

[Wineland v. Air & Liquid Sys. Corp.](#)

United States District Court for the Western District of Washington

August 5, 2021, Decided; August 5, 2021, Filed

Cause No. C19-0793RSL

Reporter

2021 U.S. Dist. LEXIS 147258 *

CHARLOTTE WINELAND, Individually, and SUSAN WINELAND, as Personal Representative of the Estate of JOHN DALE WINELAND, deceased, Plaintiffs, v. AIR & LIQUID SYSTEMS CORPORATION, et al., Defendants.

Core Terms

Pumps, asbestos, products, dust, summary judgment motion, exposure, exposure to asbestos, nonmoving, exposed

Counsel: [*1] For Charlotte Wineland, Individually, Susan Wineland, as Personal Representative of the, estate of, John Dale Wineland, Plaintiffs: Alexandra B Caggiano, Brian Weinstein, LEAD ATTORNEYS, WEINSTEIN CAGGIANO PLLC, SEATTLE, WA; Andrew Seitz, LEAD ATTORNEY, PRO HAC VICE, FROST LAW FIRM, SAN PEDRO, CA; Scott L Frost, LEAD ATTORNEY, FROST LAW FIRM PC, SAN PEDRO, CA.

For Air & Liquid Systems Corporation, individually and as successor by merger to, other, Buffalo Pumps Inc, Ingersoll Rand Company, Defendants: Kevin J Craig, Mark B Tuvim, Trevor J. Mohr, GORDON REES SCULLY MANSUKHANI LLP (WA), SEATTLE, WA.

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For CBS Corporation, formerly known as, Viacom Inc successor by merger with CBS Corporation, formerly known as, Westinghouse Electric Corporation, successor in interest, BF Sturtevant, Defendant: Christopher S Marks, Erin P Fraser, TANENBAUM KEALE LLP, SEATTLE, WA.

For Crane Co, Defendant: Ryan J Groshong, LEAD ATTORNEY, G William Shaw, K&L GATES LLP (SEATTLE), SEATTLE, WA.

For Flowserve US Inc, successor in interest, Anchor

Darling Valve Company, successor in interest, BW/IP International [*2] Inc, successor in interest, Durco International, successor in interest, Edward Valve Inc, Defendant: Randy J Aliment, LEAD ATTORNEY, Marc Marshall Carlton, Rachel Tallon Reynolds, LEWIS BRISBOIS BISGAARD & SMITH LLP (SEATTLE), SEATTLE, WA; Angie R. Nolet, Jeffrey M Odom, LANE POWELL PC (SEA), SEATTLE, WA; Christine E Dinsdale, SOHA & LANG PS, SEATTLE, WA; Rachel A Rubin, SOHA & LANG PS, SEATTLE, WA.

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For Warren Pumps LLC, individually and as, successor in interest, Quimby Pump Company Inc, Defendant: Allen Eraut, RIZZO MATTINGLY BOSWORTH PC, PORTLAND, OR.

For Alfa Laval Inc, sued individually and as, successor in interest, Delaval Separator Company, successor in interest, Sharples Inc, Consol Defendant: Christine E Dinsdale, Rachel A Rubin, SOHA & LANG PS, SEATTLE, WA.

For Auburn Technology Inc, sued as, formerly known as, Alco Power Inc, successor in interest, American Locomotive Company, successor in interest, Alco Products Incorporated, Consol Defendant: Ronald C Gardner, LEAD ATTORNEY, GARDNER TRABOLSI & ASSOC. PLLC, SEATTLE, WA.

For Aurora Pump Company, Taco [*3] Inc, Consol Defendants: Jeanne F Loftis, LEAD ATTORNEY, Lorianne Hanson, Megan Uhle, BULLIVANT HOUSER BAILEY PC (PORTLAND), PORTLAND, OR.

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For Cleaver-Brooks Inc, formerly known as, Aqua Chem

Inc, doing business as, Cleaver-Brooks Division, Consol Defendant: Timothy Kost Thorson, LEAD ATTORNEY, CARNEY BADLEY SPELLMAN PS, SEATTLE, WA.

