

Payne v. GE

United States District Court for the Eastern District of California

September 25, 2025, Decided; September 26, 2025, Filed

No. 2:20-cv-01198-TLN-AC

Reporter

2025 U.S. Dist. LEXIS 190500 *; 2025 LX 497826

DENNIS C. PAYNE, et al., Plaintiffs, v. GENERAL ELECTRIC COMPANY, et al., Defendants.

Core Terms

electric, asbestos, turbine, warn, maritime law, sophisticate, punitive damages, user, insulate, manufacturer, exposure, summary judgment motion, deposition, academy, hazard, inspect, ship, expose, summary judgment, asbestos-containing, consortium, aboard, superseding cause, intermediary, genuine, maritime, prong, reply, precaution, cure

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For York International Corporation, sued individually and as successor-in-interest to Frick Company, Goulds Pumps, LLC, Defendants: Marisa R. Chaves, LEAD ATTORNEY, Morgan Lewis & Bockius LLP, San Francisco, CA.

For SB Decking, Inc., formerly known as Selsby Battersby & Co., Defendant: Florence A. McClain, LEAD ATTORNEY, Lewis Brisbois Bisgaard & Smith LLP, San Francisco, CA; Gina Haran, LEAD ATTORNEY, Lewis Brisbois [*2] Bisgaard & Smith, San Francisco, CA.

For Redco Corporation, sued individually and as successor-in-interest to Chapman Valve Co., formerly known as Crane, Co., Defendant: Daniel M. Glassman, LEAD ATTORNEY, Arnold Porter Kaye Scholer LLP, Los Angeles, CA.

Judges: TROY L. NUNLEY, CHIEF UNITED STATES DISTRICT JUDGE.

Opinion by: TROY L. NUNLEY

Opinion

ORDER

This matter is before the Court on Plaintiffs Dennis C. Payne ("Mr. Payne") and Susan Payne's ("Plaintiffs") Motion for Summary Adjudication (ECF No. 178) and Defendant General Electric Company's ("General Electric") Motion for Summary Judgment (ECF No. 179). Both motions are fully briefed. (ECF Nos. 196, 197, 199, 207, 208, 209.¹) As set forth below, both Plaintiffs' Motion for Summary Adjudication and General Electric's Motion for Summary Judgment are GRANTED in part and DENIED in part.²

I. FACTUAL AND PROCEDURAL BACKGROUND³

The instant action arises out of Mr. Payne's alleged exposure to asbestos while working aboard a ship called the Golden Bear II.⁴ Plaintiffs allege this exposure led to his ultimate death from mesothelioma. (ECF No. 134 ¶ 1.) The Golden Bear II was originally built under a U.S. Maritime Commission contract and named the S.S. Del Orleans.⁵ (ECF No. 197-1 [*3] at 1-2.) The ship was completed and launched in 1940. (*Id.* at 1; ECF No. 208 at 15.) General Electric was contracted to manufacture the turbine for the ship, which consisted of a high pressure section, a low pressure section, and a reduction gear. (ECF No. 199-1 at 5; ECF No. 208 at 15.) General Electric started manufacturing the turbine in 1939 and delivered it to the shipbuilder in 1940. (ECF No. 199-1 at 5.) In 1941, the ship was acquired by the Navy and later redesignated the USS Crescent City. (ECF No. 208 at 16.) The USS Crescent City was then loaned to the California Maritime Academy to use as a training ship and was renamed the Golden Bear II. (ECF No. 197-1 at 5; ECF No. 208 at 16.) The federal government funded repairs to the Golden Bear II and required that in fitting the ship for service, all requirements of the American Bureau of Shipping, Coast Guard, and other regulatory agencies be satisfied. (ECF No. 208 at 17.) The Maritime Administration ("MARAD") administered the Golden Bear II, authorized any expenditures necessary for proper maintenance and upgrades of equipment, and approved all work on the ship. (*Id.*)

Mr. Payne was a marine engineering student [*4] at the California Maritime Academy from August 1972 to July 1975. (ECF No. 197-1 at 5; ECF No. 208 at 25.) In February 1975, while Mr. Payne was still a student, the Golden Bear II was on maneuvers in Panama when a turbine problem developed. (ECF No. 208 at 20.) The vessel was brought into port, and the California Maritime Academy's Chief Engineer, instructors, and students inspected the turbine by first removing the horizontal joint insulation from the high pressure section's horizontal joint. (*Id.*) Mr. Payne observed the turbine inspection and removal process, but did not remove insulation or open and inspect the turbine himself. (*Id.*) After California Maritime Academy instructors and students removed insulation and opened and inspected the turbine, representatives from MARAD and General Electric came aboard to view the turbine interior. (*Id.*) Mr. Payne never worked for or took direction from a General Electric representative. (*Id.* at 21.)

