

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES - GENERAL

Case No.	CV 12-2014 PA (FMOx)	Date	February 8, 2016
Title	Christopher Curtis v. ABB Inc., et al.		

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Stephen Montes Kerr	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

**Proceedings:** IN CHAMBERS - COURT ORDER

The Court has reviewed the parties’ Responses to the Court’s January 7, 2016 minute order requiring the parties to submit briefs regarding whether plaintiff Christopher Curtis (“Plaintiff”) intended to pursue maritime claims against the remaining defendants ABB, Inc. (“ABB”), Eaton Corporation (“Eaton”), and Schneider Electric USA, Inc. (“Schneider”) (collectively “Defendants”), and if so, what evidence supported the Court’s exercise of maritime jurisdiction over Defendants.<sup>1/</sup> The Court has also reviewed the Ninth Circuit’s Memorandum filed on November 13, 2015, and subsequent Mandate issued on December 8, 2015.

The Ninth Circuit’s Memorandum states:

In order to prevail in products liability cases, a plaintiff must establish, at minimum, (1) the plaintiff was exposed to the defendant’s product, and (2) the product was a substantial factor in causing the injury suffered. Lindstrom v. A-C Product Liability Trust, 424 F.3d 488, 492 (6th Cir. 2005); Rutherford v. Owens-Illinois, Inc., 941 P.2d 1203, 1219-20, 1223 (Cal. 1997).

(9th Cir. Mem. at 3.) The Ninth Circuit concluded that this Court had erred in granting summary judgment “to the extent that it found Plaintiff failed to raise a triable issue of fact that Curtis was exposed to asbestos released from Defendants’ products.” (Id.) The Ninth Circuit further concluded

<sup>1/</sup> This Court’s jurisdiction is based exclusively on Plaintiff’s assertion of maritime jurisdiction and, as alleged in the operative Fourth Amended Complaint, the Court possesses only supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367. (See Fourth Amended Complaint, Docket No. 550, at ¶ 1.) The Fourth Amended Complaint alleged claims against 54 defendants that manufactured asbestos-containing products that decedent was allegedly exposed to while he served in the Navy from 1955 to 1958 both at sea and at bases in California, and for the next 40 years after that while decedent was employed as an electrician and while performing maintenance on his automobiles in Tennessee, Arkansas, Wyoming, Colorado, and Missouri. Plaintiff settled his claims against many of the 54 defendants, and other defendants were either dismissed or obtained summary judgment on grounds that Plaintiff did not challenge in the appeal presented to the Circuit.

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that because this Court “erred in finding that Plaintiff failed to raise a triable issue of asbestos exposure from Defendants’ products, it also erred to the extent it relied on this finding to conclude that asbestos exposure from Defendants’ products was not a substantial factor in causing Curtis’s mesothelioma.” (Id. at 5.) According to the Ninth Circuit, “it is not clear from the record whether the district court decided causation in Defendants’ favor on a ground other than product identification, such as insufficient medical evidence linking Curtis’ exposure to asbestos to his mesothelioma.” (Id.) The Ninth Circuit therefore remanded the action to this Court for further proceedings.

Following the Ninth Circuit’s Remand, this Court ordered the parties to meet and confer and file a Joint Status Report. In the Joint Status Report, Defendants requested that “this Court issue a further order granting Defendants summary judgment on causation grounds.” The Court set pretrial and trial dates and ordered the parties to brief the continued viability of Plaintiff’s assertion of maritime jurisdiction. The Court has also carefully reviewed the parties’ briefing on the original summary judgment motions and the procedural history that resulted in the filing of those motions, which were filed in accordance with the briefing schedule ordered by this Court at the April 22, 2013 status conference. At that status conference, the Court established a procedure for the briefing on all defendants’ motions for summary judgment “concerning product identification and causation.” (Docket No. 714.)

Consistent with the procedure established at the status conference, defendant DAP, Inc. (“DAP”) filed the lead Motion for Summary Judgment on product identification and causation (Docket No. 770) to which other defendants, including ABB, Eaton, and Schneider joined or were deemed to have joined. DAP’s Motion for Summary Judgment. DAP’s Motion included a section concerning Plaintiff’s failure to provide sufficient evidence to support an inference that decedent’s exposure to defendants’ asbestos-containing products was a “substantial factor” in causing decedent’s mesothelioma. Specifically, DAP’s Motion stated:

[T]he plaintiff must show a high enough level of exposure to each particular defendants’ product that an inference that the asbestos was a substantial factor in the injury is more conjectural. [Lindstrom, 424 F.3d at 492.] That is, the exposure must have been “actual” or “real.” [Id.] Total failure to show that the defect caused or contributed to the injury will foreclose Plaintiff’s cause against Joining Defendants as a matter of law.

. . .

