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

United States District Court for the Western District of Pennsylvania

May 27, 2022, Decided; May 27, 2022, Filed

2:20-CV-01537-MJH

Reporter

2022 U.S. Dist. LEXIS 95655 *

SHIRLEY A. HILSTER, DECEASED; CHARLES W. HILSTERJR., INDIVIDUALLY; SHIRLEY A. CARPIN, AS EXECUTOR OF THE ESTATE OF SHIRLEY A. HILSTER, DECEASED; AND SHIRLEY A. HILSTER, Plaintiffs, vs. AIR & LIQUID SYSTEMS CORPORATION, et al., Defendants,

For SHIRLEY A. HILSTER, Plaintiff: Shawna Anne Forbes-King, LEAD ATTORNEY, PRO HAC VICE, Dean Omar Branham & Shirley, TX, Dallas, TX; Ethan Horn, Dean Omar Branham Shirley LLP, Dallas, TX; Rachel A. Gross, PRO HAC VICE, Dean [*2] Omar Branham Shirley LLP, Dallas, TX.

SHIRLEY A. CARPIN, Plaintiff, Pro se.

Core Terms

asbestos, pumps, gaskets, specifications, external, warnings, summary judgment, exposure, maritime, hazards, manufacturer, contractor, summary judgment motion, government contractor, vessel, ships, exposed, genuine issue of material fact, failure to warn, maritime law, asbestos-containing, documentation, demonstrates, third-party, alteration, conformed, asserts, parties

For AIR & LIQUID SYSTEMS CORPORATION, individually and as successor-in-interest to Buffalo Pumps, Inc., Defendant: Brady Lee Green, Edward Joseph White, PRO HAC VICE, Wilbraham Lawler & Buba, Philadelphia, PA; Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For BECHTEL CORPORATION, SEQUOIA VENTURES, INC., formerly known as BECHTEL CORPORATION, Defendants: Daniel J. Sinclair, Dennis R. McEwen, Eckert, Seamans, Cherin & Mellott, Pittsburgh, PA.

Counsel: [*1] For SHIRLEY A. HILSTER, Deceased, Plaintiff: Benjamin D. Braly, Ethan Horn, LEAD ATTORNEYS, PRO HAC VICE, Rachel A. Gross, PRO HAC VICE, Dean Omar Branham Shirley LLP, Dallas, TX; Craig E. Coleman, LEAD ATTORNEY, Caroselli Beachler & Coleman, Pittsburgh, PA; Shawna Anne Forbes-King, PRO HAC VICE, Dean Omar Branham & Shirley, TX, Dallas, TX.

For BW/IP INC., and its wholly-owned subsidiaries, Defendant: John A. Turlik, LEAD ATTORNEY, PRO HAC VICE, Segal McCambridge Singer & Mahoney, Philadelphia, PA.

For CHARLES W. HILSTER, JR., individually, Plaintiff: Benjamin D. Braly, Ethan Horn, LEAD ATTORNEYS, PRO HAC VICE, Rachel A. Gross, PRO HAC VICE, Dean Omar Branham Shirley LLP, Dallas, TX; Craig E. Coleman, LEAD ATTORNEY, Caroselli Beachler & Coleman, Pittsburgh, PA; Shawna Anne Forbes-King, Dean Omar Branham & Shirley, TX, Dallas, TX.

For CRANE CO., Defendant: Michael J. Ross, K&L Gates LLP, K&L Gates Center, Pittsburgh, PA; Sarah M. Czipinski, K&L Gates, K&L Gates Center, Pittsburgh, PA.

For ECKEL INDUSTRIES, INC., Defendant: Edward A. Smallwood, Kelly L Smith, Post & Schell, P.C., Pittsburgh, PA.

For SHIRLEY A. CARPIN, as Executor of the Estate of Shirley A. Hilster, Deceased, Plaintiff: Rachel A. Gross, LEAD ATTORNEY, PRO HAC VICE, Benjamin D. Braly, Dean Omar Branham Shirley LLP, Dallas, TX; Shawna Anne Forbes-King, LEAD ATTORNEY, PRO HAC VICE, Dean Omar Branham & Shirley, TX, Dallas, TX.

For EXELON CORPORATION, SCHNEIDER ELECTRIC SYSTEMS USA, INC., formerly known as INVENSYS SYSTEMS, INC., Defendants: Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For EXELON GENERATION COMPANY, LLC, a subsidiary of Exelon Corporation, [*3] MIDAMERICAN ENERGY COMPANY, Defendants: Jennifer E. Watson, LEAD ATTORNEY, Wilbraham Lawler & Buba,

Pittsburgh, PA.

For FOSTER WHEELER ENERGY CORPORATION, Defendant: Dennis F. Wolford, LEAD ATTORNEY, Reed, Tosh, Wolford & Douglass, Beaver, PA; David S. Blow, PRO HAC VICE, Tanenbaum Keale LLP, Newark, NJ.

For GOULDS PUMP LLC, GRINNELL LLC, doing business as GRINNELL CORPORATION, ITT, LLC, formerly known as ITT CORPORATION, formerly known as ITT INDUSTRIES INC., formerly known as ITT FLUID PRODUCTS CORP., formerly known as HOFFMAN SPECIALTY MFG. CORP., formerly known as BELL AND GOSSETT COMPANY, formerly known as ITT MARLOW, Defendants: Aaron Arthur, Thomas Combs & Spann, PLLC, Charleston, WV.

For IMO INDUSTRIES, INC., Defendant: Eric K. Falk, Davies, McFarland & Carroll, Pittsburgh, PA; Julie Nord Friedman, Rawle & Henderson, LLP, The Henry W. Oliver Building, Pittsburgh, PA.

For METROPOLITAN LIFE INSURANCE COMPANY, a wholly-owned subsidiary of MetLife, Inc., Defendant: Ronald L. Daugherty, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA.

For PSEG NUCLEAR LLC, a subsidiary of Public Service Enterprise Group Incorporated, PSEG POWER LLC, a subsidiary of Public Service Enterprise [*4] Group Incorporated, Defendants: Steven G. Blackmer, LEAD ATTORNEY, Willman & Silvaggio, LLP, Pittsburgh, PA.

For PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED, Defendant: Anna Sosso, LEAD ATTORNEY, Willman & Silvaggio, LLP, Pittsburgh, PA; Daniel Robert Kuszmarski, LEAD ATTORNEY, PRO HAC VICE, Hoagland, Longo, Moran, Dunst & Doukas, New Brunswick, NJ; Marc Gaffrey, LEAD ATTORNEY, PRO HAC VICE, Hoagland Longo Moran Dunst & Doukas, LLP, New Brunswick, NJ.

For THE WILLIAM POWELL COMPANY, Defendant: Edward A. Smallwood, LEAD ATTORNEY, Post & Schell, P.C., Pittsburgh, PA; Kerryann Marie Cook, PRO HAC VICE, The Cook Group, New York, NY; Steven D. Evans, Post & Schell, PC, Pittsburgh, PA.

