DOCKET NO. CV 15- 6052732 S	:	**SUPERIOR COURT**
MARTHA KRISTIANSEN PERSONAL REPRESENTATIVE OF THE ESTATE OF KENNETH KRISTIANSEN, ET AL	:	**JUDICIAL DISTRICT OF FAIRFIELD**
V.	:	**AT BRIDGEPORT**
REYNOLDS ALUMINUM DEVELOPMENT CO., ET AL	:	**MAY 2, 2016**

MEMORANDUM OF DECISION

RE: MOTION TO STRIKE (MOTION # 104.00)

On October 9, 2015, the plaintiff, Martha Kristiansen, as surviving spouse and as personal representative of the estate of Kenneth Kristiansen, filed a three count complaint against multiple defendants.[1] Count one alleges that certain defendants, despite having knowledge that asbestos is hazardous to the health and safety of all humans exposed to it, carelessly and negligently caused the release of asbestos from their factories into the surrounding environment, and the plaintiff's decedent suffered various injuries after coming into contact with such asbestos. The plaintiff further alleges that these defendants failed to warn the plaintiff's decedent of the dangerous conditions surrounding the factories and otherwise failed to protect people in the surrounding areas from the asbestos they released. Count two alleges that the plaintiff has suffered a loss of consortium as a consequence of the injuries suffered by the plaintiff's decedent. Count three alleges

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[1] On January 4, 2016, the plaintiff filed a motion to cite in additional defendants as well as an amended summons and complaint. The plaintiff's amended complaint is otherwise the same as her original complaint.

marked to all parties on 5/2/16

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conspiracy as to the defendant Metropolitan Life Insurance Company only.

On December 3, 2015, one of the defendants, E. I. du Pont Nemours and Company, (the defendant) filed a motion to strike count one, count two, and the third claim for relief[2] of the plaintiff's complaint. The defendant moves to strike count one on the ground that, while it appears to state a negligence claim against the defendant, the duty alleged does not match the corresponding allegations of breach and causation. The defendant also asserts that count one is legally insufficient to the extent that it purports to state a claim arising from General Statutes § 52-577c[3] because that statute does not give rise to a cause of action. The defendant moves to strike count two on the ground that the plaintiff's claim for loss of consortium is derivative of count one. The defendant moves to strike the plaintiff's third claim for relief on the ground that the alleged statutory sources for the punitive damages are inapplicable to the action. The plaintiff filed a memorandum of law in opposition to the defendant's motion on January 11, 2016.

"A motion to strike shall be used whenever any party wishes to contest . . . the legal sufficiency of the allegations of any complaint . . . ." Practice Book § 10-39 (a). "The role of the trial court in ruling on a motion to strike is to examine the [complaint], construed in favor of the

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2 In her third claim for relief, the plaintiff seeks "[s]tatutory punitive damages and reasonable attorney's fees pursuant to General Statutes §§ 52-240a and 52-240b (First Count)."

3 General Statutes § 52-577c provides in relevant part that "(b) Notwithstanding the provisions of sections 52-577 and 52-577a, no action to recover damages for personal injury or property damage caused by exposure to a hazardous chemical substance or mixture or hazardous pollutant released into the environment shall be brought but within two years from the date when the injury or damage complained of is discovered or in the exercise of reasonable care should have been discovered."

[plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) *Coe* v. *Board of Education*, 301 Conn. 112, 117, 19 A.3d 640 (2011). "[W]hat is necessarily implied [in an allegation] need not be expressly alleged." (Internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, 295 Conn. 240, 252, 990 A.2d 206 (2010). Practice Book § 10-39 "allows for a claim for relief to be stricken only if the relief sought could not be legally awarded." *Pamela B.* v. *Ment*, 244 Conn. 296, 325, 709 A.2d 1089 (1998).

In its memorandum in support of its motion to strike, the defendant argues that the court should strike count one because a clear disconnect exists between the alleged duty—a duty to warn purchasers, consumers, and users about the dangers of a product—and the conduct alleged, which is that the defendant permitted asbestos to be released into the ambient air, where it was subsequently inhaled by the plaintiff's decedent. The defendant additionally contends that the plaintiff has failed to allege any special relationship between the parties that would give rise to any duty. Insofar as the complaint states a claim arising from § 52-577c, the defendant argues that the court should strike count one on the ground that § 52-577c is a statute of limitation and does not give rise to a cause of action. The defendant argues that count two must be stricken because count one fails to state a claim upon which relief may be granted, and count two is derivative of count one. Finally, the defendant argues that the third claim for relief should be stricken because §§ 52-240a and 52-240b only apply to product liability actions, and the plaintiff has not asserted such a claim against the defendant.

