

Matherne v. Huntington Ingalls Inc.

United States District Court for the Eastern District of Louisiana

January 19, 2024, Decided; January 19, 2024, Filed

CIVIL ACTION 22-2656 SECTION: "J"(2)

Reporter

2024 U.S. Dist. LEXIS 10304 *

TED J. MATHERNE, SR., ET AL. VERSUS
HUNTINGTON INGALLS INCORPORATED, ET AL.

Core Terms

summary judgment, government contractor, nonmoving party

Counsel: [*1] For Giselle Matherne Ordoyne, Ted J Matherne, Sr, Ted J Matherne, Jr, Vanessa Matherne Richardson, Plaintiffs: Gerolyn Petit Roussel, LEAD ATTORNEY, Benjamin Peter Dinehart, Jonathan Brett Clement, Lauren Roussel Clement, Perry Joseph Roussel, Jr., Roussel & Clement, Mandeville, LA.

For Huntington Ingalls Incorporated, formerly known as, Northrop Gruman Shipbuilding, Inc., formerly known as, Northrop Grumman Ship Systems, Inc., formerly known as, Avondale Industries, Inc., formerly known as, Avondale Shipyards, Inc, formerly known as, Avondale Marine Ways, Inc., Defendant: Gustave A. Fritchie, III, LEAD ATTORNEY, Alison A. Spindler, Amanda Marie Crowley Fraser, David Michael Melancon, Matthew J Averill, Michael Scott Minyard, Michael Kevin Powell, Timothy Farrow Daniels, Irwin Fritchie Urquhart & Moore, LLC (New Orleans), New Orleans, LA; Brian C. Bossier, Christopher Thomas Grace, III, Edwin A. Ellinghausen, III, Erin Helen Boyd, Laura M. Gillen, Blue Williams, LLP (Metairie), Metairie, LA; Connor Peth, Irwin Fritchie Urquhart & Moore, New Orleans, LA; Darleene D. Peters, Irwin Fritchie Urquhart & Moore, LLC, New Orleans, LA; Kimmier L. Paul, Blue Williams, Metairie, LA; Whitney Charmaine [*2] Stewart, Blue Williams, LLP, Louisiana, Metairie, LA.

For Louisiana Insurance Guaranty Association, Defendant: Samuel Milton Rosamond, III, LEAD ATTORNEY, Taylor, Wellons, Politz & Duhe APLC, New Orleans, LA; Benjamin M. Chapman, Stephanie B. Laborde, Lafleur & Laborde, LLC, Baton Rouge, LA; Francis Christopher Cannone, Taylor Wellons Politz & Duhe, New Orleans, LA; Gina Talluto Cursain, Taylor,

Wellons, Politz & Duhe, APLC (New Orleans), New Orleans, LA.

For Certain Underwriters at Lloyd's London, Defendant: James R Logan, IV, LEAD ATTORNEY, Logan Law Offices, LLC, New Orleans, LA.

For Eagle, Inc., formerly known as, Eagle **Asbestos** & Packing Company, Inc., Defendant: Susan Beth Kohn, LEAD ATTORNEY, Douglas Kinler, Douglas Watson Redfearn, Simon, Peragine, Smith & Redfearn, LLP (New Orleans), Energy Centre, New Orleans, LA.

For Bayer CropScience, Inc., Successor to Rhone Poulenc AG Company, formerly known as, Amchem Products, Inc., formerly known as, Benjamin Foster Co, Defendant: McGready Lewis Richeson, LEAD ATTORNEY, Francis Xavier deBlanc, III, Pugh, Accardo, Haas, Radecker & Carey (New Orleans), New Orleans, LA; Kevin M. Jordan, Jordan, Lynch & Cancienne, PLLC, Houston, TX; Lesley [*3] Chanel Muse, Pugh Accardo, New Orleans, LA; Milele N. St. Julien, Pugh Accardo Haas Radecker & Carey, New Orleans, LA; Walter G. Lynch, Jordan, Lynch & Cancienne PLLC, Houston, TX.

For Foster-Wheeler LLC, formerly known as, Foster-Wheeler Corporation, General Electric Company, Paramount Global, Successor by Merger to CBS Corporation, formerly known as, ViacomCBS Inc, formerly known as, CBS Corporation, formerly known as, Viacom Inc, formerly known as, Westinghouse Electric Corporation, Defendants: John Joseph Hainkel, III, LEAD ATTORNEY, Angela M. Bowlin, Kelly L. Long, Kelsey Eagan, Magali Ann Puente-Martin, Frilot L.L.C., Energy Centre, New Orleans, LA; Roth Martin Hainkel, Frilot LLC, New Orleans, LA.

