

Evans v. Taylor-Seidenbach, Inc.

United States District Court for the Eastern District of Louisiana

March 18, 2024, Decided; March 18, 2024, Filed

CIVIL ACTION NO. 23-4241 SECTION L

Reporter

2024 U.S. Dist. LEXIS 46904 *

MARVIN EVANS VERSUS TAYLOR-SEIDENBACH,
INC., ET AL

Core Terms

allegations, failure to state a claim, daughters, motion to dismiss, Products, worksite, amend, sufficient factual basis, reasonable inference, exposed to asbestos, punitive damages, applicable law, improper venue, lung cancer, asbestos-containing, asbestos, contends, exposure, REASONS, damages, argues, fault

Counsel: [*1] For Marvin Evans, Plaintiff: Philip C Hoffman, LEAD ATTORNEY, Philip C. Hoffman, LLC, New Orleans, LA; Dayal S. Reddy, Dayal Reddy, New Orleans, LA.

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

For 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, Foster Wheeler LLC, formerly known as Foster Wheeler 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 Hopeman Brothers, Inc., Defendant: Kaye N. Courington, LEAD ATTORNEY, Blaine Augusta Moore, Brittney Bullock Ankersen, Jeffrey Matthew Burg, Mathilde Villere Semmes, Troy Nathan Bell, Courington, Kiefer, Sommers, Marullo [*2] & Matherne, New Orleans, LA; April Ann McQuillar, Lugenbuhl, Wheaton,

Peck, Rankin & Hubbard, Courington, Kiefer, Sommers, Marullo & Matherne, 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; Autumn Breeden, Forman Watkins & Krutz LLP, Jackson, MS; Daniel S Roberts, Thomas Peyton Smith, Forman, Watkins & Krutz LLP (New Orleans), New Orleans, LA; Elizabeth Riddell Penn, Forman Watkins & Krutz LLP, Louisiana, New Orleans, LA.

For Zurich American Insurance Company, as the insurer for Anco Insulations Inc., Defendant: Glen Mercer, LEAD ATTORNEY, Kourtney Twenhafel French, Salley, Hite, Mercer & Resor LLC, New Orleans, LA.

For Huntington Ingalls Incorporated, as successor-in-interest to Northrop Grumman Ship Systems Inc and Avondale Industries Inc formerly known as Northrop Grumman 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: Brian C. Bossier, LEAD ATTORNEY, Christopher Thomas Grace, III, Edwin [*3] A. Ellinghausen, III, Erin Helen Boyd, Laura M. Gillen, Blue Williams, LLP (Metairie), Metairie, LA; Kimmier L. Paul, Blue Williams, Metairie, LA.

For Chevron U.S.A., Inc., formerly known as Gulf Oil Corporation, Defendant: Tim D. Gray, LEAD ATTORNEY, Chelsea Gaudin Favret, Margaret Whiteley McLaughlin, McCann Elizabeth LeFeve, Melissa Desormeaux Fuller, Michael H. Abraham, Forman, Watkins & Krutz LLP (New Orleans), New Orleans, LA; Chandler Agee, Forman, Watkins & Krutz, LLP, New Orleans, LA.

For Exxon Mobil Corporation, as successor-in-interest to Standard Oil Company and Enjay Chemical Company formerly known as Exxon Corporation, Defendant, Cross Defendant: David Mark Bienvenu, Jr., LEAD ATTORNEY, John Allain Viator, Samantha Kennedy,

Bienvenu, Bonnacaze, Foco & Viator, LLC, Baton Rouge, LA; Daniel Edwin Buras, Jr., Inemesit U. O'Boyle, Patrick R Follette, Chehardy, Sherman, Williams, Murray, Recile, Stakelum&Hayes, LLC, Metairie, LA; James McClendon Williams, Chehardy, Sherman, Williams, Murray, Recile, Stakelum, & Hay, Metairie, LA; Melissa Jade Shaffer, Bienvenu, Bonnacaze, Foco, Viator & Holinga, APLLC, Baton Rouge, LA; Thomas Clay Naquin, Bienvenu, Bonnacaze, Foco, Viator & Holinga [*4] APLLC, Baton Rouge, LA.

For Georgia-Pacific Consumer Products LP, Defendant, Cross Defendant: Mary S. Johnson, LEAD ATTORNEY, Kimberly W. Jones, Johnson, Gray, McNamara, LLC (Mandeville), Mandeville, LA; Charles Arne Nunmaker, Matthew Holman, Johnson Gray McNamara, LLC, New Orleans, LA; Ingrid Kemp Laurendine, Johnson Gray McNamara (Mandeville), Mandeville, LA; Mayra L. Scheuermann, Johnson Gray McNamara, New Orleans, LA; Nichole M. Gray, Johnson Gray McNamara (New Orleans), New Orleans, LA.

For Marathon Petroleum Company LP, Defendant, Cross Defendant, Third Party Defendant: Thomas J. Cortazzo, LEAD ATTORNEY, Lewis Brisbois New Orleans, New Orleans, LA; Nicholas Chauvin, Lewis Brisbois Bisgaard & Smith, New Orleans, LA; Susan Grace Keller-Garcia, Lewis Brisbois Bisgaard & Smith, LLP, Louisiana, New Orleans, New Orleans, LA.

For Olin Corporation, formerly known as Olin Mathieson Chemical Corp, Defendant, Cross Defendant: Erich Phillip Rapp, LEAD ATTORNEY, Jay Morton Jalenak, Jr., Yuxian Wang, Kean Miller, LLP (Baton Rouge), Baton Rouge, LA; Janice M. Culotta, Kean Miller LLP, New Orleans, LA; Phillip Wade DeVilbiss, Kean Miller LLP, Lake Charles, LA; Terrence D. McCay, Kean Miller LLP [*5] (Lake Charles), Lake Charles, LA.

For Certain Underwriters at Lloyd's, London, as the liability insurer of the Executive Officers of Avondale Industries Inc, Defendant: James R Logan, IV, LEAD ATTORNEY, Logan Law Offices, LLC, New Orleans, LA.

For Dow Chemical Company, Defendant, Cross Defendant: Charles B. Wilmore, LEAD ATTORNEY, Elizabeth S. Wheeler, Erin Conner Percy, Neil Charles Abramson, Liskow & Lewis (New Orleans), New Orleans, LA; Alec Nelson Andrade, Liskow & Lewis, New Orleans, LA.

For EIDP Inc, formerly known as E.I. du Pont de Nemours and Company, Cross Defendant: Deborah DeRoche Kuchler, LEAD ATTORNEY, Lee Blanton

Ziffer, Monique M. Weiner, Kuchler Polk Weiner, LLC (New Orleans), New Orleans, LA; Holly Y. Paillet, Kuchler Polk Weiner LLC, New Orleans, LA.

For Foster Wheeler LLC, 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, 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, [*6] LA; Roth Martin Hainkel, Frilot LLC, New Orleans, LA.

For Huntington Ingalls Incorporated, Cross Claimant: Brian C. Bossier, LEAD ATTORNEY, Christopher Thomas Grace, III, Edwin A. Ellinghausen, III, Erin Helen Boyd, Laura M. Gillen, Blue Williams, LLP (Metairie), Metairie, LA; Kimmier L. Paul, Blue Williams, Metairie, LA.

For Anco Insulations, Inc., Cross Defendant: Margaret M. Joffe, LEAD ATTORNEY, Cosmich Simmons & Brown, New Orleans, LA; Kenan S. Rand, Jr, Shelley L. Thompson, Cosmich Simmons & Brown, PLLC, New Orleans, LA.

For Chevron U.S.A., Inc., formerly known as Gulf Oil Corporation, Cross Defendant: Tim D. Gray, LEAD ATTORNEY, Chelsea Gaudin Favret, McCann Elizabeth LeFevre, Melissa Desormeaux Fuller, Michael H. Abraham, Forman, Watkins & Krutz LLP (New Orleans), New Orleans, LA; Chandler Agee, Forman, Watkins & Krutz, LLP, New Orleans, LA.

For Hopeman Brothers, Inc., Liberty Mutual Insurance Company, as insurer of Wayne Manufacturing Co., Cross Defendants: Kaye 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 [*7] McQuillar, Lugenbuhl, Wheaton, Peck, Rankin & Hubbard, Courington, Kiefer, Sommers, Marullo & Matherne, LLC, New Orleans, LA.

For International Paper Company, individually and as successor by merger to Champion International Corporation and US Plywood, Cross Defendant: Walter G. Watkins, III, LEAD ATTORNEY, Forman, Watkins, & Krutz, LLP (Jackson), City Centre Bldg., Jackson, MS; Autumn Breeden, Forman Watkins & Krutz LLP, Jackson, MS; Daniel S Roberts, Forman, Watkins & Krutz LLP (New Orleans), New Orleans, LA; Elizabeth Riddell Penn, Forman Watkins & Krutz LLP, Louisiana;

Thomas Peyton Smith, Forman, Watkins & Krutz LLP (New Orleans), New Orleans, LA.

For Zurich American Insurance Company, as the insurer of Anco Insulations Inc., Cross Defendant: Glen Mercer, LEAD ATTORNEY, Kourtney Twenhafel French, Salley, Hite, Mercer & Resor LLC, New Orleans, LA.

For Huntington Ingalls Incorporated, as successor-in-interest to Northrop Grumman Ship Systems Inc and Avondale Industries Inc, Third Party Plaintiff: Brian C. Bossier, LEAD ATTORNEY, Christopher Thomas Grace, III, Edwin A. Ellinghausen, III, Erin Helen Boyd, Laura M. Gillen, Blue Williams, LLP (Metairie), Metairie, LA; Kimmier L. Paul, [*8] Blue Williams, Metairie, LA.

For Bayer Cropscience LP, other, Rhone-Poulenc AG Company, formerly known as Amchem Products, Inc., formerly known as Benjamin Foster Company, Third Party Defendant: McGready Lewis Richeson, LEAD ATTORNEY, Milele N. St. Julien, Pugh Accardo, New Orleans, LA; Ernest G. Foundas, Perrey S. Lee, Pugh, Accardo, LLC (New Orleans), New Orleans, LA; Francis Xavier deBlanc, III, Pugh, Accardo, Haas, Radecker & Carey (New Orleans), New Orleans, LA.

For Uniroyal Holding, Inc., Third Party Defendant: Thomas Peyton Smith, LEAD ATTORNEY, Forman, Watkins & Krutz LLP (New Orleans), New Orleans, LA; Autumn Breeden, Forman Watkins & Krutz LLP, Jackson, MS.

For Ameron International Corporation, Third Party Defendant: Forrest Ren Wilkes, LEAD ATTORNEY, Cosmich Simmons & Brown, PLLC (New Orleans), New Orleans, LA.

Judges: Eldon E. Fallon, United States District Judge.

Opinion by: Eldon E. Fallon

Opinion

ORDER & REASONS

Before the Court is a motion by Defendant Georgia-Pacific Consumer Products LP ("Georgia-Pacific") to Dismiss for Failure to State a Claim. R. Doc. 99. Having considered the briefing and the applicable law, the Court rules as follows.

I. BACKGROUND

This case arises from Plaintiff Marvin Evans' apparent [*9] exposure to asbestos, which he alleges led to his diagnosis of malignant lung cancer in September of 2022. R. Doc. 1-2 at 3. Evans originally sued twenty-four manufacturers, insurers, and employers in the Civil District Court for Orleans Parish. *Id.* at 1-2. Defendant Huntington Ingalls Incorporated removed the suit to this Court on August 25, 2023, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Doc. 4 at 2.

Evans' lawsuit alleges that he was exposed to asbestos-containing products because of his employment as a boilermaker with various defendant companies. R. Doc. 1-2 at 3. Evans contends that from 1969 to at least 1980, he worked at many sites, including those owned by Olin Kraft, International Paper Company, Shell USA, Inc., and Marathon Petroleum Company, LP. *Id.* At these worksites, Evans alleges that he used, handled, and/or was in the vicinity of others using asbestos-containing products, which subsequently caused his development of lung cancer. *Id.* Accordingly, Evans sued the defendant companies for their respective roles in causing his asbestos exposure. *Id.* at 3-14. Specifically, Evans contends that Defendants are liable under negligence and strict liability theories. *Id.*

