

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	HON. ADAM SILVERA	PART	13
	<i>Justice</i>		
-----X		INDEX NO.	<u>190217/2018</u>
KEITH JOUNGBLOOD,		MOTION DATE	<u>09/03/2020</u>
Plaintiff,		MOTION SEQ. NO.	<u>003</u>

- v -

AMCHEM PRODUCTS, INC., AMERICAN BILTRITE INC., AMERICAN HONDA MOTOR CO., INC. (AHM), BMW OF NORTH AMERICA, INC.-EASTERN REGION, BOBCAT COMPANY, BOMBARDIER INC, BORGWARNER MORSE TEC LLC, CATERPILLAR, INC, CERTAINTEED CORPORATION, CNH AMERICA LLC, CNH AMERICA, AS SUCCESSOR IN INTEREST TO, CUMMINS, INC, DANA COMPANIES, LLC, EATON HYDRAULICS LLC (SUCCESSOR BY MERGER TO EATON, FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST, FIAT USA, INC, FORD MOTOR COMPANY, GENERAL ELECTRIC COMPANY, HENNESSY INDUSTRIES, INC., HONEYWELL INTERNATIONAL, INC., HYSTER-YALE MATERIALS HANDLING, INC, KOMATSU AMERICA INDUSTRIES INC, LABRIE ENVIRONMENTAL GROUP USA, INC, MACK TRUCKS, INC, MAREMONT CORP., MARMON HIGHWAY TECHNOLOGIES, LLC, NAVISTAR, INC., A/K/A INTERNATIONAL, NISSAN NORTH AMERICA, INC, OSHKOSH CORPORATION, AS SUCCESSOR IN INTEREST TO, OWENS-ILLINOIS, INC, PFIZER, INC. (PFIZER), STANDARD MOTOR PRODUCTS, INC., TENNECO AUTOMOTIVE OPERATING COMPANY INC, THE HEIL CO. D/B/A HEIL ENVIRONMENTAL, TOYOTA MOTOR SALES U.S.A ., INC, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, WAYNE SWEEPERS LLC, YALE MATERIALS HANDLING CORPORATION, GLOBAL ENVIRONMENTAL PRODUCTS, INC. AS SUCCESSOR IN INTEREST TO WAYNE SWEEPER COMPANY, AP EMISSIONS TECHNOLOGIES, LLC, CRANE CARRIER COMPANY, ELGIN SWEEPER COMPANY, HOLLEY PERFORMANCE PRODUCTS INC. D/B/A MR. GASKET CO., MAXON CORPORATION, MOROSO PERFORMANCE PRODUCTS INC., MOROSO USA, INC., ARVINMERITOR INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ROCKWELL AUTOMOTIVE, EATON CORPORATION, AS SUCCESSOR -IN-INTEREST TO CUTLER-HAMMER, INC., AERCO INTERNATIONAL, INC., BMCE INC., F/K/A UNITED CENTRIFUGAL PUMP, BUCYRUS INTERNATIONAL, INC., IN INTEREST TO MARION POWER SHOVEL COMPANY, JCB, INC., KAMCO SUPPLY

**DECISION + ORDER ON
MOTION**

CORP., MAXON LIFT CORP.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347

were read on this motion to/for

SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, it is ORDERED that defendant American Biltrite Inc.'s motion for summary judgment, which seeks an order granting summary judgment in favor of American Biltrite on the grounds that American Biltrite has made a prima facie case demonstrating a lack of causation, is denied. The matter at issue stems from plaintiff Keith W. Jounghblood's diagnosis of colon cancer which plaintiff alleges was caused by Mr. Jounghblood's years of exposure to visible dust from work performed on American Biltrite brand Amtico tiles which contained asbestos. Plaintiff and defendant's experts disagree on the underlying science at issue. The fact that plaintiff and defendant's experts disagree on the underlying science raises a credibility issue that cannot be resolved without jury consideration. Conflicting testimony raises credibility issues that cannot be resolved on papers and is a basis to deny summary judgment (*Messina v New York City Transit Authority* 84 AD3d 439 [2011]). In *Marzigliano v Amchem Products, Inc., et al.*, Index No. 190134/2017 Motion Sequence 003, the Honorable Manuel J. Mendez ruled that conflicting affidavits regarding a plaintiff's exposure to chrysotile asbestos fibers raises issues of fact on general causation. Further, as to specific causation the Court noted that "[p]laintiffs are not required to show the precise causes of damages as a result of [plaintiff's] exposure to [defendant's] product, only 'facts and conditions from which defendant's liability may be reasonably inferred'" (*id.* at 6).

Here, like the plaintiff in *Marzigliano*, plaintiff cites to plaintiff's testimony which identified Amtico tiles as the source of his exposure to asbestos. Plaintiff's deposition combined with the expert reports has created "facts and conditions from which [defendant's] liability may be reasonably inferred" and raises issues of fact (*Reid v Ga.- Pacific Corp.*, 212 AD2d 462 [1st Dept. 1995]). Thus, plaintiff has provided evidence of causation stating that defendant's product is capable of causing the underlying illness at issue, and the conflicting testimony warrants the denial of defendant's motion for summary judgment.

Accordingly, it is

ORDERED that defendant's motion for summary judgment, pursuant to CPLR 3212, for a finding in favor of defendant on the grounds that said defendant has made a prima facie case demonstrating lack of causation and to dismiss plaintiff's Complaint and all cross-claims against American Biltrite is denied; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this Decision/Order upon defendants with notice of entry.

This Constitutes the Decision/Order of the Court.

9/14/2021

DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE