UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KELAN UNTERBERG,

Plaintiff,

-against-

EXXONMOBIL OIL CORP., ET AL.,

Defendants.

MEMORANDUM DECISION AND ORDER

14 Civ. 10025 (GBD)

GEORGE B. DANIELS, United States District Judge:

Plaintiff Kelan Unterberg ("Plaintiff") initially filed this action, individually and as personal representative of the estate of her late husband, Jurgen Unterberg ("Decedent"), before the Supreme Court of New York State in New York County ("the State court") on November 14, 2014 against twenty-two corporate Defendants, including ExxonMobil Oil Corporation ("ExxonMobil" or "Defendant"), formerly known as Mobil Oil Corporation ("Mobil Oil"). Plaintiff brings three causes of action for (1) negligence under § 33 of the Merchant Marine Act ("the Jones Act"), 46 U.S.C. § 30104; (2) breach of warranty of seaworthiness and reasonable fitness under United States maritime law; (3) a remedy of maintenance and cure. (*See* Compl., ECF No. 1, Ex. A to Notice of Removal ("Notice"), ¶¶ 21-30.) Plaintiff alleges that these claims arise out of Decedent's exposure to "asbestos, asbestos dust and asbestos fibers" while working on civilian vessels as a chief engineer and merchant seaman between 1973 and 1978. (Compl. ¶ 18.) Plaintiff further alleges that such exposure "directly and proximately caused Decedent to develop malignant mesothelioma[,]" other asbestos-related diseases, and his eventual death on August 11, 2012. (*Id.*)

Plaintiff amended the Complaint on December 5, 2014 to add six more Defendants. (Am. Compl., ECF No. 1, Ex. B to Notice.) Defendants removed this action to this federal Court under

28 U.S.C. §§ 1331, 1441, and 1446(a) on December 19, 2014, on Jones Act and maritime jurisdictional grounds. (*See* Notice, at 1-2.)

Defendant ExxonMobil moved for summary judgment pursuant to Federal Rule of Civil Procedure 56. (*See* Def.'s Mot. for Summ. J., ECF No. 139; Def.'s Mem. of Law in Supp. of Mot. ("Mem."), ECF No. 140.)

Defendant ExxonMobil's motion for summary judgment is GRANTED.

I. FACTUAL BACKGROUND

The following facts are taken from the parties' statements filed pursuant to Local Rule 56.1, (Def's Rule 56.1 Statement ("Def.'s 56.1 Stmt."), ECF No. 141, Ex. 24; Pl.'s Resp. to Def's Rule 56.1 Statement ("Pl.'s 56.1 Stmt."), ECF No. 163; Pl.'s Additional 56.1 Statement ("PA56.1 Stmt."), ECF No. 163, at 6; Def.'s Resp. to PA56.1 Statement ("DRPA56.1 Stmt."), ECF No. 169-1), and from Ilana Waxman's January 19, 2016 Affirmation submitted in support of Plaintiff's in Opposition to Summary Judgment. ("Waxman Affr.," ECF No. 161.) The facts are undisputed, unless otherwise noted,[1] or taken in the light most favorable to Plaintiff.

Plaintiff is the widow of Decedent, a German citizen, (Def.'s 56.1 Stmt. ¶ 5), who worked aboard the following vessels: the Mobil Comet, Mobil Wapello, Mobil Vigilant, and Mobil Exporter ("the Subject Vessels") from December 1973 to December 1978—the time period during

[1] ExxonMobil objects that Plaintiff's Additional Rule 56.1 statement includes legal conclusions. (*See, e.g.*, DRPA56.1 Stmt. ¶¶ 1, 3.) The Second Circuit has held that a Rule 56.1 Statement "is not itself a vehicle for making factual assertions that are otherwise unsupported in the record." *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 138 F. Supp. 3d 352, 394 (S.D.N.Y. 2015) (citing *Holtz v. Rockefeller & Co., Inc.*, 258 F.3d 62, 74 (2d Cir. 2001) (internal quotation marks omitted)). To the extent that Plaintiff's Additional Rule 56.1 statement improperly includes legal conclusions, this Court will disregard such statements when determining whether there are genuine issues of material fact. *See Jessamy v. City of New Rochelle*, 292 F. Supp. 2d 498, 509 n.12 (S.D.N.Y. 2003) (no heed given to legal conclusions in Rule 56.1 statement).