For Curtiss-Wright Flow Control Corp, Gardner Denver Inc, formerly known as, Gardner Denver Machinery Inc, Consol Defendants: Claude Bosworth, LEAD ATTORNEY, Shaun Mary Morgan, RIZZO MATTINGLY BOSWORTH PC, PORTLAND, OR.

For Electrolux Home Products Inc, sued individually and as, successor in interest, White Consolidated Industries, successor in interest, Copes-Vulcan Electrolux Home Products-North America, Consol Defendant: Christopher S Marks, LEAD ATTORNEY, Alice Coles Serko, Erin P Fraser, Malika Johnson, TANENBAUM KEALE LLP, SEATTLE, WA.

For IMO Industries Inc, sued individually and as, successor in interest, DeLaval Steam Turbine Company, successor in interest, [*4] Delaval Inc, Consol Defendant: James Edward Horne, LEAD ATTORNEY, Michael Edward Ricketts, GORDON THOMAS HONEYWELL (SEA), SEATTLE, WA.

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For Milwaukee Valve Company Inc, Velan Valve Corporation, Consol Defendants: Kevin J Craig, Mark B Tuvim, Trevor J. Mohr, GORDON REES SCULLY MANSUKHANI LLP (WA), SEATTLE, WA.

For The Nash Engineering Company, Consol Defendant: Dana C Kopij, LEAD ATTORNEY, Tyler J Hermesen, WILLIAMS KASTNER (SEA), SEATTLE, WA.

For Puget Sound Commerce Center Inc, formerly known as, Todd Shipyards Corporation, Consol Defendant: Walter Eugene Barton, LEAD ATTORNEY, KARR TUTTLE CAMPBELL, SEATTLE, WA; D. David Steele, George D Yaron, PRO HAC VICE, YARON & ASSOCIATES, OAKLAND, CA.

For Robertshaw Controls Co, sued individually and as, doing business as, Fulton Sylphon Valves, Consol Defendant: Randy J Aliment, LEAD ATTORNEY, Rachel Tallon Reynolds, LEWIS BRISBOIS BISGAARD & SMITH LLP (SEATTLE), SEATTLE, [*5] WA.

For Syd Carpenter Marine Contractor Inc, Consol Defendant: J. Scott Wood, LEAD ATTORNEY, Diane Catherine Babbitt, FOLEY & MANSFIELD (WA),

SEATTLE, WA.

For The WM Powell Company, Consol Defendant: Brian Bernard Smith, LEAD ATTORNEY, James D Hicks, FOLEY & MANSFIELD (WA), SEATTLE, WA.

Judges: Robert S. Lasnik, United States District Judge.

Opinion by: Robert S. Lasnik

Opinion

ORDER GRANTING THE WARREN PUMPS, LLC'S AMENDED MOTION FOR SUMMARY JUDGMENT (DKT. # 348)

This matter comes before the Court on "Defendant Warren Pumps, LLC's Amended Motion for Summary Judgment." Dkt. # 348. Plaintiffs' decedent, John Dale Wineland, worked aboard a series of Navy ships and in Navy offices between 1963 and 1984. Plaintiffs allege that Mr. Wineland was exposed to **asbestos** contained in Warren Pumps products while aboard the USS DYNAMIC, the USS LOYALTY, the USS ESTEEM, and the USS TUSCALOOSA. Mr. Wineland worked primarily in the engine rooms of the ships to which he was assigned, repairing and maintaining machinery and equipment such as diesel engines, pumps, air compressors, and valves. Mr. Wineland developed mesothelioma, an **asbestos**-related disease, and died in 2018. Plaintiffs assert that Warren Pumps is liable for Mr. Wineland's [*6] illness and death under theories of negligence and strict liability.