For International Paper Company, Defendant: Walter G. Watkins, III, LEAD ATTORNEY, Forman, Watkins, & Krutz, LLP (Jackson), City Centre Bldg., Jackson, MS; Daniel S Roberts, Mary Reeves Arthur, Thomas Peyton Smith, Forman, Watkins & Krutz LLP (New Orleans), New Orleans, LA; Elizabeth Riddell Penn, Forman

Watkins & Krutz LLP, Louisiana, New Orleans, LA.

For Berkshire Hathaway Specialty Insurance Company, formerly known as, Stonewall Insurance Company, Defendant: Desiree Weilbaecher Adams, [*4] LEAD ATTORNEY, Taylor, Wellons, Politz & Duhe, APLC (New Orleans), New Orleans, LA; Austin Tyler Welch, I, Taylor, Wellons, Politz & Duhe, LLC, New Orleans, LA; Jared A. Davidson, Taylor, Wellons, Politz & Duhe APLC, New Orleans, LA; Jonathan B. Womack, Taylor, Wellons, Politz & Duhe APLC, New Orleans, LA.

For United States Fidelity and Guaranty Company, As alleged insurer of Eagle, Inc., Defendant: Katherine Osborne Hannan, Kristopher T. Wilson, LEAD ATTORNEYS, Patricia Cowen Penton, Lugenbuhl, Wheaton, Peck, Rankin & Hubbard (New Orleans), New Orleans, LA; James R. Guidry, Lugenbuhl, Wheaton, Peck, Rankin, & Hubbard, Louisiana, New Orleans, LA.

For First State Insurance Company, Defendant: James Aristide Holmes, LEAD ATTORNEY, John K. Nieset, Christovich & Kearney, LLP, Pan American Life Center, New Orleans, LA; Katherine Blair Johnson, Christovich & Kearney, New Orleans, LA.

For Travelers Indemnity Company, Defendant: Kristopher T. Wilson, LEAD ATTORNEY, Katherine Osborne Hannan, Patricia Cowen Penton, Lugenbuhl, Wheaton, Peck, Rankin & Hubbard (New Orleans), New Orleans, LA; James R. Guidry, Lugenbuhl, Wheaton, Peck, Rankin, & Hubbard, Louisiana, New Orleans, LA.

For Taylor-Seidenbach, [*5] Inc., Defendant: Christopher Kelly Lightfoot, LEAD ATTORNEY, Darren Albert Patin, Edward J. Lassus, Jr., Gabriel J. Veninata, Hailey, McNamara, Hall, Larmann & Papale, LLP (Metairie), Metairie, LA.

For Uniroyal Holding, Inc., Erroneously named and served as Uniroyal, Inc., Defendant: Mary Reeves Arthur, LEAD ATTORNEY, Forman, Watkins & Krutz LLP (New Orleans), New Orleans, LA; Elizabeth Riddell Penn, Forman Watkins & Krutz LLP, Louisiana, New Orleans, LA.

For Pennsylvania Insurance Company, erroneously referred to as Pennsylvania General Insurance Company, Defendant: Samuel Milton Rosamond, III, LEAD ATTORNEY, Taylor, Wellons, Politz & Duhe APLC, New Orleans, LA; Francis Christopher Cannone, Taylor Wellons Politz & Duhe, New Orleans, LA; Gina Talluto Cursain, Taylor, Wellons, Politz & Duhe, APLC (New Orleans), New Orleans, LA.

For Huntington Ingalls Incorporated, Third Party Plaintiff: Gustave A. Fritchie, III, LEAD ATTORNEY, Alison A.

Spindler, Amanda Marie Crowley Fraser, David Michael Melancon, Matthew J Averill, Michael Scott Minyard, Michael Kevin Powell, Timothy Farrow Daniels, Irwin Fritchie Urquhart & Moore, LLC (New Orleans), New Orleans, LA; Brian C. Bossier, Christopher Thomas [*6] Grace, III, Edwin A. Ellinghausen, III, Erin Helen Boyd, Laura M. Gillen, Blue Williams, LLP (Metairie), Metairie, LA; Connor Peth, Irwin Fritchie Urquhart & Moore, New Orleans, LA; Darleene D. Peters, Irwin Fritchie Urquhart & Moore, LLC, New Orleans, LA; Kimmier L. Paul, Blue Williams, Metairie, LA; Whitney Charmaine Stewart, Blue Williams, LLP, Louisiana, Metairie, LA.