Several defendants have filed [*10] their answers to Evans' complaint. The Defendants generally deny the negligence and strict liability claims. See e.g., R. Doc. 14; R. Doc. 23; R. Doc. 24; R. Doc. 25; R. Doc. 27. Many defendants raise affirmative defenses, including comparative fault; failure to mitigate damages; improper venue; assumption of risk; and third-party fault. *Id.*

On November 15, 2023, Defendant Exxon filed a motion to dismiss for failure to state a claim. R. Doc. 72. Exxon sought to dismiss Evans' claim for punitive damages should he seek such damages in connection with his allegations that Exxon acted "negligently, recklessly, willfully and/or because of wanton negligence." R. Doc. 72-1 at 2. Exxon also argued that Evans filed suit in an improper venue. *Id.* at 3. However, because Evans had not actually prayed for punitive damages, and because venue could not be determined yet at that stage, this Court denied Exxon's 12(b)(6) motion as premature. R. Doc. 75 at 3.

On January 31, 2024, Evans' daughters sought to amend the complaint due to their father's passing. R. Doc. 91. In their motion to amend, the daughters asked to substitute themselves as Plaintiffs and add survivor

and wrongful death claims to the [*11] Complaint, and noted that defense counsel had not objected to their request. *Id.* at 1. This Court granted the motion to amend on February 1, 2024. R. Doc. 92.

Two weeks later, Defendant Georgia-Pacific filed the instant Motion to Dismiss for Failure to State a Claim. R. Doc. 99.

II. PRESENT MOTION

Georgia-Pacific argues that the Evans daughters have not alleged a sufficient factual basis for their claim against Georgia-Pacific. *Id.* While the Evans daughters broadly state that their father was exposed to **asbestos** at a Georgia-Pacific worksite in Zachary, Louisiana, which contributed to or caused his mesothelioma, Georgia-Pacific notes that these are the only facts they allege surrounding Georgia-Pacific's liability. *Id.* at 1-2. Significantly, Georgia-Pacific avers that it has never operated any facility in Zachary, Louisiana. *Id.* at 2. Therefore, Georgia-Pacific argues that there is not a sufficient factual basis for the daughters' claim against Georgia-Pacific. *Id.*

Plaintiffs did not file any opposition to Georgia-Pacific's motion.

III. APPLICABLE LAW

[Federal Rule of Civil Procedure 12\(b\)\(6\)](#) provides that an action may be dismissed "for failure to state a claim upon which relief can be granted." [Fed. R. Civ. P. 12\(b\)\(6\)](#). "To survive a motion to dismiss, [*12] a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" [Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 \(2009\)](#) (quoting [Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 \(2008\)](#)). "Factual allegations must be enough to raise a right to relief above the speculative level." [Twombly, 550 U.S. at 556](#). A claim is plausible on its face when the plaintiff has pled facts that allow the court to "draw a reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 570. Although a court must liberally construe the complaint in light most favorable to the plaintiff, accept the plaintiff's allegations as true, and draw all reasonable inferences in favor of the plaintiff, [Baker v. Putnal, 75 F.3d 190, 196 \(5th Cir. 1996\)](#), courts "do not accept as true conclusory allegations, unwarranted

factual inferences, or legal conclusions." [Arias-Benn v. State Farm Fire & Cas. Co., 495 F.3d 228, 230 \(5th Cir. 2007\)](#) (quoting [Plotkin v. IP Axess Inc., 407 F.3d 690, 696 \(5th Cir. 2005\)](#)).

IV. ANALYSIS

While Plaintiffs allege that their father was exposed to **asbestos** at a Georgia-Pacific worksite in their Amended Complaint, Georgia-Pacific states that it has never operated in Zachary, Louisiana. R. Doc. 99 at 1-2. Plaintiffs were provided an opportunity to oppose Georgia-Pacific's motion, but failed to do so. Therefore, this Court will grant Georgia-Pacific's 12(B)(6) Motion to Dismiss for Failure to State a Claim because the daughters [*13] have not alleged sufficient factual information to support their claim for liability against Georgia-Pacific.

V. CONCLUSION

For the foregoing reasons, Georgia-Pacific Consumer Products LP's Motion to Dismiss for Failure to State a Claim, R. Doc. 99, is **GRANTED**.

New Orleans, Louisiana this 18th day of March, 2024.

/s/ Eldon E. Fallon

United States District Judge

End of Document