

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

Supreme Court of New York, New York County

January 5, 2024, Decided

INDEX NO. 190093/2020, Third-Party Index No. 595297/2021

Reporter

2024 N.Y. Misc. LEXIS 82 *; 2024 NY Slip Op 30069(U) **

[1]** JOSEPH PIRA, AS ADMINISTRATOR FOR THE ESTATE OF GIACINTO PIRA AND MARIA PIRA, INDIVIDUALLY, Plaintiff, - v - AIR & LIQUID SYSTEMS CORPORATION, AS SUCCESSOR-BY-MERGER TO BUFFALO PUMPS, INC, AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC, AMERICAN OPTICAL CORPORATION, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, CBS CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CRANE CO, DCO LLC F/K/A DANA COMPANIES, LLC, ELECTROLUX HOME PRODUCTS, INC. INDIVIDUALLY, AND AS SUCCESSOR TO TAPPAN AND COPES-VULCAN, EMPIRE-ACE INSULATION MFG. CORP, 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, GARDNER DENVER, INC, GENERAL ELECTRIC COMPANY, GOODYEAR CANADA, INC, GOULDS PUMPS LLC, GUARD-LINE, INC, GUTHRIE DELAWARE, INC, HOBART BROTHERS COMPANY, HONEYWELL INTERNATIONAL, INC., F/K/A ALLIED SIGNAL, INC. / BENDIX, IMO INDUSTRIES, INC, ITT LLC, INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, JENKINS BROS, MCCORD CORPORATION, MINE SAFETY APPLIANCES COMPANY, MORSE TEC LLC, PFIZER, INC. (PFIZER), PREST-O-SALES & SERVICES, INC, STEEL GRIP SAFETY APPAREL COMPANY, INC, STEEL GRIP, INC., STEEL GRIP, INC. A/K/A VOORHEES, INC INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO STEEL GRIP SAFETY APPAREL COMPANY, INC, TENNECO AUTOMOTIVE

OPERATING COMPANY INC, THE BOC GROUP, INC, THE GOODYEAR TIRE AND RUBBER COMPANY, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, WARREN PUMPS, LLC, Defendant. **[**2]** STEEL GRIP, INC Plaintiff, -against- TOURISTIC UNION INTERNATIONAL, AG, HAPAG-LLOYD CRUISES, A TUI CRUISES GMBH COMPANY, Defendant.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Core Terms

summary judgment, gloves, manufactured, causation, **asbestos**, summary judgment motion, exposure, proffers, matter of law, issue of fact, own expert, mesothelioma, unequivocal, documents, exposed, studies

Judges: **[*1]** 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 004) 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 242, 243, 244, 249, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 313, 314, 364, 365, 366, 372 were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND).

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 Steel Grip, Inc. ("Steel Grip") moves for summary judgment to dismiss this action on the grounds that plaintiff-decedent, Giacinto Pira ("Mr. Pira") did not establish any confirmed contact with or exposure from Steel Grip manufactured gloves during the course of his work as a seaman for the Italian Line during the 1960s. Moving defendant further argues that plaintiff cannot establish adequate causation of Mr. Pira's mesothelioma from **asbestos** found in safety gloves. Defendant Steel Grip proffers their own expert report and citations to studies suggesting that the amounts [*2] of **asbestos** potentially released from similar gloves are of insufficient quantity to cause mesothelioma.

[**3] In opposition, plaintiff highlights Mr. Pira's clear and unequivocal testimony identifying Steel Grip as a manufacturer of gloves he used through his employment, and proffers their own expert report and conflicting citations to studies regarding potentially dangerous levels of **asbestos** exposure from **asbestos**-containing gloves.

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 [*3] 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 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 [*4] burden "to unequivocally establish that its product could not have contributed to the causation of plaintiffs injury". [Reid v Georgia-Pacific Corp.](#), 212 AD2d 462, 463, 622 N.Y.S.2d 946 (1st Dep't 1995).

The appropriate standard at summary judgment for moving defendant Steel Grip can be found in [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 [*4] of fact, and to preclude summary judgment.

Here, the Court notes that Mr. Pira clearly identified Steel Grip as a manufacturer of gloves to which he was exposed. Moreover, Steel Grip has manufactured such items, and has failed to proffer any evidence to suggest that the gloves found on the ship Mr. Pira worked on could not have been manufactured by them, or that such gloves did not contain **asbestos**. As such, defendant has failed to meet its burden under [Dyer](#). Furthermore, plaintiff has proffered conflicting expert and academic evidence herein to raise issues of fact regarding the amount of **asbestos** Mr. Pira could have been exposed to from such gloves, and whether such exposure is causally related to Mr. Pira's illness. Thus, sufficient issues of fact have been raised regarding Mr. Pira's exposure to Steel Grip products, such that summary judgment must be denied.

Accordingly, it is

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

further

[5]** ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

01/05/2024

DATE

/s/ Adam Silvera **[*5]**

ADAM SILVERA, J.S.C.

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