For Huntington Ingalls Incorporated, Cross Claimant: Gustave A. Fritchie, III, LEAD ATTORNEY, Alison A. Spindler, Amanda Marie Crowley Fraser, David Michael Melancon, Matthew J Averill, Michael Scott Minyard, Michael Kevin Powell, Timothy Farrow Daniels, Irwin Fritchie Urquhart & Moore, LLC (New Orleans), New Orleans, LA; Brian C. Bossier, Christopher Thomas Grace, III, Edwin A. Ellinghausen, III, Erin Helen Boyd, Laura M. Gillen, Blue Williams, LLP (Metairie), Metairie, LA; Connor Peth, Irwin Fritchie Urquhart & Moore, New Orleans, LA; Darleene D. Peters, Irwin Fritchie Urquhart & Moore, LLC, New Orleans, LA; Kimmier L. Paul, Blue Williams, Metairie, LA; Whitney Charmaine Stewart, Blue Williams, LLP, Louisiana, Metairie, LA.

For Berkshire Hathaway Specialty Insurance Company, Cross Defendant: Desiree Weilbaecher Adams, [*7] LEAD ATTORNEY, Taylor, Wellons, Politz & Duhe, APLC (New Orleans), New Orleans, LA; Austin Tyler Welch, I, Taylor, Wellons, Politz & Duhe, LLC, New Orleans, LA; Jared A. Davidson, Taylor, Wellons, Politz & Duhe APLC, New Orleans, LA; Jonathan B. Womack, Taylor, Wellons, Politz & Duhe APLC, New Orleans, LA.

For Eagle, Inc., Cross Defendant: Susan Beth Kohn, LEAD ATTORNEY, Douglas Kinler, Douglas Watson Redfearn, Simon, Peragine, Smith & Redfearn, LLP (New Orleans), Energy Centre, New Orleans, LA.

For First State Insurance Company, Cross Defendant: James Aristide Holmes, LEAD ATTORNEY, John K. Nieset, Christovich & Kearney, LLP, Pan American Life Center, New Orleans, LA; Katherine Blair Johnson, Christovich & Kearney, New Orleans, LA.

For Foster-Wheeler LLC, General Electric Company, Cross Defendants: John Joseph Hainkel, III, LEAD ATTORNEY, Angela M. Bowlin, Kelly L. Long, Kelsey Eagan, Magali Ann Puente-Martin, Frilot L.L.C., Energy Centre, New Orleans, LA; Roth Martin Hainkel, Frilot LLC, New Orleans, LA.

For Hopeman Brothers Inc, Cross Defendant: Kaye N. Courington, LEAD ATTORNEY, Blaine Augusta Moore, Brittney Bullock Ankersen, Jeffrey Matthew Burg, Mathilde Villere Semmes, Troy Nathan [*8] Bell, Courington, Kiefer, Sommers, Marullo & Matherne, New Orleans, LA; April Ann McQuillar, Courington, Kiefer, Sommers, Marullo & Matherne, LLC, Courington, Kiefer, Sommers, Marullo & Matherne, LLC, New Orleans, LA.

For International Paper Company, Cross Defendant: Walter G. Watkins, III, LEAD ATTORNEY, Forman, Watkins, & Krutz, LLP (Jackson), City Centre Bldg., Jackson, MS; Daniel S Roberts, Mary Reeves Arthur, Thomas Peyton Smith, Forman, Watkins & Krutz LLP (New Orleans), New Orleans, LA; Elizabeth Riddell Penn, Forman Watkins & Krutz LLP, Louisiana, New Orleans, LA.

For Taylor-Seidenbach, Inc., Cross Defendant: Christopher Kelly Lightfoot, LEAD ATTORNEY, Darren Albert Patin, Edward J. Lassus, Jr., Gabriel J. Veninata, Hailey, McNamara, Hall, Larmann & Papale, LLP (Metairie), Metairie, LA.

For United States Fidelity and Guaranty Company, As alleged insurer of Eagle, Inc., Cross Defendant: Katherine Osborne Hannan, Kristopher T. Wilson, LEAD ATTORNEYS, Patricia Cowen Penton, Lugenbuhl, Wheaton, Peck, Rankin & Hubbard (New Orleans), New Orleans, LA; James R. Guidry, Lugenbuhl, Wheaton, Peck, Rankin, & Hubbard, Louisiana, New Orleans, LA.