which Plaintiff alleges Decedent was exposed to asbestos in the course of his employment as a chief engineer and merchant seaman. (*Id.* ¶¶ 2-3; *see also* Certification of Dennis Vega in Supp. of Mot. for Summ. J. ("Vega Cert."), Ex. T, ECF No. 141-22, "Certificate of Service from Mobil Oil Gesellschaft m.b.H.") All of the Subject Vessels, as well as two other vessels on which Decedent worked (the Mobil Pride and MV Conastoga—not Subject Vessels), were registered in foreign countries and sailed under foreign flags during the relevant time period, according to Mobil Oil Reederei GmbH[2] ("MORG") ship registry records. (Def.'s 56.1 Stmt. ¶ 8.) The Comet, Wapello, Vigilant, Pride, and Conastoga all sailed under the Liberian flag and were registered with or owned by companies incorporated in Liberia as follows: Mobil Shipping Transportation Company, Monrovia, Liberia ("MOSAT") owned[3] the Pride and Vigilant, (*id.* ¶ 13); MOSAT also owned the Comet until December 30, 1974, (*id.*); Brilliant Transport Company owned the MV Conastoga, and after December 30, 1974, the Comet as well, (*id.*); and, the Iberian Transport Company owned the Wapello. (*Id.*) The Exporter sailed under the Panamanian flag and was registered to Nocos Tankers, Inc., incorporated in Panama. (*Id.* ¶ 12.)

Decedent's employer during the relevant period, 1973-78 was MOSAT, then a Liberian corporation. (*Id.* ¶ 4; Mar. 16, 2016 Oral Arg. Tr. ("Tr."), at 17:12-13; Waxman Affr., Ex. 13, at 1 ("Since 1967 German Fleet Officers during their service with Mobil have been employed by . . . [MOSAT]. MOSAT has been the employer notwithstanding that Officers have been assigned to vessels owned or bare-boat chartered by Mobil marine shipowning companies other than

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[2] MORG is a wholly-owned subsidiary of Mobil Oil. (*See, e.g.*, Waxman Affr., Ex. 6, at 4-6.)

[3] Plaintiff does not dispute that the "ships at issue were registered in countries outside the United States and sailed under foreign flags" but disputes ownership of these vessels in that Plaintiff claims "Mobil consistently held itself out to the world as the owner of all foreign-flag ships in the Mobil fleet that were nominally owned by its marine subsidiaries." (Pl.'s 56.1 Stmt. ¶¶ 8, 13.)

MOSAT.") Mobile Marine Transportation Ltd. ("Marine Transportation"), a Canadian subsidiary of ExxonMobil's predecessor, Mobil Oil, wholly owned MOSAT's stock. (PA56.1 Stmt. ¶ 2; DRPA56.1 Stmt. ¶ 2.)

II. PROCEDURAL HISTORY

Originally, Plaintiff filed an action in Hawai'i state court on December 28, 2012 against ExxonMobil, IMO Industries, Inc., and Doe defendants 1-25 alleging Decedent's asbestos exposure from 1973 to 1978 over the course of his employment as a chief engineer and merchant seaman. (Defs.' 56.1 Stmt. ¶ 1.) According to the Hawai'i state court complaint, this asbestos exposure directly and proximately "caused Decedent to develop, inter alia, malignant mesothelioma which was discovered in December 2011 and which caused Mr. Unterberg's August 11, 2012 death." (*Id.* ¶ 2.)

MOSTAT did not become a defendant to the Hawai'i action until April 1, 2014, after the parties had undertaken discovery disclosing that the Subject Vessels were owned by MOSTAT, and after Plaintiff had filed a Second Amended Complaint. (*Id.* ¶¶ 14-15.) During the summer of 2014, ExxonMobil and MOSTAT filed motions to dismiss the Hawai'i action for lack of personal jurisdiction, contending that ExxonMobil was not Decedent's employer and that MOSTAT was not a U.S.-based company. (*Id.* ¶ 18(2)[4] (citing April 23, 2014 Decl. of Fiona Harness ("Harness Decl"), ECF No. 141-13, at 18-19).) Plaintiff filed a Statement of No Opposition to the motions to dismiss on November 5, 2014, and the state court granted the motions on November 14, 2014. (*Id.* ¶ 19.)

