

## [Daly v Amchem Prods., Inc.](#)

Supreme Court of New York, New York County

December 27, 2023, Decided

INDEX NO. 190297/2019

### Reporter

2023 N.Y. Misc. LEXIS 23344 \*; 2023 NY Slip Op 34539(U) \*\*

**[\*\*1]** MARY DALY, AS ADMINISTRATRIX FOR THE ESTATE OF JOHN B DALY JR. AND MARY DALY, INDIVIDUALLY, Plaintiff, - v - AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSOURCE INC, PARAMOUNT GLOBAL, F/K/A VIACOMCBS INC., F/K/A CBS CORPORATION, A DELAWARE CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, A PENNSYLVANIA CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CERTAINTIED CORPORATION, CLEAVER BROOKS COMPANY, INC, CRANE CO, CRANE CO. INDIVIDUALLY AND AS SUCCESSOR TO PACIFIC VALVES, CROSBY VALVE LLC, ELECTROLUX HOME PRODUCTS, INC. INDIVIDUALLY, AND AS SUCCESSOR TO TAPPAN AND COPES-VULCAN, FISHER CONTROL VALVES, FISHER CONTROLS INTERNATIONAL, LLC F/K/A FISHER CONTROLS CO., AS SUCCESSOR IN INTEREST TO FISHER GOVERNOR COMPANY, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM DECISION + ORDER ON VALVES, INC., EDWARD VOGT VALVE COMPANY, AND MOTION VOGT VALVE COMPANY, FOSTER WHEELER, L.L.C, GENERAL ELECTRIC COMPANY, GOULDS PUMPS LLC, IMO INDUSTRIES, INC, LANDIS & GYR, INC, PFIZER, INC. (PFIZER), ROCKWELL AUTOMATION, INC., INDIVIDUALLY, AND AS SUCCESSOR TO ROCKWELL INTERNATIONAL CORP., NORTH AMERICAN ROCKWELL, AND ROCKWELL MANUFACTURING COMPANY, ROCKWELL AUTOMATION, INC., AS SUCCESSOR IN INTEREST TO ALLEN-BRADLEY COMPANY, LLC, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., COURTER & COMPANY INCORPORATED, INDUSTRIAL HOLDINGS CORPORATION INDIVIDUALLY AND AS

SUCCESSOR IN INTEREST TO CARBORUNDUM, NORTON PACKO INDUSTRIAL CERAMICS, INC., SAINT-GOBAIN ABRASIVES, INC., INDIVIDUALLY, AND AS SUCCESSOR TO NORTON COMPANY, Defendant.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

### Core Terms

summary judgment, Valve, summary judgment motion, gaskets, further order, manufactured, causation, matter of law, exposed to **asbestos**, sufficient evidence, instant motion, issue of fact, **asbestos**-containing, unequivocal, documents, **asbestos**, caption, papers

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

**Opinion by:** ADAM SILVERA

### Opinion

#### **DECISION + ORDER ON MOTION**

**[\*\*2]** The following e-filed documents, listed by NYSCEF document number (Motion 002) 120, 121, 122, 123, 124, 125, 126, 127, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 154, 156, 157, 162, 163, 164, 165

were read on this motion to/for JUDGMENT - SUMMARY.

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

Here, defendant Crosby Valve, LLC ("Crosby") moves to dismiss this action on the grounds that plaintiff, John B. Daly, Jr. ("Mr. Daly") was not exposed to **asbestos** from any Crosby product. See Memorandum of Law in Support of Crosby Valve, LLC's Motion for Summary Judgment. In opposition, plaintiff highlights Mr. Daly's clear and unequivocal testimony identifying Crosby as a manufacturer of valves containing **asbestos**-containing parts during the course of his work as a Con Ed mechanic 1974-2012. See Affirmation in Opposition to Defendant Crosby Valve, LLC's Motion for Summary Judgment.

Specifically, defendant Crosby's motion is based on Mr. Daly's testimony that he was [\*2] exposed to **asbestos** from "flange gaskets" used along with Crosby valves, and not actually manufactured by Crosby. See Reply Memorandum of Law of Defendant Crosby Valve, LLC, In Support of Motion for Summary Judgment, p. 3-4.

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 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, 580 N.Y.S.2d 294 (1st Dep't 1992), citing [Dauman Displays, Inc. v Masturzo](#), 168 AD2d 204, 562 N.Y.S.2d 89 (1st Dep't 1990). 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 [\*3] 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 injury". [Reid v Georgia-Pacific Corp.](#), 212 AD2d 462, 463, 622 N.Y.S.2d 946 (1st Dep't 1995).

Ordinarily, the appropriate standard at summary judgment for moving defendant Crosby in an **asbestos** action would be that of [Dyer v Amchem Products Inc.](#), 207 AD3d 408, 409, 171 N.Y.S.3d 498 (1st Dep't 2022). In [Dyer](#), defendants were granted summary judgment not by "simply argu[ing] that plaintiff could not affirmatively prove causation" but by "affirmatively prov[ing], as a matter of law, that there was no causation." *Id.* The Appellate Division, First Department, recently affirmed this Court's decision in [Sason v Dykes Lumber Co., Inc., et. al.](#), 2023 NY Slip Op 05796 (1st Dep't 2023), stating that "the parties' competing causation evidence constituted the classic 'battle of the experts' sufficient to raise a question of fact, and to preclude summary [\*\*4] judgment. However, in the instant motion, defendant Crosby correctly identifies [In re New York City Asbestos Litigation \(Dummitt\)](#), 27 NY3d 765, 799, 37 N.Y.S.3d 723, 59 N.E.3d 458 (N.Y. 2016) as the standard governing defendant's liability for solely a third-party [\*4] product.

The Court finds that Mr. Daly's testimony does not indicate any products manufactured by defendant Crosby, and that moving defendant has provided evidence that such gaskets were not required by Crosby for the use of their valves. Plaintiff's exhibits have been identified as largely withdrawn, irrelevant to Crosby as a manufacturer, or as containing no reference to the **asbestos**-containing gaskets at issue herein. See Reply Memorandum of Law, *supra*, p. 6-8. As such, plaintiff has failed to raise an issue of fact sufficient to defeat summary judgment. Here, plaintiff has not provided sufficient evidence to demonstrate that defendant Crosby was actively involved in the **asbestos** gaskets at issue herein or "substantially participated" in integrating such gaskets with Crosby-manufactured valves. See [Dummitt, supra](#).

Accordingly, it is

ORDERED that defendant Crosby's motion for summary judgment is granted; and it is further

ORDERED that the complaint is dismissed in its entirety as against defendant Crosby with costs and

disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that **[\*5]** the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

**[\*\*5]** ORDERED that within 30 days of entry defendant Crosby shall serve all parties with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

**12/27/2023**

**DATE**

/s/ Adam Silvera

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

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