

Sims v. Aerojet Rocketdyne, Inc.

United States District Court for the Southern District of Florida

February 29, 2024, Decided; February 29, 2024, Entered on Docket

CASE NO. 22-62148-CIV-DIMITROULEAS

Reporter

2024 U.S. Dist. LEXIS 49923 *

MICHELLE M. SIMS, as Personal Representative of the Estate of John R. McCabe, Sr., Plaintiff, vs. AEROJET ROCKETDYNE, INC., et al., Defendants.

Core Terms

summary judgment, **asbestos**, material fact, product liability, nonmoving, disease, exposed

Counsel: [*1] For Curtiss-Wright Corporation, Defendant: Erin Kayla Weinstock, Michael Roland Holt, M. Stephen Smith III, LEAD ATTORNEYS, Rumberger Kirk & Caldwell, Miami, FL.

For Honeywell International Inc., Honeywell Inc., Honeywell International Inc., Individually and as successor to AlliedSignal Inc. and The Bendix Corporation, Honeywell International Inc., formerly known as, Defendants: Bruce T. Bishop, PRO HAC VICE, Willcox & Savage P.C., Norfolk, VA; Kelly L. Kesner, Luks Santaniello Petrillo & Jones, Miami, FL; Kelvin Wyles, PRO HAC VICE, Husch Blackwell LLP, Los Angeles, CA; Timothy John Ferguson, LEAD ATTORNEY, Foley & Mansfield, Miami, FL; Troy Patrick Cunningham, LEAD ATTORNEY, Lewis Brisbois, Miami, FL.

For MORTON INTERNATIONAL LLC, Individually and as successor to Morton Thiokol successor-by-merger to Thiokol Corporation, Defendant: Patrick Theodore Garvey, PRO HAC VICE, Sinars Slowikowski Tomaska, Chicago, IL; Peter J. Melaragno, LEAD ATTORNEY, Fowler White Burnett, Miami, FL.

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For Schneider Electric USA Inc., Square D Company, Schneider Electric USA Inc., formerly known as, Defendants: W. Scott Mason, LEAD ATTORNEY, Fox Rothschild LLP, West Palm Beach, FL.

For ShellUSA Inc., Defendant: Caitlyn R. McCutcheon, Miami, FL.

For The Goodyear Tire & Rubber Company, Defendant: Edward Joy Briscoe, Peter J. Melaragno, LEAD ATTORNEYS, Fowler White Burnett, Miami, FL.

For VANDERBILT MINERALS LLC, R.T. Vanderbilt Company Inc., VANDERBILT MINERALS LLC, formerly known as, Defendants: Eduardo J Medina, LEAD ATTORNEY, Bice Cole Law Firm P.L., Coral Gables, FL.

Judges: WILLIAM P. DIMITROULEAS, United States District [*3] Judge.

Opinion by: WILLIAM P. DIMITROULEAS

Opinion

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court Defendant Curtiss-Wright Corporation, ("Curtiss-Wright" or "Defendant")s

Motion for Summary Judgment, filed on January 12, 2024 [DE 333]. The Court has carefully considered the Motion, Plaintiff Michelle M. Sims, Personal Representative of the Estate of John R. McCabe Sr., ("Plaintiff")'s January 26, 2024 Response [DE 345], Defendant's February 9, 2018 Reply [DE 66], Defendant's Statement of Undisputed Material Facts [DE 334] ("DSOF" ¶¶1-13), Plaintiff's Statement of Material Facts in Response [DE 346 at pp. 1-5] ("PRSOF" ¶¶1-13), Plaintiff's Additional Facts [DE 346 at pp. 5-9] ("PRSOF" ¶¶14-32)¹, the exhibits and affidavits filed in the record, and is otherwise fully advised in the premises.

I. Background

This is a products liability action in which Plaintiff has sued Defendant Curtiss-Wright and dozens of other Defendants claiming damages arising out of the deceased, John McCabe's ("McCabe") alleged exposure to **asbestos** from equipment and products. See [DE 148]. Plaintiff has sued Defendants, including Curtiss-Wright, for strict products liability and negligence (namely [*4] failure to warn), claiming that Defendants' alleged **asbestos**-containing products caused McCabe to develop an **asbestos**-related disease, specifically malignant epithelioid mesothelioma. Plaintiff further claims that McCabe passed away on January 1, 2023 during the pendency of this action as a result of this disease. *Id.* at ¶ 2.

Defendant Curtiss-Wright has moved for summary judgment, seeking summary judgment in its favor on the grounds that Plaintiff has failed to submit any evidence to support Plaintiff's claim that McCabe was exposed to **asbestos** while working on or around any Curtiss-Wright product.

II. Standard of Review

Under Rule 56(a), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." [Fed. R. Civ. P. 56\(a\)](#).

¹ Defendant Curtiss-Wright did not file a response statement of facts to Plaintiff's Additional Facts. Accordingly, pursuant to [S.D. Fla. Local Rule 56.1\(c\)](#), each of Plaintiff's Additional Facts which are supported by properly cited record evidence are deemed admitted.

The movant bears "the stringent burden of establishing the absence of a genuine issue of material fact." [Suave v. Lamberti](#), 597 F. Supp. 2d 1312, 1315 (S.D. Fla. 2008) (citing [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323 (1986)).