For Hopeman Brothers Inc, Cross Claimant: Kaye [*9] N. Courington, LEAD ATTORNEY, Blaine Augusta Moore, Brittney Bullock Ankersen, Jeffrey Matthew Burg, Mathilde Villere Semmes, Troy Nathan Bell, Courington, Kiefer, Sommers, Marullo & Matherne, New Orleans, LA; April Ann McQuillar, Courington, Kiefer, Sommers, Marullo & Matherne, LLC, Courington, Kiefer, Sommers, Marullo & Matherne, LLC, New Orleans, LA.

Judges: CARL J. BARBIER, UNITED STATES DISTRICT JUDGE.

Opinion by: CARL J. BARBIER

Opinion

ORDER & REASONS

Before the Court is a *Motion for Partial Summary Judgment Regarding the Avondale Interests'*

Government Contractor Defense filed by Plaintiffs Ted J. Matherne, Sr., Ted J. Matherne, Jr., Giselle Matherne Ordoyne, and Vanessa Matherne Richardson against Defendants Huntington Ingalls Incorporated ("Avondale"), Certain Underwriters at Lloyd's, London, and Sparta Insurance Company ("the Avondale Interests"); (**Rec. Doc. 226**). Avondale filed an opposition (Rec. Doc. 255), and Plaintiffs have replied (Rec. Doc. 290). Having considered the motion and legal memoranda, the record, and the applicable law, the Court finds that the motion for partial summary judgment (**Rec. Doc. 226**) should be **GRANTED**.

FACTS AND PROCEDURAL BACKGROUND

Roseanna Matherne was diagnosed with mesothelioma [*10] on or around December 1, 2021 and died on March 10, 2022 as a result of the disease. Mrs. Matherne's husband worked at Avondale Shipyard from 1965 to 1983. During his employment, Mr. Matherne worked on U.S. Coast Guard Cutters and Lykes, States, LASH, and LNG vessels, all of which were built with asbestos-containing materials for the United States government. Mrs. Matherne was allegedly exposed to asbestos from her husband's work clothes which she laundered in their family home. Plaintiffs allege that this exposure led to Mrs. Matherne's mesothelioma diagnosis and her subsequent death. Plaintiffs filed this suit against numerous Defendants in Orleans Parish, and the case was later removed to this Court on August 12, 2022.

LEGAL STANDARD

Summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." [*Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 \(1986\)](#) (citing *FED. R. CIV. P. 56*); see [*Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 \(5th Cir. 1994\)](#). When assessing whether a dispute as to any material fact exists, a court considers "all of the evidence in the record but refrains from making credibility determinations or weighing the evidence." [*11] [*Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 398 \(5th Cir. 2008\)](#). All reasonable inferences are drawn in favor of the nonmoving party, but a party cannot defeat summary judgment with conclusory allegations or unsubstantiated assertions. [*Little*, 37 F.3d at 1075](#). A

court ultimately must be satisfied that "a reasonable jury could not return a verdict for the nonmoving party." [Delta](#), 530 F.3d at 399.

If the dispositive issue is one on which the moving party will bear the burden of proof at trial, the moving party "must come forward with evidence which would 'entitle it to a directed verdict if the evidence went uncontroverted at trial.'" [Int'l Shortstop, Inc. v. Rally's, Inc.](#), 939 F.2d 1257, 1264-65 (5th Cir. 1991). The nonmoving party can then defeat the motion by either countering with sufficient evidence of its own, or "showing that the moving party's evidence is so sheer that it may not persuade the reasonable fact-finder to return a verdict in favor of the moving party." [Id.](#) at 1265.

If the dispositive issue is one on which the nonmoving party will bear the burden of proof at trial, the moving party may satisfy its burden by merely pointing out that the evidence in the record is insufficient with respect to an essential element of the nonmoving party's claim. See [Celotex](#), 477 U.S. at 325. The burden then shifts to the nonmoving party, who must, by submitting or referring to evidence, set out specific [*12] facts showing that a genuine issue exists. See [id.](#) at 324. The nonmovant may not rest upon the pleadings but must identify specific facts that establish a genuine issue for trial. See [id.](#) at 325; [Little](#), 37 F.3d at 1075.

DISCUSSION

Plaintiffs in this matter seek summary judgment to prevent Avondale and the alleged insurers of its executive officers from utilizing the government contractor defense to "immunize Avondale's failure to warn of the health hazards of **asbestos** and its failure to implement safety measures that would have prevented the uncontrolled spread of **asbestos** dust" that caused Roseanna Matherne's exposure. (Rec. Doc. 226, at 1).

