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2017 WL 2983082

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

IN RE: ASBESTOS LITIGATION DOROTHY CHARBONNEAU, individually and as personal representative of the est...

Superior Court of Delaware, July 12, 2017 Not Reported in A 3d, 2017 WL 2983082 (Approx. 3 pages) Superior Court of Delaware.

IN RE: ASBESTOS LITIGATION

DOROTHY CHARBONNEAU, individually and as personal representative of the estate of ROBERT CHARBONNEAU, deceased, Plaintiffs,

v.

FAIRBANKS COMPANY, et al., Defendants.

C.A. No. N15C-01-045 ASB  
July 12, 2017

Upon Defendant Fairbanks Company's Motion for Summary Judgment. GRANTED.

Opinion

The Honorable Calvin L. Scott, Jr.

\*1 Plaintiff Dorothy Charbonneau (hereinafter "Plaintiff") cannot satisfy the summary judgment criteria.<sup>1</sup>

Plaintiff alleges that her husband, Robert Charbonneau, was exposed to asbestos from Defendant Fairbanks Company's ("Fairbanks" or "Defendant") products while working as a maintenance man and welder for several employers in Massachusetts. Plaintiff is the only product identification witness in this action. During his deposition he recalled Defendant's brand of valves as a product he worked with at both Greeting Cards and Gordon Chemical. He worked with both globe valves and gate valves. At the Oxford Housing Authority he testified that he worked with gate valves, globe valves, and a zone valve with a ball valve in both ends. He described the valves as brass in color, and stated that these brass colored valves were present at all the sites he worked at. He stated that while at Gordon Chemical he installed new Fairbanks valves and removed Fairbanks valves. He testified that he replaced the packing and external insulation on the valves and broken valve handles. He testified that the packing was located at the stem of the valve. To access the packing Mr. Charbonneau had to unscrew the packing nut on the shaft, and sometimes use a packing remover tool or a pair of pliers to get the packing out. When asked where the external packing came from, Mr. Charbonneau stated that the packing came from the supply house. As for the external insulation, Mr. Charbonneau described the insulation as white, and the insulation was located on the valve itself. Mr. Charbonneau removed the insulation in order to remove the valve itself. He stated that the maintenance crew supplied the insulation. The new insulation came in powder form and needed to be mixed. Mr. Charbonneau applied this mix with his hands. When asked if he believed the packing he removed and installed contained asbestos, he stated that he assumed it did because of the high heat that was going through the pipes.

Defendant argues that the record lacks evidence that the valve packing contained asbestos, and that Defendant manufactured the asbestos packing. Plaintiff argues that Defendant required asbestos for use with its valve products, and Plaintiff provided six different catalogues for the proposition that Defendant "specifically and regularly called for the use of asbestos gaskets and packing" with its products. Plaintiff argues that Mr. Charbonneau testified from personal knowledge about removing asbestos on piping, and that Mr. Charbonneau replaced Fairbanks valves with other Fairbanks valves. He also testified that the Fairbanks valves were externally insulated. Under Massachusetts law:

SELECTED TOPICS

Products Liability

Particular Products  
Evidence of Manufacturer Unexcused Noncompliance

Secondary Sources

Products liability: liability of manufacturer or seller for injury or death caused by defect in boat or its parts, supplies, or equipment

1 A.L.R.4th 411 (Originally published in 1980)  
...This annotation collects the reported state and federal cases wherein the courts have considered whether a manufacturer or seller of a boat or its parts, supplies, or equipment is liable for injury to ...

Products liability: inhalation of asbestos

39 A.L.R.4th 399 (Originally published in 1985)  
...This annotation collects the state and federal cases in which the courts have discussed the liability of a manufacturer, distributor, or seller for personal injury or death allegedly caused by inhalati...

Products liability: proof of defect under doctrine of strict liability in tort

51 A.L.R.3d 9 (Originally published in 1973)  
...To recover under the strict tort liability doctrine for injury or damage caused by product failure there must be proof that the product was defective. This annotation collects those cases which discuss...

See More Secondary Sources

Briefs

In re Agent Orange Product Liability Litigation; Dow Chemical Company, Monsanto Company v. Daniel Raymond Stephenson

2002 WL 32126124  
In re Agent Orange Product Liability Litigation; Dow Chemical Company, Monsanto Company v. Daniel Raymond Stephenson  
Supreme Court of the United States  
Dec. 12, 2002

...[Page 3] 79-10-15 In the matter of the claims for equitable relief and damages brought by veterans of the War in Southeast Asia who are still alive; wives of those veterans who are still alive; veteran...

Joint Appendix

2010 WL 4628575  
Goodyear Luxembourg Tires, SA Goodyear Lastikieri T.A.S., and Goodyear Dunlop Tires France, SA, Petitioners, v. Edgar D. Brown and Pamela Brown, Co-Administrators of the Estate of Julian David Brown, and Karen M. Helms, Administratrix of the Estate of Matthew M. Helms, Respondents.  
Supreme Court of the United States  
Nov. 12, 2010

...At the December 10, 2007, Civil Session of Superior Court of Onslow County, the Honorable Gary E. Trawick, Judge Presiding, conducted a rehearing of the Motions to Dismiss for Lack of Personal Jurisdic...