[4] Defendant's Rule 56.1 Statement contains two paragraphs each numbered 18 and 19. This refers to the second of the paragraphs numbered "18."

Plaintiff then commenced this action that same day in New York state court. (*Id.* ¶ 20.) Plaintiff added six new defendants in its Amended Complaint. (*Id.*) Between December 19, 2014, when this action was removed to federal court, and January 22, 2016, Plaintiff and twenty-two Defendants filed stipulations of discontinuance or voluntary dismissal.[5] (*See generally* ECF Docket Entries.)

III. LEGAL STANDARD

Summary judgment is appropriate where the record establishes that there is no "genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine dispute exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court "is not to weigh the evidence but is instead required to view the evidence in the light most favorable to the party opposing summary judgment, to draw all reasonable inferences in favor of that party, and to eschew credibility assessments." *Weyant v. Okst*, 101 F.3d 845, 854 (2d Cir. 1996); *see also Williams v. McAllister Bros., Inc.*, 534 F.2d 19, 21 (2d Cir. 1976).

To defeat a motion for summary judgment, the nonmoving party must provide "hard evidence," *D'Amico v. City of N.Y.*, 132 F.3d 145, 149 (2d Cir. 1998), "from which a reasonable inference in [its] favor may be drawn," *Binder & Binder PC v. Barnhart*, 481 F.3d 141, 148 (2d Cir. 2007) (internal quotation marks omitted). "To satisfy Rule 56(e), affidavits must be based upon 'concrete particulars,' not conclusory allegations. To the extent that these affidavits contain bald assertions and legal conclusions . . . the district court [can] properly refuse[ ] to rely on them." *Schwapp v. Town of Avon*, 118 F.3d 106, 111 (2d Cir. 1997) (citations omitted); *Fletcher v. Atex,*

[5] Aside from Defendant ExxonMobil and Defendant Reichhold Inc., which has filed for bankruptcy, (*see, generally*, Exhibit C to Notice, ECF No. 1), the only remaining named Defendants in this case, ABB Inc., Elliot Turbomachinery Co., Inc., Schutte & Koerting, Inc., have not been served. (*See id.*)

Inc., 68 F.3d 1451, 1456 (2d Cir. 1995); *Moises Mendoza Padilla v. Empressa Hondurena De Vapores, S.A., Balboa Shipping Co., & United Brands Co.*, 1981 A.M.C. 671, 673 (S.D.N.Y. Dec. 2, 1980) ("Plaintiff at that time may not avoid summary judgment except by affidavits or other submissions setting forth "specific facts showing that there is a genuine issue for trial.") (citing Fed. R. Civ. P. 56(e)).

IV. EXXONMOBIL WAS NOT DECEDENT'S EMPLOYER UNDER THE JONES ACT

Defendant argues that, as a threshold matter, this Court should dismiss Plaintiff's First and Third Causes of Action under the Jones Act because ExxonMobil was neither Decedent's employer nor the owner of the Subject Vessels during the relevant time period. (*See* Mem. at 1.) The record is clear that Decedent was an employee of MOSAT. (Def.'s 56.1 Stmt. ¶ 6 (citing Vega Cert., Ex. D, at 1); Tr., at 17:12-13.) However, the parties disagree as to whether ExxonMobil's predecessor in interest, Mobil Oil, and MOSTAT are essentially the same business entity for liability purposes under the Jones Act. (*See* PA56.1 Stmt. ¶¶ 3, 5 (citing to 1972, 1976, 1975 Mobil Oil Form 10-K, Exs. 5, 6, 11 of Waxman Affr., ECF Nos. 161-5, -6, -11).) Plaintiff asks this Court to "pierce the corporate veil" and find that (1) Mobil Oil was the alter ego of MOSAT and its other marine subsidiaries; (2) was therefore Decedent's real employer and owner of the Subject Vessels; and (3) therefore may be held liable for Plaintiff's three causes of action. (*See* Opp'n at 4.)

