

## **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 95671 \*

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,

### **Core Terms**

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purchase order, **asbestos**, cloth, submarines, summary judgment motion, summary judgment, supplied, exposed to **asbestos**, pipefitter, exposed, genuine

**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 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 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 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.

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.

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

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 Kuszmerski, 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, Watkinville, [\*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. Czapinski, 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

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

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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

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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.

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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.

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SERVICE ENTERPRISE GROUP INCORPORATED, Cross Defendants: Anna M. Sosso, Willman & Silvaggio, Pittsburgh, PA.

For FOSTER WHEELER ENERGY CORPORATION, Cross Defendant: Dennis F. Wolford, Reed, Tosh, 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 [\*12] ATTORNEY, PRO HAC VICE, Dean Omar Branham & Shirley, TX, Dallas, TX.

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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, [\*13] individually 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.

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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.

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

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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.

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

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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.

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

**[\*17]** For PSEG NUCLEAR LLC, 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 **[\*18]** ASSOCIATION, INC., 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.

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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

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Plaintiffs bring the within action against many Defendants for Shirley A. Hilster's **asbestos**-related injuries and death. Defendant, Eckel Industries, Inc., **[\*19]** now moves for summary judgment pursuant to [Fed. R. Civ. P. 56](#). (ECF Nos. 343). Eckel has also moved to exclude Plaintiffs' expert, Dr. Edwin Holstein (ECF No. 349). These matters are now ripe for consideration.

Upon Consideration of Eckel's Motion for Summary Judgment (ECF Nos. 343), the respective briefs of the parties (ECF Nos. 344, 375, and 386), the arguments of counsel, and for the following reasons, Eckel's Motion for Summary Judgment will be granted. Based upon the Court's disposition Eckel's Motion for Summary Judgment, Eckel's Motion to Exclude Dr. Holstein will be dismissed as moot.

### 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 by 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 [\*20] 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 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 would have shaken out the clothing prior to washing it. (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, [\*21] Concert of Action Damages (Count X), Wrongful Death (Count XI), and Survival (Count XII).

Eckel's Motion for Summary Judgment contends that Plaintiffs' claims against it must be dismissed because there is no evidence that Charles Hilster was exposed to **asbestos** from a product sold or supplied by Eckel. Further, Eckel argues that it, as a supplier of products, had no reason to know in 1960 that bystander exposure to **asbestos** might cause disease. Thus, Eckel maintains that it had no duty to warn Shirley Hilster.

## 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 [\*22] 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 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). [\*23]

## III. Discussion

Eckel argues that Plaintiffs have insufficient evidence to establish that Shirley Hilster was exposed and inhaled **asbestos** fibers from a product sold or supplied by Eckel Industries, Inc. It maintains that, because Shirley Hilster was exposed to **asbestos** from the work clothes of her husband, Plaintiffs must produce evidence that Mr. Hilster worked around **asbestos** containing products sold or supplied by Eckel. Eckel contends that Plaintiffs have produced no such evidence.

Plaintiffs maintain that Mr. Hilster worked as a pipefitter at Electric Boat in Groton, Connecticut for 13 years, between 1957 and 1970. During that period, Mr. Hilster

asserts that he worked on pipes, pumps, valves, and related equipment on nuclear submarines. Eckel supplied insulation to Electric Boat, and Plaintiffs maintain that two documents from 1960 purportedly prove that Eckel supplied **asbestos**-containing materials, namely "Kaylo" block and pipe covering insulation and 50,000 square feet of 80% **asbestos** cloth. (ECF Nos. 375-7 and 375-9). Plaintiffs assert that such purported Eckel materials were assigned to a class of submarines upon which Mr. Hilster allegedly worked.

In response, Eckel addresses [\*24] the two purchase orders at issue and argues that, despite Plaintiffs' contentions, the record does not support that Mr. Hilster worked with, encountered, or was exposed to any of the **asbestos** containing materials described in the purchase orders. Eckel argues that the jury would have to engage in impermissible speculation in attempting to connect the products referenced in the purchase orders to Mr. Hilster.