For VIACOMCBS INC., and also as successor-in-interest to BF Sturtevant, formerly known as CBS CORPORATION, a Delaware Corporation, formerly known as VIACOM, INC., successor by merger to CBS Corporation, a Pennsylvania corporation, formerly known as WESTINGHOUSE ELECTRIC CORPORATION, Defendant: Daniel J. Sinclair, Dennis

R. McEwen, Eric L. Horne, Eckert, Seamans, Cherin & Mellott, Pittsburgh, PA; Gretchen Panchik, Eckert Seamans, Pittsburgh, PA; William D Harvard, PRO HAC VICE, Evert Weathersby Houff, Watkinsville, [*5] GA.

For WARREN PUMPS LLC, Defendant: Danielle M. Vugrinovich, Patrick Reilly, Marshall Dennehey Warner Coleman & Goggin, Pittsburgh, PA; Judith Perritano, PRO HAC VICE, Pierce Davis & Perritano LLP, Boston, MA.

For ABB INC., Defendant: Melanie Irwin, Willman & Silvaggio, Pittsburgh, PA.

For AECOM ENERGY & CONSTRUCTION, INC., Defendant: Jason M. English, LEAD ATTORNEY, Margolis Edelstein, The Oliver Building, Pittsburgh, PA; Kyle T. McGee, LEAD ATTORNEY, Robert D. Shope, Jr., Margolis Edelstein, Pittsburgh, PA; Dawn Dezii, PRO HAC VICE, Margolis Edelstein, Mount Laurel, NJ.

For AIR & LIQUID SYSTEMS CORPORATION, individually and as successor-in-interest to Buffalo Pumps, Inc., Cross Defendant: Brady Lee Green, Edward Joseph White, LEAD ATTORNEYS, PRO HAC VICE, Wilbraham Lawler & Buba, Philadelphia, PA; Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For BW/IP INC., and its wholly-owned subsidiaries, Cross Defendant: John A. Turlik, Segal McCambridge Singer & Mahoney.

For CENTRAL HUDSON GAS & ELECTRIC CORPORATION, Cross Defendant: Ruthe Ann Nepf, LEAD ATTORNEY, PRO HAC VICE, Thompson Hine LLP.

For CRANE CO., Cross Defendant: Michael J. Ross, K&L Gates LLP, K&L Gates Center, Pittsburgh, [*6] PA; Sarah M. Czypinski, K&L Gates, K&L Gates Center, Pittsburgh, PA.

For ECKEL INDUSTRIES, INC., Cross Defendant: Edward A. Smallwood, Kelly L Smith, Post & Schell, P.C., Pittsburgh, PA.

For ELECTRIC BOAT CORPORATION, a subsidiary of General Dynamics Corporation, GENERAL DYNAMICS CORPORATION, Cross Defendants: James B. Insko, LEAD ATTORNEY, Gordon Rees Scully Mansukhani, Pittsburgh, PA; Erik C. Dimarco, Gordon Rees Scully Mansukhani LLP.

For EXELON CORPORATION, MIDAMERICAN ENERGY COMPANY, SCHNEIDER ELECTRIC SYSTEMS USA, INC., Cross Defendants: Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For FOSTER WHEELER ENERGY CORPORATION, Cross Defendant: David S. Blow, LEAD ATTORNEY, PRO HAC VICE, Tanenbaum Keale LLP, Newark, NJ.

For GOULDS PUMP LLC, GRINNELL LLC, ITT, LLC, Cross Defendants: Aaron Arthur, Thomas Combs & Spann, PLLC, Charleston, WV.

For METROPOLITAN LIFE INSURANCE COMPANY, a wholly-owned subsidiary of MetLife, Inc., Cross Defendant: Ronald L. Daugherty, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA.

For PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED, Cross Defendant: Daniel Robert Kuzmerski, LEAD ATTORNEY, PRO HAC VICE, Hoagland, Longo, Moran, Dunst & Doukas, [*7] New Brunswick, NJ; Marc Gaffrey, LEAD ATTORNEY, PRO HAC VICE, Hoagland Longo Moran Dunst & Doukas, LLP, New Brunswick, NJ.

For THE WILLIAM POWELL COMPANY, Cross Defendant: Edward A. Smallwood, LEAD ATTORNEY, Post & Schell, P.C., Pittsburgh, PA; Kerryann Marie Cook, LEAD ATTORNEY, PRO HAC VICE, The Cook Group, New York, NY; Steven D. Evans, Post & Schell, PC, Pittsburgh, PA.

For VIACOMCBS INC., and also as successor-in-interest to BF Sturtevant, Cross Defendant: William D Harvard, LEAD ATTORNEY, PRO HAC VICE, Evert Weathersby Houff, Watkinsville, GA.

For WARREN PUMPS LLC, Cross Defendant: Judith Perritano, LEAD ATTORNEY, PRO HAC VICE, Pierce Davis & Perritano LLP, Boston, MA; Danielle M. Vugrinovich, Patrick Reilly, Marshall Dennehey Warner Coleman & Goggin, Pittsburgh, PA.

For IMO INDUSTRIES, INC., Cross Claimant: Julie Nord Friedman, Rawle & Henderson, LLP, The Henry W. Oliver Building, Pittsburgh, PA.

For BW/IP INC., and its wholly-owned subsidiaries, Cross Defendant: John A. Turlik, Segal McCambridge Singer & Mahoney, Philadelphia, PA.

For SEMINOLE ELECTRIC COOPERATIVE, INC., Cross Defendant: Houston Bragg, Dinsmore & Shohl, LLP, Lexington, KY.

For BW/IP INC., and its wholly-owned subsidiaries, [*8] Counter Defendant: John A. Turlik, Segal McCambridge Singer & Mahoney, Philadelphia, PA.

For AIR & LIQUID SYSTEMS CORPORATION, individually and as successor-in-interest to Buffalo Pumps, Inc., Counter Defendant: Brady Lee Green,

Edward Joseph White, LEAD ATTORNEYS, PRO HAC VICE, Wilbraham Lawler & Buba, Philadelphia, PA; Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For CENTRAL HUDSON GAS & ELECTRIC CORPORATION, Counter Defendant: Ruthe Ann Nepf, LEAD ATTORNEY, PRO HAC VICE, Thompson Hine LLP.

For CRANE CO., Counter Defendant: Michael J. Ross, K&L Gates LLP, K&L Gates Center, Pittsburgh, PA; Sarah M. Czypinski, K&L Gates, K&L Gates Center, Pittsburgh, PA.

For ECKEL INDUSTRIES, INC., Counter Defendant: Kelly L Smith, Post & Schell, P.C., Pittsburgh, PA.

For ELECTRIC BOAT CORPORATION, a subsidiary of General Dynamics Corporation, GENERAL DYNAMICS CORPORATION, Counter Defendants: James B. Insko, LEAD ATTORNEY, Gordon Rees Scully Mansukhani, Pittsburgh, PA; Erik C. Dimarco, Gordon Rees Scully Mansukhani LLP.

For EXELON CORPORATION, SCHNEIDER ELECTRIC SYSTEMS USA, INC., Counter Defendants: Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For FOSTER WHEELER ENERGY CORPORATION, [*9] Counter Defendant: David S. Blow, LEAD ATTORNEY, PRO HAC VICE, Tanenbaum Keale LLP, Newark, NJ.

For GOULDS PUMP LLC, GRINNELL LLC, ITT, LLC, Counter Defendants: Aaron Arthur, Thomas Combs & Spann, PLLC, Charleston, WV.

For IMO INDUSTRIES, INC., Counter Defendant: Eric K. Falk, Davies, McFarland & Carroll, Pittsburgh, PA; Julie Nord Friedman, Rawle & Henderson, LLP, The Henry W. Oliver Building, Pittsburgh, PA.

For METROPOLITAN LIFE INSURANCE COMPANY, a wholly-owned subsidiary of MetLife, Inc., Counter Defendant: Ronald L. Daugherty, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA.

For PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED, Counter Defendant: Daniel Robert Kuzmerski, LEAD ATTORNEY, PRO HAC VICE, Hoagland, Longo, Moran, Dunst & Doukas, New Brunswick, NJ; Marc Gaffrey, LEAD ATTORNEY, PRO HAC VICE, Hoagland Longo Moran Dunst & Doukas, LLP, New Brunswick, NJ.

For SEMINOLE ELECTRIC COOPERATIVE, INC.,

Counter Defendant: Houston Bragg, LEAD ATTORNEY, Dinsmore & Shohl, LLP, Lexington, KY.

For THE WILLIAM POWELL COMPANY, Counter Defendant: Edward A. Smallwood, LEAD ATTORNEY, Post & Schell, P.C., Pittsburgh, PA; Kerryann Marie Cook, LEAD ATTORNEY, PRO HAC VICE, The Cook Group, New York [*10] York, NY; Steven D. Evans, Post & Schell, PC, Pittsburgh, PA.

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For WARREN PUMPS LLC, Counter Claimant: Judith Perritano, LEAD ATTORNEY, PRO HAC VICE, Pierce Davis & Perritano LLP, Boston, MA; Danielle M. Vugrinovich, Patrick Reilly, Marshall Dennehey Warner Coleman & Goggin, Pittsburgh, PA.

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For EXELON GENERATION COMPANY, LLC, a subsidiary of Exelon Corporation, MIDAMERICAN ENERGY COMPANY, Cross Defendants: Jennifer E. Watson, LEAD ATTORNEY, Wilbraham Lawler & Buba, Pittsburgh, PA.

For IMO INDUSTRIES, INC., Cross Defendant: Eric K. Falk, [*11] Davies, McFarland & Carroll, Pittsburgh, PA; Julie Nord Friedman, Rawle & Henderson, LLP, The Henry W. Oliver Building, Pittsburgh, PA.

For SEMINOLE ELECTRIC COOPERATIVE, INC., Cross Defendant: Houston Bragg, LEAD ATTORNEY, Dinsmore & Shohl, LLP, Lexington, KY.

For GOULDS PUMP LLC, GRINNELL LLC, ITT, LLC, Cross Claimants: Aaron Arthur, Thomas Combs & Spann, PLLC, Charleston, WV.

For ECKEL INDUSTRIES, INC., Cross Claimant: Edward A. Smallwood, Kelly L Smith, Post & Schell, P.C., Pittsburgh, PA.

For VERMONT YANKEE NUCLEAR POWER

CORPORATION, Cross Defendant: Ashley D Waldinger, Dickie, McCamey & Chilcote, P.C, Pittsburgh, PA.

For PSEG NUCLEAR LLC, a subsidiary of Public Service Enterprise Group Incorporated, PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED, Cross Defendants: Anna M. Sosso, Willman & Silvaggio, Pittsburgh, PA.

For FOSTER WHEELER ENERGY CORPORATION, Cross Defendant: Dennis F. Wolford, Reed, Toshi, Wolford & Douglass, Beaver, PA.

For CHARLES W. HILSTER, JR., Cross Defendant: Craig E. Coleman, LEAD ATTORNEY, Caroselli Beachler & Coleman, Pittsburgh, PA; Ethan Horn, Rachel A. Gross, LEAD ATTORNEYS, PRO HAC VICE, Dean Omar Branham Shirley LLP, Dallas, TX; Shawna Anne Forbes-King, LEAD ATTORNEY, [*12] PRO HAC VICE, Dean Omar Branham & Shirley, TX, Dallas, TX.

For SHIRLEY A. HILSTER, Cross Defendant: Benjamin D. Braly, Ethan Horn, LEAD ATTORNEYS, PRO HAC VICE, Dean Omar Branham Shirley LLP, Dallas, TX; Craig E. Coleman, LEAD ATTORNEY, Caroselli Beachler & Coleman, Pittsburgh, PA; Shawna Anne Forbes-King, LEAD ATTORNEY, PRO HAC VICE, Dean Omar Branham & Shirley, TX, Dallas, TX; Rachel A. Gross, PRO HAC VICE, Dean Omar Branham Shirley LLP, Dallas, TX.

For EXELON GENERATION COMPANY, LLC, a subsidiary of Exelon Corporation, Counter Defendant: Jennifer E. Watson, LEAD ATTORNEY, Wilbraham Lawler & Buba, Pittsburgh, PA.

For SEMINOLE ELECTRIC COOPERATIVE, INC., Counter Defendant: Houston Bragg, Dinsmore & Shohl, LLP, Lexington, KY.

For VERMONT YANKEE NUCLEAR POWER CORPORATION, Counter Defendant: Ashley D Waldinger, Dickie, McCamey & Chilcote, P.C, Pittsburgh, PA.

For AIR & LIQUID SYSTEMS CORPORATION, individually and as successor-in-interest to Buffalo Pumps, Inc., Cross Claimant: Brady Lee Green, Edward Joseph White, LEAD ATTORNEYS, PRO HAC VICE, Wilbraham Lawler & Buba, Philadelphia, PA; Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For AIR & LIQUID SYSTEMS CORPORATION, individually [*13] and as successor-in-interest to Buffalo Pumps, Inc., Counter Claimant: Brady Lee Green, Edward Joseph White, LEAD ATTORNEYS, PRO HAC

VICE, Wilbraham Lawler & Buba, Philadelphia, PA; Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For FOSTER WHEELER ENERGY CORPORATION, Counter Defendant: Dennis F. Wolford, LEAD ATTORNEY, Reed, Tosh, Wolford & Douglass, Beaver, PA.

For PSEG POWER LLC, a subsidiary of Public Service Enterprise Group Incorporated, Counter Defendant: Anna M. Sosso, Willman & Silvaggio, Pittsburgh, PA.

For PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED, Cross Defendant: Steven G. Blackmer, Willman & Silvaggio, LLP, Pittsburgh, PA.

For EXELON CORPORATION, SCHNEIDER ELECTRIC SYSTEMS USA, INC., MIDAMERICAN ENERGY COMPANY, Cross Claimants: Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For EXELON CORPORATION, SCHNEIDER ELECTRIC SYSTEMS USA, INC., MIDAMERICAN ENERGY COMPANY, Counter Claimants: Jennifer E. Watson, Wilbraham Lawler & Buba, Pittsburgh, PA.

For EXELON GENERATION COMPANY, LLC, a subsidiary of Exelon Corporation, Cross Claimant: Jennifer E. Watson, LEAD ATTORNEY, Wilbraham Lawler & Buba, Pittsburgh, PA.

For EXELON GENERATION COMPANY, LLC, a subsidiary [*14] of Exelon Corporation, Counter Claimant: Jennifer E. Watson, LEAD ATTORNEY, Wilbraham Lawler & Buba, Pittsburgh, PA.

For FOSTER WHEELER ENERGY CORPORATION, Cross Defendant: Dennis F. Wolford, LEAD ATTORNEY, Reed, Tosh, Wolford & Douglass, Beaver, PA.

For TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., Counter Defendant: Tausha Saunders, Greenberg Traurig, LLP, Philadelphia, PA.

For FOSTER WHEELER ENERGY CORPORATION, Cross Claimant: David S. Blow, LEAD ATTORNEY, PRO HAC VICE, Tanenbaum Keale LLP, Newark, NJ; Dennis F. Wolford, LEAD ATTORNEY, Reed, Tosh, Wolford & Douglass, Beaver, PA.

For BECHTEL CORPORATION, SEQUOIA VENTURES, INC., Cross Defendants: Daniel J. Sinclair, Dennis R. McEwen, Eckert, Seamans, Cherin & Mellott, Pittsburgh, PA.

For VIACOMCBS INC., and also as successor-in-interest to BF Sturtevant, Cross Defendant: Daniel J.

Sinclair, Dennis R. McEwen, Eric L. Horne, Eckert, Seamans, Cherin & Mellott, Pittsburgh, PA; Gretchen Panchik, Eckert Seamans, Pittsburgh, PA.

For BECHTEL CORPORATION, SEQUOIA VENTURES, INC., Counter Defendants: Daniel J. Sinclair, Dennis R. McEwen, Eckert, Seamans, Cherin & Mellott, Pittsburgh, PA.

For VIACOMCBS INC., and also as successor-in-interest [*15] to BF Sturtevant, Counter Defendant: Daniel J. Sinclair, Dennis R. McEwen, Eric L. Horne, Eckert, Seamans, Cherin & Mellott, Pittsburgh, PA; Gretchen Panchik, Eckert Seamans, Pittsburgh, PA.

For ELECTRIC BOAT CORPORATION, a subsidiary of General Dynamics Corporation, GENERAL DYNAMICS CORPORATION, Cross Claimants: James B. Insko, LEAD ATTORNEY, Gordon Rees Scully Mansukhani, Pittsburgh, PA; Erik C. Dimarco, Gordon Rees Scully Mansukhani LLP.

For ELECTRIC BOAT CORPORATION, a subsidiary of General Dynamics Corporation, Cross Defendant: Erik C. Dimarco, Gordon Rees Scully Mansukhani LLP, New York, NY.

For PSEG NUCLEAR LLC, a subsidiary of Public Service Enterprise Group Incorporated, PSEG POWER LLC, a subsidiary of Public Service Enterprise Group Incorporated, Cross Claimants: Anna M. Sosso, Willman & Silvaggio, Pittsburgh, PA.

For PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED, Cross Claimant: Daniel Robert Kuzmerski, LEAD ATTORNEY, PRO HAC VICE, Hoagland, Longo, Moran, Dunst & Doukas, New Brunswick, NJ; Marc Gaffrey, LEAD ATTORNEY, PRO HAC VICE, Hoagland Longo Moran Dunst & Doukas, LLP, New Brunswick, NJ; Anna M. Sosso, Willman & Silvaggio, Pittsburgh, PA.

For BW/IP INC., and its wholly-owned [*16] subsidiaries, Cross Defendant: John A. Turlik, LEAD ATTORNEY, Segal McCambridge Singer & Mahoney, Philadelphia, PA.

For VIACOMCBS INC., and also as successor-in-interest to BF Sturtevant, Cross Claimant: William D Harvard, LEAD ATTORNEY, PRO HAC VICE, Evert Weathersby Houff, Watkinville, GA; Daniel J. Sinclair, Dennis R. McEwen, Eric L. Horne, Eckert, Seamans, Cherin & Mellott, Pittsburgh, PA; Gretchen Panchik, Eckert Seamans, Pittsburgh, PA.

For ELECTRIC BOAT CORPORATION, a subsidiary of General Dynamics Corporation, Cross Defendant: Erik

C. Dimarco, LEAD ATTORNEY, Gordon Rees Scully Mansukhani LLP.

For PSEG NUCLEAR LLC, a subsidiary of Public Service Enterprise Group Incorporated, PSEG POWER LLC, a subsidiary of Public Service Enterprise Group Incorporated, Cross Defendants: Steven G. Blackmer, LEAD ATTORNEY, Willman & Silvaggio, LLP, Pittsburgh, PA.

For BW/IP INC., and its wholly-owned subsidiaries, Counter Defendant: John A. Turlik, LEAD ATTORNEY, Segal McCambridge Singer & Mahoney, Philadelphia, PA.

For ELECTRIC BOAT CORPORATION, a subsidiary of General Dynamics Corporation, Counter Defendant: Erik C. Dimarco, LEAD ATTORNEY, Gordon Rees Scully Mansukhani LLP.

For PSEG NUCLEAR LLC, [*17] a subsidiary of Public Service Enterprise Group Incorporated, PSEG POWER LLC, a subsidiary of Public Service Enterprise Group Incorporated, Counter Defendants: Steven G. Blackmer, LEAD ATTORNEY, Willman & Silvaggio, LLP, Pittsburgh, PA.

For CENTRAL HUDSON GAS & ELECTRIC CORPORATION, Cross Defendant: Ruthe Ann Nepf, LEAD ATTORNEY, Thompson Hine LLP.

For CENTRAL HUDSON GAS & ELECTRIC CORPORATION, Counter Defendant: Ruthe Ann Nepf, LEAD ATTORNEY, Thompson Hine LLP.

For BW/IP INC., and its wholly-owned subsidiaries, Cross Claimant: John A. Turlik, LEAD ATTORNEY, Segal McCambridge Singer & Mahoney, Philadelphia, PA.

For PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED, Cross Defendant: Anna Sosso, LEAD ATTORNEY, Willman & Silvaggio, LLP, Pittsburgh, PA; Daniel Robert Kuzmerski, LEAD ATTORNEY, Hoagland, Longo, Moran, Dunst & Doukas, New Brunswick, NJ; Marc Gaffrey, LEAD ATTORNEY, Hoagland Longo Moran Dunst & Doukas, LLP, New Brunswick, NJ.

For AECOM ENERGY & CONSTRUCTION, INC., Cross Defendant: Dawn Dezii, LEAD ATTORNEY, PRO HAC VICE, Margolis Edelstein, Mount Laurel, NJ; Kyle T. McGee, LEAD ATTORNEY, Margolis Edelstein, Pittsburgh, PA.

For TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., [*18] Cross Defendant: Tausha Saunders, LEAD ATTORNEY, Greenberg Traurig, LLP,

Philadelphia, PA.

For CRANE CO., Cross Claimant: Michael J. Ross, K&L Gates LLP, K&L Gates Center, Pittsburgh, PA; Sarah M. Czynski, K&L Gates, K&L Gates Center, Pittsburgh, PA.

For ABB INC., Cross Defendant: Melanie Irwin, Willman & Silvaggio, Pittsburgh, PA.

For ELECTRIC BOAT CORPORATION, a subsidiary of General Dynamics Corporation, Cross Claimant: Erik C. Dimarco, LEAD ATTORNEY, Gordon Rees Scully Mansukhani LLP.

For ABB INC., Cross Claimant: Melanie Irwin, Willman & Silvaggio, Pittsburgh, PA.

For AECOM ENERGY & CONSTRUCTION, INC., Cross Claimant: Dawn Dezii, LEAD ATTORNEY, PRO HAC VICE, Margolis Edelstein, Mount Laurel, NJ; Jason M. English, LEAD ATTORNEY, Margolis Edelstein, The Oliver Building, Pittsburgh, PA; Kyle T. McGee, LEAD ATTORNEY, Margolis Edelstein, Pittsburgh, PA.

For THE WILLIAM POWELL COMPANY, Cross Defendant: Edward A. Smallwood, LEAD ATTORNEY, Post & Schell, P.C.

Judges: MARILYN J. HORAN, United States District Judge.

Opinion by: MARILYN J. HORAN

Opinion

Plaintiffs bring the within action against many Defendants for Shirley A. Hilster's **asbestos**-related injuries and death. Defendant, Air & Liquid Systems Corporation successor-by-merger [*19] to Buffalo Pumps, Inc. (collectively "Buffalo"), now moves for summary judgment pursuant to [Fed. R. Civ. P. 56](#). (ECF Nos. 363). The matter is now ripe for consideration.

Upon Consideration of Buffalo's Motion for Summary Judgment (ECF Nos. 363), the respective briefs of the parties (ECF Nos. 364, 379, and 385), the arguments of counsel, and for the following reasons, Buffalo's Motion for Summary Judgment will be granted.

I. Background

Plaintiffs initiated this **asbestos**-related personal injury action, alleging that Shirley Hilster was exposed to **asbestos** from contact with her husband's work clothes

and person when greeting him home, laundering his work clothes, and spending time in his vehicle. Plaintiffs allege Mr. Charles Hilster was employed as a pipefitter, hydraulic pipefitter, new construction project manager and maintenance supervisor at various premises and naval shipyards from approximately 1958 to 1987 and 1989 to 1995. (ECF No. 1 at ¶¶ 114-118.)

Plaintiffs allege that Shirley Hilster was exposed to **asbestos** from laundering her husband's work clothing throughout their marriage (with the exception of when Mr. Hilster served in the Navy). Charles Hilster claimed that he was exposed to **asbestos** while [*20] working as a pipefitter apprentice, pipefitter, supervisor, foreman, piping supervisor, assistant project manager and project manager at various industrial facilities and naval shipyards beginning in 1957 and continuing into 1975. (ECF No. 320-1 at p. 12). Mr. Hilster testified that, during this time period, his wife Shirley would launder his work clothes and that she would have shaken them out prior to washing. (ECF No. 350-1 at p. 57:8-16). Shirley Hilster was diagnosed with malignant mesothelioma of the pleura in July 2020. She died of this disease on October 11, 2020.

Plaintiffs aver claims of Negligence (Count I), Strict Liability (Count II), Breach of Implied Warranty (Count III), Negligence-Premises Liability (Count IV), Negligent Hiring, Training and/or Supervision of Defendant-Employees (Count V), Gross Negligence; Willful, Wanton, and Reckless Conduct (Count VI), False Representation (Count VII), Failure to Warn-Product Defendants (Count VIII), Failure to Warn-Premises Defendants (Count IX), Conspiracy, Concert of Action Damages (Count X), Wrongful Death (Count XI), and Survival (Count XII).

Buffalo moves for summary judgment on the basis that it is not liable under applicable [*21] maritime law, and because Plaintiffs have not established any causal connection between any product for which it is legally responsible and Mrs. Hilster's disease, and/or because it is immune under the government contractor defense. Buffalo also moves for summary judgment on Plaintiffs' non-pecuniary and punitive damages claim.

II. Standard of Review

According to [Federal Rule of Civil Procedure 56](#), a court must grant summary judgment where the moving party "shows that there is no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." [Fed. R. Civ. P. 56\(a\)](#). For a dispute to be genuine, there must be "a sufficient

evidentiary basis on which a reasonable jury could find for the non-moving party." [Moody v. Atl. City Bd. of Educ.](#), 870 F.3d 206, 213 (3d Cir. 2017) (internal quotations omitted). Additionally, for a factual dispute to be material, it must have an effect on the outcome of the suit. *Id.* In reviewing and evaluating the evidence to rule upon a motion for summary judgment, the court must "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the" non-moving party. [Blunt v. Lower Merion Sch. Dist.](#), 767 F.3d 247, 265 (3d Cir. 2014) (internal quotations omitted). However, where "the non-moving party fails to make 'a sufficient showing on an essential element of her case [*22] with respect to which she has the burden of proof,'" the moving party is entitled to judgment as a matter of law. [Moody](#), 870 F.3d at 213 (quoting [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

"The movant has the burden of showing that there is no genuine issue of fact, but the plaintiff is not thereby relieved of his own burden of producing in turn evidence that would support a jury verdict." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 256, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). "Discredited testimony is not normally considered a sufficient basis for drawing a contrary conclusion. Instead, the plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment." [Id.](#) at 256-57 (internal citation omitted). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." [Id.](#) at 249-50 (internal citations omitted). Judges are not "required to submit a question to a jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such a character that it would warrant the jury in finding a verdict in favor of the party." [Id.](#) at 251 (internal citation omitted).

III. Discussion

A. Liability for Third-Party External Gaskets used on Buffalo Pumps

Buffalo argues, inter alia, that Plaintiffs cannot establish Buffalo's liability for any **asbestos** [*23] exposure from third-party gaskets used alongside a Buffalo pump was a substantial factor in causing Shirley Hilster's mesothelioma. Plaintiffs contend that Buffalo sold its pumps with **asbestos** components and that Buffalo knew that **asbestos** gaskets and insulation would be used with its pumps.

1. Applicable Law

As an initial matter, the parties dispute as to whether maritime or Connecticut law applies to Plaintiffs' claims against Buffalo. Buffalo maintains that maritime law applies because Mr. Hilster's alleged exposure to **asbestos** was aboard Navy nuclear submarines being built and maintained at Electric Boat. In addition, Buffalo contends that the claims arising out of Mrs. Hilster's illness were caused by "a vessel on navigable water." Plaintiffs argue that Connecticut law applies because Connecticut has the greatest governmental interest in this case, and because Mrs. Hilster's exposures occurred in Connecticut.

Federal courts are authorized under the U.S. Constitution and by Congress to hear cases pertaining to admiralty and maritime jurisdiction. [U.S. Const. art. III, § 2; 28 U.S.C. § 1333\(1\)](#). A party seeking to invoke maritime jurisdiction in an **asbestos**-related claim under [section 1333](#) must satisfy a locality and connection test. *Conner v. Alfa Laval, Inc.*, 799 F. Supp. 2d 455, 458-59 (E.D. Pa. 2011). The [*24] locality test "is satisfied as long as some portion of the **asbestos** exposure occurred on a vessel on navigable waters." *Id.* at 466. Work performed aboard a ship that is docked or in "dry dock" at the shipyard is still considered to occur on navigable waters. *Conner*, 799 F. Supp. 2d at 466. The connection test is satisfied if (1) the exposure "had a potentially disruptive impact on maritime commerce" and (2) "the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity." *Id.* at 463 (citation omitted). Where an individual is exposed to **asbestos** while he is performing maintenance on equipment integral to the functioning of the vessel, this exposure could "potentially slow or frustrate the work being done on the vessel." *Id.* at 465 (quoting [John Crane, Inc. v. Jones](#), 274 Va. 581, 650 S.E.2d 851, 854 (2007)).

Here, if Mr. Hilster was the injured party, maritime law would likely apply. However, the question of so-called bystander or take-home liability is less clear. Mrs. Hilster's alleged exposure did not occur on "navigable waters," shipyard, dock, or drydock. After review of the record of this particular case, this Court finds that it need not resolve that matter, as both maritime and Connecticut substantive law provide the same conclusion [*25] to resolve Buffalo's liability arguments.

2. Analysis

Buffalo argues that, under maritime law, it cannot be liable for third-party external gaskets affixed to its pumps. With regard to the liability of manufacturers and the use of third-party parts, the Supreme Court has held

as follows:

In the maritime tort context, we hold that a product manufacturer has a duty to warn when (i) its product requires incorporation of a part, (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (iii) the manufacturer has no reason to believe that the product's users will realize that danger.

[Air & Liquid Sys. Corp. v. DeVries](#), 139 S.Ct. 986, 996, 203 L.Ed.2d 373 (2019). As regards the first prong, [DeVries](#) clarified that "requires incorporation" includes when "(i) a manufacturer directs that the part be incorporated; (ii) a manufacturer itself makes the product with a part that the manufacturer knows will require replacement with a similar part; or (iii) a product would be useless without the part." *Id.* at 995-6.

Connecticut Product Liability law similarly provides:

(a) A product seller shall not be liable for harm that would not have occurred but for the fact that his product was altered or modified by a third party unless: [*26] (1) The alteration or modification was in accordance with the instructions or specifications of the product seller; (2) the alteration or modification was made with the consent of the product seller; or (3) the alteration or modification was the result of conduct that reasonably should have been anticipated by the product seller.

[Conn. Gen. Stat. Ann. § 52-572p](#).

Here, the record undisputedly demonstrates that Plaintiffs have produced no evidence that Buffalo required that the external **asbestos** gaskets be applied for its pumps to function. Buffalo did not provide the external gaskets. The record establishes that either the Navy or Electric Boat chose the external gaskets, and they chose whether or not said gaskets contained **asbestos** or non-**asbestos** material. Indeed, Mr. Hilster testified that submarines sometimes used non-**asbestos** external gaskets on external pump flanges. Further, Buffalo tested its pumps, using rubber, and not **asbestos**, gaskets, prior to delivery in order assure both complied with applicable military specifications (MILSPECS). As regards external gaskets, the record does not establish any genuine issues of material fact, under a maritime analysis, that (i) Buffalo specified or directed the use of [*27] the external gaskets; or that (ii) Buffalo incorporated an **asbestos**-containing external gasket on its equipment, knowing that it would be

necessary to replace the gasket with an identical or similar **asbestos** containing product; or that (iii) Buffalo's pump could not function without the use of an **asbestos** containing external gasket. Likewise, under a Connecticut law analysis, the record does not support that the use of external gaskets made from **asbestos** (1) was in accordance with the instructions or specifications of Buffalo; or (2) was made with the consent of Buffalo; or (3) was the result of conduct that reasonably should have been anticipated by Buffalo.

Therefore, under either maritime or Connecticut law, Buffalo's Motion for Summary Judgment, as regard any liability for any **asbestos** exposure from external gaskets produced by third parties, will be granted.

B. Liability for Internal Gaskets within Buffalo Pumps

Aside from external gaskets, Buffalo maintains that Plaintiffs have not produced sufficient evidence that Mr. Hilster encountered any Buffalo Pumps which contained internal **asbestos** gaskets. The record also reflects that some of the Buffalo pumps utilized non-**asbestos** internal [*28] gaskets. (ECF No. 363-1 at ¶¶ 21-23, 25). Plaintiffs contend that Mr. Hilster did encounter internal components which contained **asbestos**.

Mr. Hilster testified that he could not recall working near a Buffalo pump, or when and how he might have worked around a particular Buffalo pump on any particular vessel. (ECF No. 363-2 at pp. 9-11; ECF No. 379-4 at p. 10). He also testified that any of his experience involving Buffalo pumps would have been limited to third-party external components, which sometimes contained external **asbestos** gaskets. *Id.* In particular, Mr. Hilster recalled removing gasket material from Crane, Hoke, Edward, and Powell pumps. (ECF No. 379-4). Mr. Hilster offered no testimony that he worked upon internal **asbestos** containing components of pumps in general and/or of Buffalo pumps in particular, or that he removed external gaskets from Buffalo pumps. Plaintiffs' proffered expert, retired Captain R. Bruce Woodruff, testified that he could not determine, from his review of Mr. Hilster's testimony and the records in this case, whether, when, or how Mr. Hilster worked on any particular pump or vessel. (ECF No. 364-6 at pp. 10, 13-15).

1. Applicable Law

As regards the internal [*29] gaskets within Buffalo pumps, the parties again do not agree on whether maritime or Connecticut law applies. As above, the Court's disposition does not require resolution of that issue, because both legal frameworks require similar

elements, whose analysis in this case leads to the same conclusion.