The Jones Act provides seamen with a "right of recovery against their employers for negligence resulting in injury or death." *Williams*, 534 F.2d at 21 (citing 46 U.S.C. § 688) (internal quotation marks omitted). A seaman plaintiff may only bring a Jones Act action against his "employer." *Cosmopolitan Co. v. McAllister*, 337 U.S. 783, 789 (1949); *Mahramas v. American Export Isbrandtsen Lines, Inc.*, 475 F.2d 165, 170 (2d Cir. 1973); *Karvelis v. Constellation Lines*

S.A., 806 F.2d 49, 52 (2d Cir. 1986). Furthermore, "only one person, be it an individual or a corporation, could be sued as the employer." *Mahramas*, 475 F.2d at 170 (citing *Cosmopolitan Co.*, 337 U.S. at 791); *Karvelis*, 806 F.2d at 52.

The Second Circuit has recognized that where a subsidiary is a "mere instrumentality" of the parent, the parent may properly be sued under the Jones Act. *Penny v. United Fruit Co.*, 869 F. Supp. 122, 132 (E.D.N.Y. 1994) (citing *Williams*, 534 F.2d at 21). Under *Williams*, the test is essentially equivalent to whether or not to pierce the corporate veil:

> Ownership by a parent of all its subsidiary's stock has been held an insufficient reason in and of itself to disregard distinct corporate entities. Actual domination, rather than the opportunity to exercise control, must be shown.

534 F.2d at 20 (citations omitted). Or, a parent company must have used the subsidiary to perpetuate a fraud. *Kirno Hill Corp. v. Holt*, 618 F.2d 982, 985 (2d Cir. 1980) (citing *Garner v. Snyder*, 607 F.2d 582, 586 (2d Cir. 1979); *Interocean Shipping Co. v. National Shipping and Trading Co.*, 523 F.2d 527, 539 (2d Cir. 1975)). When courts in this Circuit consider whether a parent so dominates a subsidiary as to warrant disregarding the corporate separateness of the two entities, they look to a number of factors in this fact-specific inquiry, including but not limited to:

> (1) disregard of corporate formalities; (2) inadequate capitalization; (3) intermingling of funds; (4) overlap in ownership, officers, directors, and personnel; (5) common office space, address and telephone numbers of corporate entities; (6) the degree of discretion shown by the allegedly dominated corporation; (7) whether the dealings between the entities are at arm's length; (8) whether the corporations are treated as independent profit centers; (9) payment or guarantee of the corporation's debts by the dominating entity; and (10) intermingling of property between the entities.

T&O Shipping, Ltd. v. Source Link Co., No. 06-CV-7724 (KMK), 2006 WL 3513638, at *3 (S.D.N.Y. Dec. 5, 2006) (citing *Wajilam Exports (Singapore) Pte. Ltd. v. ATL Shipping Ltd.*, 475 F. Supp. 2d 275, 284 (S.D.N.Y. 2006)). "No single factor is dispositive." *Golden Horn Shipping Co. v. Volans Shipping Co.*, 14-CV-2168, 2014 WL 5778535, at *3 (S.D.N.Y. Nov. 6, 2014).

Furthermore, "[i]t is not enough that related corporations have the same officers and directors, or that the a parent corporation owns all of its subsidiary's stock, or even that a parent and subsidiary hold themselves out as being a single integrated operation, controlled and managed from the parent's offices." *Kashfi v. Phibro-Salomon, Inc.*, 628 F. Supp. 727, 733 (S.D.N.Y. 1986) (internal citations omitted).