In sum, there is absolutely no evidence as to when, how, or under what circumstances Mr. Curtis might have been exposed to asbestos from any product manufactured, supplied or controlled by the Joining Defendants. Assuming that Plaintiff could somehow overcome this hurdle, there is no way to quantify the amount of his alleged exposure to . . . the Joining Defendant’s allegedly defective product. Plaintiff[ has] no admissible

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evidence or information an expert might use to quantify his exposure to a product for which Joining Defendants could be held liable. That is, Plaintiff[] simply cannot establish where, when or how Mr. Curtis was exposed to asbestos from Joining Defendants' products. Without such evidence, there is absolutely no foundation for any expert witness to find that Mr. Curtis's exposure to Joining Defendants' products was a substantial factor in causing Mr. Curtis's injury and Plaintiff's inability to produce such evidence entitles Joining Defendants to summary judgment as a matter of law.

(DAP's Motion, Docket No. 770, at 7-9.)

In its Motion for Summary Judgment, ABB argued that "[P]laintiff cannot prove the requisite 'threshold exposure' for liability against defendant or that its product or conduct can be considered a factor, let alone a substantial factor, to establish liability." (Docket No. 790 at 5.) ABB's Reply similarly contended that ABB had "clearly shifted the burden to plaintiff as he cannot prove that Mr. Curtis was exposed to asbestos from an ABB electrical product, let alone with the required frequency and regularity that to a reasonable medical probability was a substantial factor in bringing about decedent's injuries." (Docket No. 864 at 6; see also id. at 8 ("Plaintiff has failed to provide sufficient evidence to meet the requisite 'substantial factor' standard. . . . As a matter of law, there is no showing of exposure rising to the level of frequency and regularity of exposure . . . necessary to establish that ABB is a substantial factor in causing asbestos-related illness.").)

Eaton joined in DAP's Motion and separately argued that Plaintiff "cannot establish the requisite elements of exposure and causation in connection with each cause of action alleged in his complaint against Eaton." (Docket No. 779 at 2.) Eaton's Reply also asserted that it was attacking Plaintiff's lack of evidence of both exposure and causation. (Docket No. 867 at 8 ("Plaintiff fails to establish the requisite elements of exposure and causation necessary to support his causes of action against Eaton.").)

Schneider, which was formerly known as Square D, also moved for summary judgment not just on product identification, but causation grounds:

Plaintiff has no evidence that (1) Decedent encountered any Square D product; (2) any such product was defective (by actually containing asbestos); (3) Decedent's work with any such product exposed him to respirable asbestos fibers, let alone in sufficient quantity to constitute a substantial factor in causing his injury.

(Docket No. 772 at 3.) Schneider specifically argued that even if there was evidence that decedent was exposed to asbestos from its products, Plaintiff nevertheless lacked evidence that any such exposure was a substantial factor in decedent's mesothelioma:

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Even if Decedent's deposition testimony were entirely admissible, which it is not, and even if Plaintiff had evidence that a Square D product at issue contained asbestos, which he does not, Plaintiff would still lack any evidence that Decedent's alleged work with Square D products constitutes a substantial factor in causing Decedent's injury.

(Id. at 9.) Schneider's Reply similarly asserted that "even if Plaintiff[] established that a Square D product at issue actually contained asbestos, which [he has] not, this motion should still be granted because Plaintiff[] present[s] no evidence to establish the requisite 'extent and nature' of Decedent's exposure to such asbestos." (Docket No. 868 at 9; see also id. at 11 ("Summary Judgment should be granted because Plaintiff[] lack[s] any evidence that Decedent ever encountered an asbestos-containing Square D product, or that Decedent's alleged work with such product exposed him to any asbestos at all, let alone in quantities sufficient to constitute a substantial factor in causing his injury.").)

In his Opposition to Defendants' Motion, Plaintiff acknowledged the substantial factor requirement: "Plaintiff need only prove that the decedent was exposed to Defendant's asbestos containing product which was a substantial factor in causing his mesothelioma." (Docket No. 851 at 16.) Despite understanding that his claims required evidence that decedent's exposure to asbestos from each of Defendants' products was a substantial factor in causing decedent's mesothelioma, Plaintiff provided no such evidence in Opposition to Defendants' Motions. The issue of whether Defendants' products were a substantial factor in causing decedent's mesothelioma was presented in each of Defendants' Motions for Summary Judgment. Plaintiff had sufficient notice of the issue, and the record was adequately developed to address the issue. Moreover, as the Court concluded in granting Defendants' Motion, and denying Plaintiff's Federal Rule of Civil Procedure 56(d) request for a continuance to complete additional discovery, Plaintiff's Rule 56(d) request did not seek additional time to conduct discovery concerning the substantial factor analysis. (Docket No. 883 at 3-4 ("Plaintiff has not explained how [the additional evidence Plaintiff sought in pending discovery] would defeat Defendants' Motions[,] which require Plaintiff to create a triable issue of fact that Decedent was exposed to asbestos from products supplied by Defendants that was a substantial factor in causing decedent's mesothelioma. Neither the interrogatories Plaintiff propounded in June 2013 nor the deposition of Danny Mangum — which was completed prior to Plaintiff filing of his Opposition — will provide that information. Moreover, there is no sufficient justification for Plaintiff having waited for 15 months before propounding this discovery.").) Plaintiff's appeal did not challenge the denial of his Rule 56(d) request.