Under maritime law, "a plaintiff must show, for each defendant, that '(1) he was exposed to the defendant's product, and (2) the product was a substantial factor in causing the injury he suffered.' [Lindstrom v. A—C Prod. Liab. Trust](#), 424 F.3d 488, 492 (6th Cir.2005); citing [Stark v. Armstrong World Indus., Inc.](#), 21 F.App'x 371, 375 (6th Cir.2001).

Under Connecticut law, a plaintiff asserting a claim for **asbestos**-related injuries must "1) identify an **asbestos**-containing product for which a defendant is responsible, 2) prove that he has suffered damages, and 3) prove that defendant's **asbestos**-containing product was a substantial factor in causing his damages." [Laposka v. Aurora Pump Co.](#), 2004 Conn. Super. LEXIS 2578, 2004 WL 2222935, at *1 (Conn. Super. Sept. 14, 2004) (quoting [Roberts v. Owens-Corning Fiberglas Corp.](#), 726 F. Supp. 172, 174 (W.D. Mich. 1989)). "The plaintiff must produce evidence sufficient to support an inference that he inhaled **asbestos** dust from the defendant's product." [Drucker v. A.W. Chesterton Co.](#), CV075006717S, 2009 Conn. Super. LEXIS 1715, 2009 WL 2231654, at *2 (Conn. Super. Ct. June 23, 2009) (citing [Peerman v. Georgia-Pacific Corporation](#), 35 F.3d 284, 287 (7th Cir.1994)). A general recollection of a product cannot overcome a motion for summary judgment. [Gay v. A.O. Smith Corp.](#), 2:19-CV-1311, 2021 U.S. Dist. LEXIS 120300, 2021 WL 2652926, at *4 (W.D. Pa. June 28, 2021) Further, "[s]peculation does not create a genuine issue of fact; instead, it creates a false issue, the demolition of which is a primary [*30] goal of summary judgment." [Lexington Ins. Co. v. W. Pa. Hosp.](#), 423 F.3d 318, 333 (3d Cir. 2005) (quoting [Hedberg v. Ind. Bell Tel. Co., Inc.](#), 47 F.3d 928, 932 (7th Cir.1995)).

Here, the evidence and testimony of record do not connect any Buffalo-supplied **asbestos** containing product to Mr. Hilster without the insertion of speculation. On the vessels that Mr. Hilster worked on, there were some Buffalo pumps that contained **asbestos** and some that did not. The record does not establish any question of material fact that Mr. Hilster worked on a particular Buffalo pump that contained **asbestos**. Further, he has testified that he did not work on any internal components of the Buffalo pumps where the **asbestos** would have been located. Further, Mr. Hilster offered no evidence or testimony that he was present while others performed work on internal components of a Buffalo pump. While the record

supports that Mr. Hilster may have removed third party external gaskets, which contained asbestos, he did not testify concerning his removal of external gaskets involving Buffalo pumps. Therefore, Plaintiffs have produced no evidence sufficient to establish any genuine issue of material fact that infers that Mr. Hilster was exposed to any asbestos containing material sold or supplied by Buffalo. Without direct or even circumstantial evidence [*31] that Mr. Hilster was definitively in the presence of a Buffalo product that contained asbestos, the jury would otherwise be invited to improperly speculate based upon such attenuated circumstances. Because no reasonable juror could find that a Buffalo product caused Mrs. Hilster's mesothelioma, Buffalo is entitled to summary judgment.

C. Government Contractor Defense

Notwithstanding its argument on liability, Buffalo also maintains that it is entitled to summary judgment through the government contractor defense. Buffalo argues that it had to comply with military specifications in order for its product to be purchased and accepted by the Navy. It further contends that, during the relevant time period that Mr. Hilster worked at Electric Boat, the Navy was aware of asbestos hazards to personnel. Plaintiffs contend that Buffalo has failed to meet its burden to demonstrate that it is entitled to summary judgment on said defense because Buffalo should have provided warnings to the Navy regarding its asbestos components. Buffalo responds that, even it had been aware of the asbestos hazards, all warnings and labeling were governed by the Navy's specifications and review.

The Supreme Court first [*32] articulated the so-called "government contractor defense" in Boyle v. United Technologies Corporation, 487 U.S. 500, 512, 108 S. Ct. 2510, 101 L. Ed. 2d 442 (1987). In order to protect the governmental interests it identified, the Court held that contractors must be exempted from liability, under state law, for design defects in military equipment when (1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States. "The first two of these conditions assure that the suit is within the area where the policy of the 'discretionary function' would be frustrated — i.e., they assure that the design feature in question was considered by a Government officer, and not merely by the contractor itself. . ." Id. at 512.

With regard to failure to warn claims, the first prong of Boyle is altered to preclude liability where the government exercised discretion and approved the warnings. See Tate v. Boeing Helicopters, 55 F.3d 1150, 1157 (6th Cir. 1995). Courts require the government approval to "transcend rubber stamping" for the defense to shield a government contractor from liability for failure to warn. Id. at 1156-5. The choice of equipment-related warnings involves exercises of [*33] governmental discretion in the same way as does the selection of equipment design. See Jurzec v. American Motors Corp., 856 F.2d 1116, 1118-19 (8th Cir. 1988); Myslowski v. U.S., 806 F.2d 94, 97-98 (6th Cir. 1986), cert. denied, 480 U.S. 948, 107 S. Ct. 1608, 94 L. Ed. 2d 793 (1987); Nicholson v. United Techs. Corp., 697 F. Supp. 598, 604 (D. Conn. 1988). As Tate observed, "[w]hen the government exercises its discretion and approves designs prepared by private contractors, it has an interest in insulating its contractors from liability for such design defects...Similarly, when the government exercises its discretion and approves warnings intended for users, it has an interest in insulating its contractors from state failure to warn tort liability." Tate, 55 F.3d at 1157 (citing Boyle, 487 U.S. at 511-12).

Thus, "[w]hen state law would otherwise impose liability for a failure to warn of dangers in using military equipment, that law is displaced if the contractor can show: (1) the United States exercised its discretion and approved the warnings, if any; (2) the contractor provided warnings that conformed to the approved warnings; and (3) the contractor warned the United States of the dangers in the equipment's use about which the contractor knew, but the United States did not." Tate I, 55 F.3d at 1157; see also, e.g., Sawyer v. Foster Wheeler LLC, 860 F.3d 249, 256 (4th Cir. 2017); Leite v. Crane Co., 749 F.3d 1117, 1123 (9th Cir.), cert. denied, 574 U.S. 934, 135 S. Ct. 361, 190 L. Ed. 2d 252 (2014).