Plaintiff contends that Defendant operated its international marine transportation system through a series of wholly owned subsidiaries, in a manner that was "substantially identical" to that of Standard Oil, (Opp'n at 6; PA56.1 ¶ 2), which was found to be operating through its wholly-owned subsidiary, Amoco International Oil Company, in *In re Oil Spill by Amoco Cadiz off Coast of France* ("*Amoco I*"), MDL 376, 1984 U.S. Dist. LEXIS 17480 (N.D. Ill. Apr. 18, 1984). Such similarity, according to Plaintiff, necessitates a finding that MOSAT was an alter ego of ExxonMobil. (Opp'n at 6.) By itself, however, "[o]wnership by one corporation of the stock in another corporation, either directly or through a subsidiary, is simply not a sufficient legal basis . . . to disregard corporate entities." *Banegas v. United Brands Co.*, 663 F. Supp. 198, 201 (D.S.C. 1986); *Phillips v. Tidewater Barge Lines, Inc.*, No. CV-05-1157, 2006 WL 1724542, at *9 (D. Or. Mar. 21, 2006) (quoting *Banegas* and granting summary judgment on plaintiff's Jones Act claim because of lack of sufficient evidence to pierce the corporate veil); *De Mateos v. Texaco Panama, Inc.*, 417 F. Supp. 411, 419–20 (E.D. Pa. 1976) (finding that corporate witness's inconsistencies in deposition testimony, when weighed against significant and continuing business operations and contacts maintained by defendant, were insufficient to pierce corporate veil).

1. Plaintiff has only established, at most, two of the alter ego factors.

With regard to overlap in ownership, officers, directors, and personnel, Plaintiff contends that Mobil Oil and its subsidiaries, Mobil Marine and MOSAT, "were operated by an interlocking

set of officers and directors from Mobil Oil's New York headquarters." (Opp'n at 10.) Defendant argues that ExxonMobil's 30(b)(6) representative, Bruce Larson, testified that Marine Transportation and other Mobil affiliates "had their own separate board of directors that were to the best of our knowledge . . .not employees of either Mobil Oil or Mobil Corporation" and that "overseas subsidiaries are delegated the responsibility . . .for looking after their operations with [the Mobil Tanker Manual] being an informational guideline" to the extent that Mobil's international subsidiaries "were operating independently." (Larson Dep. Tr., Ex. J to Vega Decl., ECF No. 141-11, at 56:1-3; 142:12-43:9.).

Plaintiff, on the other hand, argues that Harmon Hoffman was the manager of the parent company's Marine Transportation Department from April 11, 1972 until December 1, 1978, (*see* Waxman Affr., Ex. 27, at 793-94), and also served as one of five vice presidents and one of eight directors of MOSAT from 1972-1974. (Opp'n at 11; Waxman Affr., Ex. 4, at 952-953.) Mr. Hoffman then served as President of MOSAT from February 1974 until about January 10, 1979. (*See* Waxman Affr., Ex. 4, at 968-997.) Similarly, R.C. Carr, Treasurer of MOSAT from 1972 to 1976, eventually became Assistant Treasurer of Mobil Oil in 1979 (outside of the timeframe of Decedent's employment with MOSAT). (Opp'n at 14; Waxman Affr., Ex. 9, at 4; Ex. 12, at 184-86.) Also, Mobil Oil's assistant secretaries between 1972 and 1976, while not officially appointed as MOSAT's secretary, prepared and signed MOSAT's corporate minutes.[6] (Opp'n at 13; *see,*

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[6] Plaintiff offers other purported evidence of overlap of directors, officers, and personnel. However, as Defendant correctly notes, much of the overlap is between MOSAT and its subsidiary vessel owners, such as Nocos and Brilliant; not, as is required, directly between MOSAT and Defendant. (*See* Tr., at 10: 9-11:25; *compare* Waxman Decl., Ex. 6, at 8-1; Ex. 9, at 4; and Ex. 10, at 9-11 *with* Ex. 12, at 1-3 (demonstrating no overlap between Mobil Oil's directors/officers and those of MOSAT or MOSAT's subsidiaries from 1973-1978).) Plaintiff conceded such at oral argument:

> The Court: You are not relying on any other overlapping officers of Mobil Oil Company and MOSAT [other than Hoffman]?

e.g., Waxman Affr., Ex. 4, at 948, 955.) Finally, in terms of ownership, Mobil Oil owned all of Mobil Marine's stock, and Mobil Marine, in turn, owned all of MOSAT. (*See* PA56.1 Stmt. ¶ 2; DRPA56.1 Stmt. ¶ 2.) Viewed in the light most favorable to the non-moving party, Plaintiff has established an overlap in directors and personnel between Mobil Oil and MOSAT.[7]