As the Court found when it originally granted Defendants' Motions, the Court again finds these matters are appropriate for decision without oral argument. See Fed. R. Civ. P. 78; see also Local Rule 7-15. The Court further concludes that because Plaintiff was originally provided notice of this ground for Defendants' Motion, and Defendants' have again requested that this Court consider the issue after meeting and conferring and submitting their December 28, 2015 Joint Status Report, that the Court may, and will, more fully address the substantial factor analysis. The Court concludes that it requires no further briefing.

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This Court understands and accepts the Ninth Circuit’s conclusion that triable issues of fact exist concerning decedent’s alleged exposure to asbestos-containing products manufactured and distributed by Defendants. However, the Court now makes clear what the Ninth Circuit found was not clear about this Court’s July 15, 2013 minute order granting Defendants’ Motions for Summary Judgment: this Court found at the time, and after thoroughly reviewing the briefing in support of and in opposition to those Motions, continues to find, that Plaintiff was required to come forward not just with evidence of decedent’s exposure to asbestos from each of Defendants’ products, but that his exposure was a substantial factor in causing decedent’s mesothelioma. Plaintiff did not supply any admissible evidence, let alone sufficient medical evidence, to satisfy his burden that decedent’s alleged exposure to asbestos from Defendants’ products during decedent’s brief service in the Navy was a substantial factor in causing decedent’s mesothelioma. Nor did Plaintiff supply evidence that decedent’s alleged exposure to asbestos from Defendants’ products during decedent’s 40-year civilian career was a substantial factor in causing decedent’s mesothelioma.

Specifically, there is no evidence in the record, from either a lay or expert witness, that decedent’s exposure to asbestos from products manufactured or distributed by ABB, Eaton, or Schneider was a substantial factor in causing decedent’s maritime or state law injuries. See Lindstrom, 424 F.3d at 492 (“[W]e have permitted evidence of substantial exposure for a substantial period of time to provide a basis for the inference that the product was a substantial factor in causing the injury. ‘Minimal exposure’ to a defendant’s product is insufficient. Likewise, a mere showing that defendant’s product was present somewhere at plaintiff’s place of work is insufficient. Rather, where a plaintiff relies on proof of exposure to establish that a product was a substantial factor in causing injury, the plaintiff must show ‘a high enough level of exposure that an inference that the asbestos was a substantial factor in the injury is more than conjectural.’”) (quoting Stark v. Armstrong World Indus., Inc., 21 Fed. App’x 371, 375 (6th Cir. 2001)); see also id. at 493 (“The requirement, however, is that the plaintiff make a showing with respect to each defendant that the defendant’s product was a substantial factor in plaintiff’s injury.”) (affirming summary judgment despite plaintiff’s submission of affidavit offering medical testimony concerning causation).

The issue of Plaintiff’s failure to provide sufficient evidence that Defendants’ products were a substantial factor in causing decedent’s injury, separate and apart from the issue of product identification, was presented in Defendants’ Motions, and this Court has now more fully explained that this was and is an independent basis for granting summary judgment in favor of Defendants on both the maritime and state law claims. Indeed, Plaintiff made no effort to differentiate between the substantial factor causation analysis that applies to the maritime claims and the substantial factor causation analysis that applies to the state law claims. There is no evidence that would support a conclusion that decedent’s brief exposure to asbestos contained in Defendants’ products while he served in the Navy, when compared to his 40-year civilian career, was a substantial factor in causing his mesothelioma. Because Defendants cannot be liable on any of Plaintiff’s claims against them without evidence that exposure to asbestos from their products was a substantial factor in causing decedent’s mesothelioma, Defendants are entitled to summary judgment on Plaintiff’s maritime claims and, additionally, on the state law claims. This is because Plaintiff did not submit any evidence, let alone sufficient medical evidence, to satisfy the substantial factor requirement on either type of claim, despite Defendants having moved for summary judgment on the substantial factor issue.

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Conclusion

As this Court originally found when it granted defendants' motion for summary judgment, there is no evidence that decedent's exposure to asbestos from ABB, Eaton, and Schneider products during either his relatively brief service in the Navy or during his civilian career while working as an electrician, was a substantial factor in causing his mesothelioma. Therefore, the Court grants summary judgment in favor of ABB, Eaton, and Schneider on both Plaintiff's maritime and state law claims. The Court will enter a Judgment consistent with this Order. The Court vacates the pretrial and trial dates.

IT IS SO ORDERED.