The parties' briefing agrees that Connecticut law applies to Plaintiff's claims against Eckel. 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 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 WL 2231654, at \\*2 \(Conn. Super. Ct. June 23, 2009\)](#) (citing [Peerman v. Georgia-Pacific Corporation, 35 F.3d 284, 287 \(7th Cir.1994\)](#)). "Speculation does not create a genuine issue of fact; instead, it creates a false issue, the demolition of which is a primary 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 [\*25] an Eckel-supplied **asbestos** containing product to Mr. Hilster without the insertion of speculation. First, with regard to the September 12, 1960 Purchase Order, such indicates that General Dynamics/Electric Boat sought to purchase four (4) pieces of heat insulating block and nine (9) feet of pipe insulation from Eckel. While Plaintiffs assert that these

materials were "for use on submarines," the material referenced in the September 12, 1960, Purchase Order is labeled for use in a "Main Steam Mock-Up." Mr. Hilster never testified to working on any main steam mock-up(s) nor have Plaintiffs identified where such work was performed at Electric Boat. Thus, Plaintiffs have not produced any evidence that Mr. Hilster was exposed to the Eckel material referenced in the September 16, 1960 Purchase Order. Moreover, a handwritten notation on the September 16, 1960 Purchase Order directs the material "to the South Yard carpenter shop." Plaintiffs have produced no evidence of record that Mr. Hilster worked at the South Yard carpenter shop in September 1960.

Second, as regard the February 9, 1960 Purchase Order, such indicated that Electric Boat sought to purchase thermal **asbestos** cloth from Eckel. [\*26] However, no evidence establishes the actual delivery of said materials. Nevertheless, even if the ordered cloth had been delivered, Plaintiffs have not established that Mr. Hilster worked with or around this ordered product. A notation on the February 9, 1960 Purchase Order contained the following notation: "For EBDiv. Ref. Only: 589-597 requirements." Said notations purportedly indicate that the ordered cloth was for use on submarines within the 589-597 designated number range. The record establishes that Electric Boat built two submarines in this range, the USS Scorpion (SSN-589) and the USS Tullibee (SSN-597). According to Plaintiffs' naval expert, the Electric Boat shipyard in Groton, CT constructed the Scorpion in the late 1950s, and it was launched on December 29, 1959, prior to the February 9, 1960 Purchase Order. (ECF No. 322-1 at p. 7). Moreover, Mr. Hilster testified that, while the name "Scorpion" was familiar to him, he could not recall any specific work he may have performed on this submarine. (ECF No. 344-2 at p. 2). While the USS Tullibee was also built in Groton, CT, Mr. Hilster never testified or otherwise identified working on this submarine; thus, the record does [\*27] not support that he was exposed to any **asbestos** from the materials identified on the February 9, 1960 Purchase Order. Thus, the 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 Eckel. Without direct or even circumstantial evidence that Mr. Hilster was definitively in the presence of an Eckel 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 an Eckel product caused Mrs. Hilster's



mesothelioma, Eckel is entitled to summary judgment.

Having determined that the Plaintiffs' claims against Eckel fail due to lack of causation evidence, the Court will not address Eckel's remaining arguments regarding a duty to warn Mrs. Hilster as a bystander. Likewise, the Court will not address Eckel's Motion to Exclude Dr. Holstein.

#### IV. Conclusion

Accordingly, based upon the foregoing, Eckel's Motion for Summary Judgment will be granted. Judgment will be entered in favor of Eckel and against the Plaintiffs. Eckel's Motion to Exclude Dr. Holstein **[\*28]** will be dismissed as moot. A separate order will follow.

DATED this 27th day of May, 2022.

BY THE COURT:

/s/ Marilyn J. Horan

MARILYN J. HORAN

United States District Judge