Plaintiff also contends she has established common office space, address and telephone numbers of corporate entities. (Opp'n at 3, 20; Tr., at 22:24-23:22.) Plaintiff states that "MOSAT's principal place of business was Mobil Oil . . . headquarters at 150 E. 42nd Street, New York, NY 10017." (Opp'n at 3.) As proof, Plaintiff offers documents containing the corporate details of MOSAT, including that its address from 1973 to 1978 was 150 East 42nd Street. (*See* Waxman Affr., Ex. 4.) In light of the summary judgment standard, Plaintiff has raised a genuine issue of material fact regarding MOSAT and Mobil Oil's purportedly shared office space.

Plaintiff also argues that MOSAT did not have a sufficient degree of discretion to be considered independent from Mobil Oil. *See T&O Shipping, Ltd.*, 2006 WL 3513638, at *3; (Tr., at 43:10-12). Plaintiff relies upon and interprets the Mobil Tankers Manual to assert that Mobil Oil was responsible for the "operation and day-to-day planning of Mobile vessels" outside of the United States. (Opp'n at 8-9). However, the same Tankers Manual refutes this:

> *Each fleet manager's office is responsible* for the proper operation and husbanding of vessels in a particular fleet. For vessels not documented under the laws of the United States, the fleet manager's office is Mobil Shipping Company Limited at London, England, or Mobil Oil Française at Paris, France, or *Mobil Oil Reederei GmbH at Hamburg, Germany*.

Ms. Waxman: That is correct, your Honor.
The Court: You are relying on the overlapping directors and officers among the subsidiaries.
Ms. Waxman: Correct, your Honor. (*See* Tr., 34:12-18.)

[7] This Court observes that MOSAT was itself a subsidiary of the Canadian company, Mobil Marine, which was, in turn, one of many of Mobil Oil's subsidiaries, (PA56.1 ¶ 2), and is not a party to this action. Even in light of the overlap of personnel between MOSAT and Mobil Oil, the relationship between the two remains quite attenuated.

(Waxman Affr., Ex. 14, at 0477 (emphasis added).) Here, the Subject Vessels were not documented under the United States' flag, but rather the Panamanian and Liberian flags. (*See* Def.'s 56.1 Stmt. ¶¶ 12-13.) Thus, pursuant to the Manual, MOSAT—not Mobil Oil—"has general responsibility for the *international* marine transportation system of the company," including the Subject Vessels. (*See* Waxman Affr., Ex. 14, at 477.) Plaintiff has therefore failed to provide evidence that shows a genuine issue of material fact as to any lack of discretion afforded to MOSAT by Mobil Oil that would be sufficient to pierce the corporate veil.

2. Plaintiff's remaining evidence fails to raise a genuine issue of material fact sufficient to pierce the corporate veil.

According to Plaintiff, a number of other indicia apart from the two existing formal factors counsel this Court to find that MOSAT and Mobil Oil are alter egos. For example, Plaintiff contends that this Court should pierce the corporate veil because Mobil Oil and MOSAT had the same legal counsel, Mobil Oil's Office of Marine Counsel. (*See* Opp'n, at 21; Waxman Affr., Ex. 14, at 478.) As further proof, Plaintiff cites to a 1964 memorandum that pre-dates Decedent's employment. (*Id.* at 21 (citing Waxman Affr., Ex. 14, at 362-64).) The memorandum proposes that "the letterhead for each foreign subsidiary should contain the subsidiary's name and formal registered address in Liberia, Bermuda, or Panama; but should tell the receiver to 'Reply to' the New York address of Socony Mobil Oil Company (the corporate predecessor of Mobil) [at 633 3rd Avenue]." (*Id.*) Later, an unspecified "Tax Counsel" recommended that Mobile Marine's address not be 633 3rd Avenue, but 150 E. 42nd Street. (*Id.* (citing Waxman Affr., Ex. 14, at 364).) While this memorandum mentions Mobile Marine, MOSAT's direct parent company, it fatally fails to refer to MOSAT. (*See id.*) Plaintiff's submission of excerpts from the Tankers

Manual and the 1964 memorandum do not constitute a sufficient factual basis to conclude that MOSAT and Mobil Oil were essentially the same company.