Warren Pumps seeks summary dismissal of all of plaintiffs' claims, arguing that plaintiffs have failed to produce admissible evidence from which a jury could reasonably conclude that Mr. Wineland's exposure to **asbestos** from Warren Pumps products was a substantial contributing factor in his illness and death, as required by maritime law. Having reviewed the memoranda, declarations, and exhibits submitted by the parties¹ and taking the evidence in the light most favorable to plaintiffs, the Court finds as follows:

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact that would

¹This matter can be decided on the papers submitted in connection with this motion and the supplemental briefing regarding the applicability of maritime law. The parties' requests for oral argument are DENIED.

preclude the entry of judgment as a matter of law. The party seeking summary dismissal of the case "bears the initial responsibility of informing the district court of the basis for its motion" (*Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)) and "citing to particular parts of materials in the record" that show the absence of a genuine issue of material fact (*Fed. R. Civ. P. 56(c)*). Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to designate "specific [*7] facts showing that there is a genuine issue for trial." *Celotex Corp.*, 477 U.S. at 324. The Court will "view the evidence in the light most favorable to the nonmoving party . . . and draw all reasonable inferences in that party's favor." *Colony Cove Props., LLC v. City of Carson*, 888 F.3d 445, 450 (9th Cir. 2018). Although the Court must reserve for the trier of fact genuine issues regarding credibility, the weight of the evidence, and legitimate inferences, the "mere existence of a scintilla of evidence in support of the non-moving party's position will be insufficient" to avoid judgment. *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment. *S. Cal. Darts Ass'n v. Zaffina*, 762 F.3d 921, 925 (9th Cir. 2014). In other words, summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable fact finder could return a verdict in its favor. *Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053, 1071 (9th Cir. 2019).

For the reasons set forth in the Order Granting Crane Co.'s Motion for Summary Judgment (Dkt. # 550), the Court finds that maritime law applies to plaintiffs' tort claims. To prevail on their negligence and strict liability claims, plaintiffs "must demonstrate, among other things, that [Mr. Wineland's] injuries were caused by exposure to **asbestos** that was attributable to [Warren [*8] Pumps's] conduct." *McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1174 (9th Cir. 2016). See also *Lindstrom v. A-C Prod. Liab. Tr.*, 424 F.3d 488, 492 (6th Cir. 2005), abrogated on other grounds by *Air & Liquid Sys. Corp. v. DeVries*, U.S. , 139 S. Ct. 986, 203 L. Ed. 2d 373 (2019). To establish causation under maritime law, plaintiffs must show that Mr. Wineland's exposure to **asbestos** from Warren Pumps products "was a substantial contributing factor in causing his injuries." *McIndoe*, 817 F.3d at 1174. Evidence of only minimal exposure to **asbestos** dust attributable to each defendant is insufficient: plaintiffs must provide

"evidence regarding the *amount* of exposure to dust" attributable to Warren Pumps and, "critically, the *duration* of such exposure." *Id.* at 1176-77 (emphasis in original). The evidence 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." *Id.* at 1176 (quoting *Lindstrom*, 424 F.3d at 492). "[M]ore is needed" than simply placing a defendant's products in the workplace and showing that the decedent was occasionally exposed to **asbestos** dust from those products. *Id.* at 1176-77.

There is evidence that the distilling plant pumps aboard the DYNAMIC, LOYALTY, and ESTEEM were provided by Warren Pumps. Dkt. # 445-3 at 14. The distilling plants were located in the forward engine room of the three vessels. Dkt. # 445-8 at 66; Dkt. # 445-9 at 94; Dkt. # 445-10 at 68.² Each distilling plant included [*9] three pumps and utilized **asbestos** pump shaft packing and compressed **asbestos** sheet gaskets. Dkt. # 445-3 at 14. Warren Pumps also provided **asbestos**-containing replacement parts to the Navy during the relevant time frame. Dkt. # 445-3 at 24.³ In addition, "Warren Rupp manufactured air driven reciprocating pumps [were] installed on TUSCALOOSA." Dkt. # 445-3 at 20. See also Dkt. # 445-11 at 89.⁴ Finally, there is evidence from which a reasonable jury could find that Mr. Wineland was exposed to significant levels of **asbestos** dust while working in the engine rooms of all four vessels.⁵

² The renderings of the forward engine room of an Aggressive-Class Minesweeper shows the distillation plant in the space. See, e.g., Dkt. # 455-8 at 37 and 76 (USS DYNAMIC).