"A fact is material for the purposes of summary judgment only if it might affect the outcome of the suit under the governing law." [Kerr v. McDonald's Corp.](#), 427 F.3d 947, 951 (11th Cir. 2005) (internal quotations omitted). Furthermore, "[a]n issue [of material fact] is not 'genuine' if it is unsupported by the evidence or is created [*5] by evidence that is 'merely colorable' or 'not significantly probative.'" [Flamingo S. Beach / Condo. Ass'n, Inc. v. Selective Ins. Co. of Southeast](#), 492 F. App'x 16, 26 (11th Cir. 2013) (quoting [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 249-50 (1986)). "A mere scintilla of evidence in support of the nonmoving party's position is insufficient to defeat a motion for summary judgment; there must be evidence from which a jury could reasonably find for the non-moving party." *Id.* at 26-27 (citing [Anderson](#), 477 U.S. at 252). Accordingly, if the moving party shows "that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the nonmoving party" then "it is entitled to summary judgment unless the nonmoving party, in response, comes forward with significant, probative evidence demonstrating the existence of a triable issue of fact." [Rich v. Sec'y, Fla. Dept. of Corr.](#), 716 F.3d 525, 530 (11th Cir. 2013) (citation omitted).

III. Discussion

As to Plaintiff's claims for negligent failure to warn or strict products liability against Curtiss-Wright, the threshold burden is product identification. See [Levine v. Wyeth Inc.](#), 684 F.Supp.2d 1338, 1345 (M.D. Fla. 2010) ("It is well established under Florida law and elsewhere that identification of the product that caused the harm as the one sold or manufactured by the defendant is an essential element of traditional tort law."); see also [Pulte Home Corp. v. Ply Gem Indus., Inc.](#), 804 F. Supp. 1471, 1485 (M.D. Fla. 1992) ("The requirement for product identification in products liability is an important [*6] one"). Plaintiff not only must establish evidence of product identification, but also that the alleged exposures substantially contributed to his **asbestos**-related disease. See [Reaves v. Armstrong World Industries, Inc.](#), 569 So. 2d 1307, 1309 (Fla. 4th DCA 1990) ("It is incumbent upon the Plaintiff to establish by the greater weight of the evidence that the Plaintiff was exposed to the **asbestos** products of each of the

remaining defendants and that this exposure contributed substantially to producing the injury claimed of.")

To prevail in a strict product liability action, "the user must establish the manufacturer's relationship to the product in question, the defective and unreasonably dangerous condition of the product, and the existence of the proximate causal connection between such condition and the user's injuries or damages." [West v. Caterpillar Tractor Co., 336 So. 2d 80, 86-87 \(Fla. 1976\)](#); see also [Cintron v. Osmose Wood Preserving, Inc., 681 So. 2d 859, 861 \(Fla. 5th DCA 1996\)](#).

Defendant Curtiss-Wright has moved for summary judgment, seeking summary judgment in its favor on the grounds that Plaintiff has failed to submit any evidence to support Plaintiff's claim that McCabe was exposed to asbestos while working on or around any product that Curtiss-Wright manufactured or sold. First, Defendant argues that Plaintiff has failed to identify any Curtiss-Wright aircraft or product that McCabe allegedly worked [*7] with or around. Second, Defendant contends that Plaintiff has failed to provide any record evidence supporting causation, *i.e.*, evidence of an event or of work that McCabe performed that was a substantial contributing factor in causing his illness. Specifically, Defendant asserts that Plaintiff has not provided any evidence of the following necessary criteria for establishing claims for negligent failure to warn or strict products liability against Curtiss-Wright: (1) that McCabe worked on or around a Curtiss-Wright product, (2) that the Curtiss-Wright product contained asbestos, (3) that the Curtiss-Wright product created dust, and (4) that McCabe was exposed in any way to asbestos-containing dust from any Curtiss-Wright product.

In response to the summary judgment motion, Plaintiff introduces evidence that precludes the Court from determining as a matter of law that McCabe did not work on or around any Curtiss-Wright product where asbestos was distributed, handled or produced breathable dust which substantially contributed to McCabe's malignant epithelioid mesothelioma, an asbestos-exposure related disease. This includes, *inter alia*, evidence that McCabe was exposed to asbestos from [*8] his work on and around and other aircraft mechanics' work in his presence on the C-46 aircraft manufactured by Curtiss-Wright and that the asbestos-containing products on various components incorporated in the C-46 were a substantial factor in causing McCabe's disease. Here, viewing the evidence in the light most favorable to Plaintiff, the nonmoving

party, as well as making reasonable inferences in the light most favorable to Plaintiff, the Court determines that there are genuine issues of material fact regarding Plaintiff's claims for negligent failure to warn and strict liability against Defendant Curtiss-Wright which must be determined by the factfinder, precluding summary judgment.

IV. Conclusion

Based upon the foregoing, it is **ORDERED AND ADJUDGED** that Defendant's Motion for Summary Judgment [DE 333] is **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 29th day of February, 2024.

/s/ William P. Dimitrouleas

WILLIAM P. DIMITROULEAS

United States District Judge

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