As Defendant correctly argues, Plaintiff fails to meet her evidentiary burden as to piercing the corporate veil under Second Circuit law. (*See* Def.'s Reply in Further Supp. of Mot. for Summ. J. ("Reply"), at 6.) Plaintiff has failed to establish any of the other factors used in this Circuit in such an inquiry. As to the first factor—disregard of corporate formalities—Plaintiff conceded at Oral Argument that she is not making any such arguments, nor has any evidence to support this factor. *T&O Shipping, Ltd.*, 2006 WL 3513638, at *3; (Tr., at 36:10-11 ("Your Honor, we are not arguing that they ignored corporate form.").) Plaintiff also has offered no evidence that the foreign ship-owning entities were inadequately capitalized, nor that there was any intermingling of funds. *See T&O Shipping, Ltd.*, 2006 WL 3513638, at *3. Similarly, Plaintiff has not submitted evidence regarding any lack of arms-length dealings between MOSAT and Mobil Oil, that MOSAT was not treated as an independent profit center, that MOSAT paid Mobil Oil's debts, or that the entities intermingled property. *See id.* Finally, while Plaintiff attempted to offer sufficient evidence of MOSAT's lack of discretion, the evidence did not raise a genuine issue of material fact. *See id.*

Even when viewed in the light most favorable to Plaintiff, MOSAT's relationship to Mobile Oil is too attenuated to create a genuine issue of material fact such that this Court should pierce the corporate veil. Defendant's motion for summary judgment as to Plaintiff's negligence and maintenance and cure claims against ExxonMobil under Jones Act is therefore GRANTED.

VI. EXXONMOBIL DID NOT OWN THE SUBJECT VESSELS

With regard to Plaintiff's claim of breach of warranty of seaworthiness, Plaintiff argues that Mobil Oil was the true owner of the Subject Vessels. However, Plaintiff concedes that the registered owners of the tankers "were Liberian subsidiaries of Mobil Oil Corporation", (Tr. at

16:4-5), as follows: Mobil Shipping Transportation Company, Monrovia, Liberia ("MOSAT") owned[8] the Pride and Vigilant, (Pl.'s 56.1 Stmt. ¶ 13); MOSAT also owned the Comet until December 30, 1974, (*id.*); Brilliant Transport Company owned the MV Conastoga, and after December 30, 1974, also the Comet, (*id.*); the Iberian Transport Company owned the Wapello, (*id.*); and the Exporter was registered to Nocos Tankers, Inc., incorporated in Panama. (*Id.* ¶ 12.)

To prevail on a claim for breach of warranty of seaworthiness, a plaintiff must demonstrate that a defendant was the owner (or owner *pro hac vice*) of a vessel. *McGuire v. A-C Product Liability Trust*, Civ. No. 2:11-32123, 2015 WL 9583366, at *1 n.1 (Aug. 5, 2015 E.D. Pa.). Defendant's predecessor in interest was not the owner of the Subject Vessels.

Plaintiff having failed to demonstrate sufficient common identity between Brilliant, Nocos, and Iberian Tankers –the owners of the Subject Vessels—and Mobil Oil as the parent corporation, Defendant ExxonMobil's motion for summary judgment on Plaintiff's breach of seaworthiness claim under general maritime law is GRANTED.

VII. CONCLUSION

Defendant ExxonMobil's motion for summary judgment dismissing it from this action is hereby GRANTED in its entirety.

This Order resolves the motion at ECF No. 139.

Dated: New York, New York
August 23, 2016

SO ORDERED.

GEORGE B. DANIELS
United States District Judge

[8] Plaintiff does not dispute that the "ships at issue were registered in countries outside the United States and sailed under foreign flags" but disputes ownership of these vessels in that Plaintiff claims "Mobil consistently held itself out of the world as the owner of all foreign-flag ships in the Mobil fleet that were nominally owned by its marine subsidiaries." (Pl.'s 56.1 Stmt. ¶¶ 8, 13.)