In response, the plaintiff contends that she is not limited by the statement of "duty" in

paragraph eleven of her complaint and that, pursuant to the Practice Book, it is unnecessary to allege a promise or a duty that the law implies from the facts pleaded. The plaintiff additionally argues that § 52-577c indicates that Connecticut recognizes a duty not to release hazardous chemicals into the ambient environment, which the defendant breached when it released asbestos from its factory, causing injuries to the plaintiff's decedent. The plaintiff makes no mention of count two. The plaintiff concedes that her third claim for relief does not apply to the defendant.

"Duty is a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action. . . . [T]he test for the existence of a legal duty of care entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case." (Internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, 306 Conn. 523, 539, 51 A.3d 367 (2012). "With respect to the second inquiry, namely, the policy analysis, there generally is no duty that obligates one party to aid or to protect another party. See 2 Restatement (Second), Torts § 314, p. 116 (1965). One exception to this general rule arises when a definite relationship between the parties is of such a character that public policy justifies the imposition of a duty to aid or to protect another. . . . In delineating more precisely the parameters of this limited exception to the general rule, [the Supreme Court] has concluded that, [in the absence of] a *special relationship of custody or control*, there is no duty to protect a third person from the conduct of another." (Citations omitted; emphasis

in original; internal quotation marks omitted.) *Murdock* v. *Croughwell*, 268 Conn. 559, 566, 848 A.2d 363 (2004).

"Additionally, [a] duty to use care may arise from a contract, from a statute, or from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act." (Internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, supra, 306 Conn. 539. Notably, the court has recognized that state and federal environmental laws create a duty not to pollute. See *B&D Molded Products, Inc.* v. *Vitek Research Corp.*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-97-060362-S (April 21, 1999) (24 Conn L. Rptr. 396).

Upon review of the complaint in its entirety, the court concludes that the plaintiff has alleged facts that give rise to a duty of care on the part of the defendant. The plaintiff alleges that the defendants knew or should have known about the hazardous nature of asbestos and the danger posed by asbestos-containing products in their factories, that the defendants released asbestos from their factories into the surrounding environment, that they failed to take adequate measures to prevent human exposure to the asbestos, and that the plaintiff's decedent suffered multiple injuries as a consequence of his contact with the asbestos. The plaintiff additionally alleges that asbestos is a hazardous pollutant as defined by § 52-577c (a) and that the plaintiff's decedent was exposed to asbestos released from the defendants' factories into the surrounding environment pursuant to

§ 52-577c (a).[4] These allegations necessarily imply that the defendant owed a duty of care to the plaintiff's decedent not to pollute the local community in which he lived with asbestos, which it knew or should have known was hazardous to human health. A disconnect between the alleged duty and the alleged conduct is not present.

Furthermore, the defendant's argument as to a lack of an alleged special relationship is inapplicable here. The plaintiff's complaint alleges that the plaintiff's decedent was injured by the defendants' actions and omissions; the complaint does not allege that the defendants failed to intervene to prevent a third party from causing him injury.

Finally, the court agrees with the defendant that § 52-577c is procedural and does not provide for an independent cause of action. See *Tolchin* v. *Shell Oil Co.*, Superior Court, judicial district of New Haven, Docket No. CV-97-398334-S (October 18, 1999, *Zoarski, J.*) (determining § 52-577c is procedural because not tied to statutory right of action); *Caprio* v. *Upjohn Co.*, 148 F. Supp. 2d 168, 173 (D. Conn. 2001) (finding § 52-577c (b) is procedural). Even so, the court does not read the plaintiff's complaint as asserting a cause of action under § 52-577c. Thus, the court will not grant the defendant's motion to strike count one on that ground.

Because the plaintiff has sufficiently alleged a duty in count one, the defendant's argument

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General Statutes § 52-577c (a) provides in relevant part that "(1) 'Environment' means any surface water, ground water, drinking water supply, land surface or subsurface strata or ambient air within the state or under the jurisdiction of the state; (2) 'exposure' means any contact, ingestion, inhalation or assimilation, including irradiation . . . (4) 'hazardous pollutant' means any designated, specified or referenced chemical considered to be a 'hazardous substance' under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601(14); [and] (5) 'release' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment."

with respect to count two fails also. The plaintiff's third claim for relief must be stricken, however, because §§ 52-240a and 52-240b only apply to products liability actions; see § 52-240a (entitled "Award of attorney's fees in product liability action"); § 52-240b (entitled "Punitive damages in product liability actions"); and the plaintiff agrees that the statutes do not apply to the defendant. Accordingly, the court denies the defendant's motion to strike count one and count two of the plaintiff's complaint and grants the motion to strike the plaintiff's third claim for relief as applied to the defendant.

BELLIS, J)