The government contractor defenses arise out of the United States Supreme Court decisions in [Boyle v. United Technologies Corp.](#), 487 U.S. 500, 108 S. Ct. 2510, 101 L. Ed. 2d 442 (1988) and [Yearsley v. W. A. Ross Constr. Co.](#), 309 U.S. 18, 60 S. Ct. 413, 84 L. Ed. 554 (1940). The [Boyle](#) government contractor defense provides immunity from state law tort claims for certain government contractors for product design defects 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." [Boyle](#), 487 U.S. at 512. Based on the "discretionary function" exception to the [Federal Tort Claims Act](#), the [Boyle](#) defense protects against the financial burden of liability judgments against government contractors, which would be passed through to the United States government. See [Bailey v. McDonnell Douglas Corp.](#), 989 F.2d 794, 798 (5th Cir. 1993) (quoting [Boyle](#), 487 U.S. at 511). The [Boyle](#) Court explained that the first two elements "assure that the design feature in question was considered by a government officer, and not merely by the contractor," and that the third element encourages manufacturers to disclose their knowledge of risks. [Boyle](#), 487 U.S. at 512.

The [Yearsley](#) defense shields government contractors whose work was (1) authorized and directed by the Government of the United States and (2) performed pursuant to an Act of Congress. [Taylor Energy Co., L.L.C. v. Luttrell](#), 3 F.4th 172, 175 (5th Cir. 2021) (internal citations and quotation marks omitted). The rationale behind the [Yearsley](#) defense is that there is "no ground for holding [the government's] agent liable who is simply acting under the authority thus validly conferred;" [Yearsley v. W. A. Ross Constr. Co.](#), 309 U.S. 18, 21, 60 S. Ct. 413, 84 L. Ed. 554 (1940); however, an agent of the government can be liable for his conduct if he exceeds his authority or if the authority was not validly conferred; [id.](#) at 22.

Plaintiffs argue that their motion is basically identical to other motions on this subject which this Court and others within the Eastern District of Louisiana have granted. (Rec. Doc. 226, at [*14] 3) See [Falgout v. Anco Insulations, Inc., No. 21-1443, 2022 U.S. Dist. LEXIS 187097, 2022 WL 7540115 \(E.D. La. Oct. 13, 2022\)](#); [Adams v. Eagle, Inc., No. 21-694, 2022 U.S. Dist. LEXIS 158790, 2022 WL 4016749 \(E.D. La. Sept. 2, 2022\)](#); [Broussard v. Huntington Ingalls, Inc., No. 20-836, 2021 U.S. Dist. LEXIS 225247, 2021 WL 5448795 \(E.D. La. Nov. 22, 2021\)](#); [Crossland v. Huntington Ingalls, Inc., 635 F.Supp. 3d. 491 \(E.D. La. Oct. 19, 2022\)](#). Defendants assert that this case is different because "unlike the claims asserted by the plaintiffs in the [Adams](#), [Falgout](#), and [Crossland](#) cases, . . . Plaintiffs' claims against Avondale arising out of the use, handling, and disposal of **asbestos** clearly seek to impose liability on the part of the contractor for executing the government's will." (Rec. Doc. 255, at 2) (internal quotation omitted). In other words, Defendants argue that in the instant matter Plaintiffs make claims of general negligence and strict liability in addition to

claims for failure to warn and failure to enact safety measures. However, in their reply, Plaintiffs assert that they have not moved for summary judgment on the government contractor defense as to the Avondale Interests' claims for strict liability or general negligence. Rather, Plaintiffs state that they are only entitled to summary judgment for the failure to warn and failure to enact safety measures claims on which this Court and others have repeatedly ruled. Beyond addressing claims for which Plaintiffs have not sought summary judgment, the Avondale Interests' opposition does not present any compelling new reasons to deny summary judgment which [*15] were not already addressed and dismissed in this Court's order in [Falgout, 2022 U.S. Dist. LEXIS 187097, 2022 WL 7540115](#).

CONCLUSION

Accordingly, for the reasons stated in [Falgout v. Anco Insulations, Inc., 2022 U.S. Dist. LEXIS 187097, 2022 WL 7540115 \(E.D. La. Oct. 13, 2022\)](#),

IT IS HEREBY ORDERED that the motion for partial summary judgment (**Rec. Doc. 226**) is **GRANTED**. The Avondale Interests may not use the government contractor defense only for those claims listed in Plaintiffs' motion.

New Orleans, Louisiana this 19th day of January, 2024.

/s/ Carl J. Barbier

CARL J. BARBIER

UNITED STATES DISTRICT JUDGE

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