

## Holland v Amchem Prods., Inc.

Supreme Court of New York, New York County

September 19, 2023, Decided

INDEX NO. 190053/2020

### Reporter

2023 N.Y. Misc. LEXIS 5657 \*; 2023 NY Slip Op 33284(U) \*\*

**[\*\*1]** LYNN HOLLAND AS ADMINISTRATOR FOR THE ESTATE OF JOHN E HOLLAND, Plaintiff, - v - AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSOURCE INC, CARRIER CORPORATION, CBS CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC, CRANE CO, CROSBY VALVE LLC, ECR INTERNATIONAL, CORP., F/K/A DUNKIRK BOILERS AND UTICA BOILER COMPANY, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, FOSTER WHEELER, L.L.C, GENERAL ELECTRIC COMPANY, GOULDS PUMPS LLC, GRINNELL LLC, IMO INDUSTRIES, INC, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, PEERLESS INDUSTRIES, INC, PFIZER, INC. (PFIZER), U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, UTICA BOILERS, INC., INDIVIDUALLY AND AS SUCCESSOR TO UTICA RADIATOR CORPORATION, WARREN PUMPS, LLC, WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, A WHOLLY OWNED SUBSIDIARY OF THE MARLEY COMPANY, LLC, Defendant.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

### Core Terms

summary judgment motion, summary judgment, products, Valve, deposition testimony, issue of fact, unequivocal, exposed to **asbestos**, matter of law, **asbestos**-containing, constitutes, confirmed, documents, **asbestos**

**Judges:** **[\*1]** PRESENT: HON. ADAM SILVERA, J.S.C.

**Opinion by:** ADAM SILVERA

### Opinion

#### DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88 were read on this motion to/for JUDGMENT - SUMMARY.

**[\*\*2]** Upon the foregoing documents, it is ordered that the instant motion for summary judgment seeking dismissal of this action, pursuant to [CPLR §3212](#), is denied for the reasons set forth below.

Here, defendant Crosby Valve, LLC ("Crosby") moves to dismiss this action on the grounds that plaintiff, John Holland ("Mr. Holland") was not exposed to **asbestos** from any Crosby product. In opposition, plaintiff highlights Mr. Hollands clear and unequivocal testimony identifying Crosby as a manufacturer, the lack of personal knowledge in defendant Crosby's supporting affidavit, and the testimony of Crosby's corporate affiant confirming **asbestos**- containing Crosby products. See Affirmation in Opposition to Defendant Crosby Valve, LLC's Motion for Summary Judgment, p. 3-9.

The Court notes that summary judgment is a drastic remedy and should only be granted if the moving party

has sufficiently established that it is [\*2] warranted as a matter of law. See [Alvarez v Prospect Hosp.](#), 68 NY2d 320, 324, 501 N.E.2d 572, 508 N.Y.S.2d 923 (1986). "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case". [Winegrad v New York University Medical Center](#), 64 NY2d 851, 853, 476 N.E.2d 642, 487 N.Y.S.2d 316 (1985). Despite the sufficiency of the opposing papers, the failure to make such a showing requires denial of the motion. See *id.* at 853.

Additionally, summary judgment motions should be denied if the opposing party presents admissible evidence establishing that there is a genuine issue of fact remaining. See [Zuckerman v City of New York](#), 49 NY2d 557, 560, 404 N.E.2d 718, 427 N.Y.S.2d 595 (1980). "In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility." [Garcia v J.C. Duggan, Inc.](#), 180 AD2d 579, 580 st Dep't 1992), citing [Dauman Displays, Inc. v Masturzo](#), 168 AD2d 204, 562 N.Y.S.2d 89 (1st Dep't 1990). [\*\*3] The court's role is "issue-finding, rather than issue-determination". [Sillman v Twentieth Century-Fox Film Corp.](#), 3 NY2d 395, 404, 144 N.E.2d 387, 165 N.Y.S.2d 498 (1957) (internal quotations omitted). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. See [Ugarriza v Schmieder](#), 46 NY2d 471, 475-476, 386 N.E.2d 1324, 414 N.Y.S.2d 304 (1979). Furthermore, the Appellate Division, First Department has held that on a motion for summary judgment, it is moving defendant's burden "to unequivocally establish that its product could not have contributed to the causation of plaintiff's [\*3] injury". [Reid v Georgia-Pacific Corp.](#), 212 AD2d 462, 463, 622 N.Y.S.2d 946 (1st Dep't 1995).

With respect to plaintiff's deposition testimony, the Appellate Division, First Department, has held that "[t]he deposition testimony of a litigant is sufficient to raise an issue of fact so as to preclude the grant of summary judgment dismissing the complaint. The assessment of the value of a witnesses' testimony constitutes an issue for resolution by the trier of fact, and any apparent discrepancy between the testimony and the evidence of record goes only to the weight and not the admissibility of the testimony." [Dollas v W.R. Grace and Co.](#), 225 AD2d 319, 321, 639 N.Y.S.2d 323 (1st Dep't 1996) (internal citations omitted).

The Court finds that Mr. Holland provided unequivocal testimony identifying defendant Crosby products as a source of his **asbestos** exposure and that defendant Crosby's corporate representative and historical Crosby catalogue confirmed the presence and circulation of Crosby's **asbestos**-containing products. See Affirmation in Opposition, *supra*, p. 10. Defendant Crosby's only evidence in support of their claim is the affidavit of Robert J. Martin, dated December 1, 2022. See Affirmation of Counsel in Support of Crosby Valve, LLC's Motion for Summary Judgment, Exh. D. Mr. Martin's affidavit provides no basis for his conclusions, no reference [\*4] to company materials reviewed, and contradicts his deposition testimony with respect to **asbestos**-containing gaskets being used on Crosby valves. See *id.*

[\*\*4] As conflicting evidence has been presented herein, and a reasonable juror could decide that Mr. Holland was exposed to **asbestos** from the installation or use of Crosby products, sufficient issues of fact exist to preclude summary judgment.

Accordingly, it is

ORDERED that defendant Crosby's motion for summary judgment is denied in its entirety; and it is further

ORDERED that within 30 days of entry plaintiff shall serve all parties with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

**09/19/2023**

**DATE**

/s/ Adam Silvera

**ADAM SILVERA, J.S.C.**

---

End of Document