To prove causation in an **asbestos** case, the plaintiff must establish (1) that the defendant's product contained **asbestos** (product identification), (2) that the victim was exposed to the **asbestos** in the defendant's product (exposure), and (3) that such exposure was a substantial contributing factor in causing harm to the victim (substantial factor).<sup>2</sup>

\*2 Defendant argues that Plaintiff's claims are barred because Defendant had no duty to warn of **asbestos** parts from another manufacturer. Plaintiff presented evidence that Mr. Charbonneau installed and removed Fairbanks valves, and that some of Fairbanks valves were sold with **asbestos** component parts. Plaintiff supplied answers to interrogatories stating that some Fairbanks valves contained **asbestos** gaskets and packing between the 1930s and 1980s. Defendant argues that under Massachusetts law it is not liable for other manufacturers' **asbestos** containing products. Although Plaintiff demonstrated that Fairbanks sold valves that contained **asbestos** gaskets and packing, Plaintiff failed to provide evidence that the packing and gaskets were manufactured by Fairbanks. Mr. Charbonneau testified that he installed and removed Fairbanks valves. In Massachusetts to "prove causation in an **asbestos** case, it is plaintiff's principal burden to show that a defendant's product contained **asbestos** and that the victim was exposed to the **asbestos** in the defendant's product."<sup>3</sup> As stated by this Court before, "Massachusetts courts have never held a manufacturer liable ... for failure to warn of risks created solely in the use or misuse of the product of another manufacturer."<sup>4</sup> There is no evidence in the record that the replacement parts Mr. Charbonneau worked with were **asbestos** parts manufactured or supplied by Defendant, Fairbanks. Simply because a Plaintiff worked with a Defendant's product, without evidence beyond speculation that the product contained **asbestos**, and the **asbestos** containing part was manufactured by Defendant, a reasonable jury could not infer exposure. Specifically in this case, external packing, packing inside the valves, and gaskets with the valves were replaced numerous times. Without any indication that the replacement packing, external insulation, or parts in the Fairbanks valve were manufactured by Fairbanks, Plaintiff asks the Court to speculate that Defendant is responsible. When viewing the evidence in a light most favorable to Plaintiff, a reasonable jury could not infer that Mr. Charbonneau was exposed to **asbestos** from Fairbanks product beyond speculation. Defendant's Motion for Summary Judgment is therefore **GRANTED**.

IT IS SO ORDERED.

All Citations

Not Reported in A.3d, 2017 WL 2983082

Footnotes

- 1 Super. Ct. Civ. R. 56; *Smith v. Advanced Auto Parts, Inc.*, 2013 WL 6920864, at \*3 (Del. Super. Dec. 30, 2013); see *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979); *Nutt v. A.C. & S., Inc.*, 517 A.2d 690, 692 (Del. Super. Ct. 1986); *In re Asbestos Litigation (Helm)*, 2012 WL 3264925 (Del. Aug. 13, 2012).
- 2 *Morin v. AutoZone Ne., Inc.*, 943 N.E.2d 495, 499 (Mass. App. Ct. 2011).
- 3 *Whiting v. CBS Corp.*, 2013 WL 530860, at \*1 (Mass. Ct. App. Feb. 14, 2013) (emphasis added).
- 4 *In re Asbestos Lit., Cosner*, 2012 WL 1694442 (Del. Super. May 14, 2012).

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NORFOLK & WESTERN RAILWAY COMPANY, Petitioner, v. Freeman AYERS, et al., Respondents.

2002 WL 32102927  
 NORFOLK & WESTERN RAILWAY COMPANY, Petitioner, v. Freeman AYERS, et al., Respondents.  
 Supreme Court of the United States  
 June 17, 2002

...FN\* Counsel of Record FN\* The complaints of Respondents Johnson (Civil Action No. 92-C-8888) and Shirley (Civil Action No. 92-C-8970) are substantially similar to the complaints of Respondents Ayers, Bu...

See More Briefs

Trial Court Documents

In re United Gilsonite Laboratories

2014 WL 7778860  
 In Re: UNITED GILSONITE LABORATORIES, a Pennsylvania Corporation, Debtor.  
 United States Bankruptcy Court, M.D. Pennsylvania.  
 Dec. 08, 2014

...United Gilsonite Laboratories, as debtor and debtor in possession ("UGL" or the "Debtor"), having filed with the United States Bankruptcy Court for the Middle District of Pennsylvania (the "Court") und...

In re USG Corp.

2012 WL 1463988  
 In re: USG CORPORATION, a Delaware corporation, et al., Debtors.  
 United States Bankruptcy Court, W.D. North Carolina.  
 Apr. 23, 2012

...FN1. The Debtors are the following 11 entities: USG Corporation, United States Gypsum Company, USG Interiors, Inc., USG Interiors International, Inc., L&W Supply Corporation, Beadex Manufacturing, LLC,...

In re MMC Precision Holdings Corp.

2009 WL 8188993  
 In re MMC PRECISION HOLDINGS CORP., et al., Debtors.  
 United States Bankruptcy Court, D. Delaware.  
 Mar. 12, 2009

...FN1. The Debtors are the following 8 entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): MMC Precision Holdings Corp., a Delaware corporation (689...

See More Trial Court Documents