Three witnesses, Buffalo employee Martin K. Kraft, retired Navy Rear Admiral David P. Sargent, and Plaintiffs' expert Captain Woodruff, have testified or attested regarding [*34] the Navy procurement process for pumps on the submarines where Mr. Hilster worked. RADM Sargent asserts that, since the 1950s, the Navy has developed MILSPECS, which present detailed descriptions of government procurement requirements. (ECF No. 364-7 at ¶ 21). MILSPECS include requirements such as chemical composition, dimensions, required testing and performance demonstrations, required labeling, and packaging and shipping requirements. Id. The Navy also required

manufacturers of components, such as pumps, valves, and electrical equipment, to comply with technical specifications expressly detailed in the MILSPECS in order for the Navy to accept the equipment. *Id.* at ¶ 23. Specifications for any equipment intended for use aboard Navy ships was drafted, approved, and maintained by the Navy. *Id.* at ¶ 22. Only the Navy could change or modify those specifications. *Id.* According to RADM Sargent, "Buffalo Pumps equipment could not have been installed aboard Navy vessels unless that equipment was first determined by the Navy to be in conformity with all applicable Navy specifications and contractual requirements." *Id.* at ¶ 39. RADM Sargent also asserted that "[U]niformity and standardization [*35] of any communication, particularly safety information, are critical to the operation of the Navy or Navy ships." *Id.* at ¶ 38.

In addition to MILSPECS, nuclear submarines were also subject to the standards established by the Navy's Bureau of Ships (BUSHIPS). Captain Woodruff testified that BUSHIPS had an on-site team that was also involved in the design, construction, overhaul and repair of nuclear warships, including the development of specifications of those ships and their equipment. (ECF No. 364-5 at p. 6-8).

According to Mr. Kraft, MILSPECS "required Buffalo Pumps to submit for approval and acceptance by the federal government drafts of any manuals, drawings or other written materials required to be provided with regard to pumps it manufactured for the Navy." (ECF No. 364-1 at ¶ 13). Before equipment was shipped from Buffalo's facility, Navy personnel inspected all packaging and labeling to ensure compliance with the Navy's specifications and requirements, and that the Navy's payment and acceptance of a product confirms that all specifications, standards, and contract requirements have been met. (ECF No. 364-7 at ¶¶ 40-43 and ECF No. ECF 364-1 at ¶ 16).

With regard to the Navy's awareness [*36] of asbestos hazards to personnel, Buffalo Pumps has proffered Samuel A. Forman, M.D., a former Navy officer who is board certified in occupational medicine. (ECF No. 364-11 at ¶ 1). Dr. Forman asserts that Navy has been aware of the potential hazards of asbestos-containing products since the 1920s and that such knowledge continued to expand over the next several decades. *Id.* at ¶¶ 20-47. In contrast, Buffalo asserts that it has no documentation from its historical records to reflect that it had any awareness of any potential hazard associated with exposure to asbestos at any time during the 1950s

and 1960s. (ECF No. 364-1 at ¶¶ 34-35). Plaintiffs have argued that Buffalo knew or should have known about the hazards of asbestos based upon an industry awareness at the time. On this last point, Plaintiffs contend there exist genuine issues of material fact with regard to whether the Navy had sufficient awareness of the dangers of asbestos exposure or that its awareness was superior to Buffalo. Plaintiffs' arguments are unavailing as they have not proffered any evidence that disputes the documentation referenced by Dr. Forman regarding the Navy's historical awareness of asbestos health [*37] hazards. Further, Plaintiffs have not provided any documentation, or lay or expert witness, that disputes Buffalo's assertions with regard to the awareness of asbestos hazards.

Here, the undisputed record demonstrates that the United States Navy approved reasonably precise specifications involving an extensive procurement and approval process, including MILSPECS with regard to design, materials, and labeling for Buffalo, from which Buffalo would have had no discretion to waver. The record also demonstrates that the Navy's acceptance of Buffalo pumps, after extensive inspections and review, indicates that said pumps conformed to the Navy's specifications. Finally, the record demonstrates that, at the time it accepted of the Buffalo pumps in the 1950s and 1960s, the United States Navy knew of the potential dangers of asbestos-containing products. Therefore, the Court finds no genuine issue of material fact with regard to Buffalo's government contractor defense and that Buffalo has met the three elements under [Boyle](#) to succeed in this affirmative defense.

As regards the government contract defense for Plaintiffs' failure to warn claims, both RADM Sargent and Captain Woodruff agree the Navy determined [*38] the contents of all technical manuals, including any cautionary language through an extensive exchange with vendors, such as Buffalo. (ECF No. 369-6 at p. 17 and ECF No. 369-8 at ¶ 35). The record establishes that the Navy maintained an extensive process and exercised its discretion regarding the documentation, which would include safety information and warnings, related to Buffalo pumps. Plaintiffs offer no contrary evidence regarding this process undertaken by the Navy with regard to specifications and with regard to manuals, warnings, or any other written materials. While Plaintiffs contend that Buffalo violated the Navy's specifications in failing to warn of asbestos containing products, Plaintiffs have offered no statement or evidence that, at the time Buffalo supplied pumps or any time after, the Navy suggested any deficiencies or that Buffalo failed in

any respect to meet the Navy's specifications and requirements. Plaintiffs cannot dispute those warnings and cautions were within the purview of both the Navy's specifications for documentation and its review to ensure conformity with those specifications. Buffalo's compliance with the Navy's instructions during a robust, substantive, [*39] and multi-layered review satisfy [Boyle](#)'s first and second elements. With regards to [Boyle](#)'s third element, just as under the Court's design defect analysis, Plaintiffs offer no evidence to refute that Buffalo had any knowledge of **asbestos** hazards or that the Navy did not have ample or superior knowledge of **asbestos** hazards. Therefore, the Court finds no genuine issue of material fact with regard to Buffalo's government contractor defense for Plaintiffs' failure to warn claims, and that Buffalo has met the three elements under [Boyle](#) to succeed in this affirmative defense.

Accordingly, in addition to granting Buffalo's summary judgment against Plaintiffs' claims for liability, Buffalo is also entitled to summary judgment against Plaintiffs by virtue of the government contractor defense. In so far as judgment will be entered in favor of Buffalo, the Court will not address the parties' remaining arguments regarding non-pecuniary and punitive damages.

IV. Conclusion

Accordingly, based upon the foregoing, Buffalo's Motion for Summary Judgment will be granted. Judgment will be entered in favor of Buffalo and against the Plaintiffs. A separate order will follow.

DATED this 27th day of May, 2022.

BY THE COURT: [*40]

/s/ Marilyn J. Horan

MARILYN J. HORAN

United States District Judge

ORDER

Upon Consideration of Buffalo's Motion for Summary Judgment (ECF Nos. 363), the respective briefs of the parties (ECF Nos. 364, 379, and 385), the arguments of counsel, and for the reasons stated in this Court's Opinion (ECF No. 407), Buffalo's Motion for Summary Judgment is granted. Judgment is entered in favor of Buffalo and against the Plaintiffs.

DATED this 27th day of May, 2022.

BY THE COURT:

/s/ Marilyn J. Horan

MARILYN J. HORAN

United States District Judge

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