See Steele, 21 A.3d at 1027-28.

V

Conclusion

This Court finds that the Defendant has met its summary judgment burden and that the Plaintiffs have failed to produce sufficient evidence of product nexus. Additionally, the Plaintiffs' claim for Loss of Consortium fails since the Defendant has presented a valid defense to the underlying personal injury claim. Therefore, the Defendant's Motion for Summary Judgment is granted in full. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Brenda Hinkley, et al. v. A.O. Smith Corporation, et al.**
CASE NO:	**PC-15-1722**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 13, 2017**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
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