³ The only evidence regarding specific replacement parts orders relate to work performed on vessels other than those on which Mr. Wineland served. Dkt. # 445-3 at 24-25.

⁴ The Court assumes, for purposes of this motion, that Warren Rupp-Houdaille, Inc. and the named defendant are the same entity.

⁵ Based on his extensive experience in the Navy and at naval shipyards, including the supervision of enginemen during the relevant time frame aboard the USS BRUMBY and the USS NEWPORT NEWS, Captain Arnold Moore opines that Mr. Wineland was likely or extremely likely to have repaired, assisted in the repair, or very closely supervised the repair of the major machinery and valves installed in the engine rooms of the DYNAMIC, LOYALTY, ESTEEM, and TUSCALOOSA. Dkt. # 445-3 at 8. Captain Moore describes how these repairs would be carried out, including activities which would invariably create **asbestos** dust, including the removal of old, dried packing and gaskets and the cutting and installation of

Plaintiffs have not, however, produced evidence from which a reasonable jury could conclude that Mr. Wineland suffered a substantial exposure to **asbestos** dust from Warren Pumps products. There is no evidence regarding where the Warren Pumps air driven reciprocating pumps were installed on the TUSCALOOSA, making it impossible to determine whether Mr. Wineland was exposed to **asbestos** from those pumps. Although the distilling plant pumps were located in Mr. Wineland's workspace and it is entirely possible that the pumps were maintained, repaired, or overhauled while Mr. Wineland served aboard one or more [*10] of the vessels,⁶ there is no indication how frequent such activities might have been. It is plaintiff's burden to provide evidence showing "a high enough level of exposure that an inference that the **asbestos** was a substantial factor in the injury is more than conjectural." *McIndoe*, 817 F.3d at 1176 (quoting [Lindstrom](#), 424 F.3d at 492). "[M]ore is needed" than simply placing a defendant's products in the workplace and showing that the decedent was occasionally exposed to **asbestos** dust from those products. *Id.* at 1176-77. Absent "evidence regarding the amount of exposure to dust" attributable to Warren Pumps and, "critically, the duration of such exposure," (*Id.* at 1176-77 (emphasis in original)), a jury would have to speculate as to whether **asbestos** from Warren Pumps products "was a substantial contributing factor in causing his injuries." *Id.* at 1174.

Plaintiffs have failed to raise a triable issue of fact regarding causation under maritime law. For all of the foregoing reasons, Warren Pumps's motion for

new packing and gasket materials Dkt. # 445-3 at 9. Plaintiffs' industrial hygienist, Steven Paskal, similarly opines that "it is virtually certain that [Mr. Wineland], and/or others in close proximity and/or in shared, enclosed airspaces, would have routinely removed and replaced gaskets and stem/shaft packing associated with . . . pumps" Dkt. # 445-17 at 5. These activities would have exposed Mr. Wineland to an **asbestos**-containing aerosol that would remain suspended in air streams for extended periods of time at concentrations that ranged from hundreds to millions of times ambient pollution levels. Dkt. # 445-17 at 2-3 and 6. Gregory Bullinger, a shipmate of Mr. Wineland on the TUSCALOOSA, confirms that "work on the equipment in the engine room was regular, ongoing, and routine. We all removed and replaced packing and gaskets on the various equipment, including the valves, pumps, and ALCO diesel engines." Dkt. # 445-15 at 3.

⁶Mr. Wineland served aboard the DYNAMIC from September 1963 to September 1966, the LOYALTY from September 1970 to July 1972, the TUSCALOOSA from July 1972 to December 1974, and the ESTEEM from March 1978 to October 1980.

summary judgment (Dkt. # 348) is GRANTED. Plaintiff's motion for summary judgment regarding Warren Pumps's affirmative defenses (Dkt. # 372) is DENIED as moot.

Dated this 5th day of August, 2021.

/s/ Robert S. Lasnik

Robert S. Lasnik

United States District Judge

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