On June 15, 2020, Plaintiffs filed the instant action. (ECF No. 1.) Plaintiffs filed a Second Amended Complaint on March 21, 2023, claiming: (1) negligence under maritime law; (2) negligence under California law; (3) breach of express and implied [*5] warranties; (4) strict liability under maritime law; (5) strict liability under California law; and (6) loss of consortium. (ECF No. 134.)

Plaintiffs subsequently filed the instant Motion for Summary Adjudication and General Electric filed a cross Motion for Summary Judgment. (ECF Nos. 178, 179.)

¹ Defendants Alfa Laval, Inc. ("Laval") and Tate Andale, LLC ("Andale") also filed oppositions, which are now moot. (ECF Nos. 195, 198, 200.) Laval was dismissed from this action with prejudice (ECF No. 217) and Andale settled (ECF No. 225).

² The Court already denied Plaintiffs' Motion for Summary Adjudication as to Andale based on the parties' settlement. (ECF No. 225.)

³ The following facts are undisputed unless otherwise stated.

⁴ The parties refer to this ship interchangeably as the "Golden Bear II" and the "TS Golden Bear II." (See, e.g., ECF No. 197-1 at 5.) For purposes of this order, the Court refers to this ship as the Golden Bear II.

⁵ The parties refer to this ship interchangeably as the "SS Del Orleans" and "SS Delorleans." (Compare ECF No. 197-1 at 1, with ECF No. 208 at 15.) For consistency and for purposes of this order, the Court refers to this ship as the S.S. Del Orleans.

II. EVIDENTIARY OBJECTIONS

To clarify the record on summary judgment, the Court first rules on General Electric's objections to Arnold Moore's report ("Moore report"), which Plaintiffs submit in support of their Motion for Summary Adjudication. (ECF No. 197-2.) General Electric's additional objections to Plaintiffs' evidence are ruled upon throughout the order when relevant. (ECF No. 209-1.) The objections to evidence the Court does not rely upon are DENIED as moot.

A. Arnold Moore's Report

General Electric objects and moves to exclude the Moore report in its entirety for two reasons. First, General Electric argues the Moore report is unsworn and unaccompanied by a declaration attesting to Moore's ability to testify to the report's content. (ECF No. 197-2 at 1-2.) In response, Plaintiffs state they will file a declaration from Moore to cure any deficiency. (ECF No. 207 at 4.) On June 11, 2024, [*6] Plaintiffs filed a signed declaration from Arnold Moore attesting to his ability to testify to the report's content. (ECF No. 211.)

While General Electric is correct that generally unsworn expert reports are inadmissible, see *Liebling v. Novartis Pharms. Corp.*, No. CV1110263MMMRWX, 2014 WL 12576619, at *2 (C.D. Cal. Mar. 24, 2014) (collecting cases), the Ninth Circuit emphasizes a "policy favoring disposition on the merits[.]" *In re Eisen*, 31 F.3d 1447, 1454 (9th Cir. 1994). Given this policy, the Court allows Plaintiffs to "cure" the Moore report through the belatedly signed declaration. See *Medina v. Mapes*, No. 1:21-CV-00844-JLT-EPG, 2024 WL 1722270, at *2 (E.D. Cal. Apr. 19, 2024) (similarly allowing Plaintiffs to cure deficient expert report).

General Electric's second argument is that the Moore report is unreliable because it contains statements that contradict Moore's sworn deposition testimony. (ECF No. 197-2 at 2-5.) In response, Plaintiffs argue Moore's report does not contradict his deposition testimony. (ECF No. 207 at 2.) Plaintiffs contend that General Electric cites no contradictory statement made in Moore's report and any purported contradictions with his deposition testimony are taken out of context. (*Id.* at 3-4.)

The Court agrees with Plaintiffs and finds General Electric's objection to be meritless. First, General Electric argues Plaintiffs cite to Moore's report to support their argument that General Electric [*7] should have provided danger warnings for asbestos-containing gaskets, but Moore stated in deposition that Mr. Payne was not present for the removal of any such gaskets. (ECF No. 197-2 at 3.) The fact that Plaintiffs cite to Moore's report to support this argument does not undermine the report — if anything, this is simply an unpersuasive citation. Second, General Electric contends Moore states in his report that it was likely many repair parts for machinery on the Golden Bear II were ordered from the original equipment manufacturers, but in deposition he admitted he cannot tie General Electric to any of the pertinent replacement parts used during Mr. Payne's time on the ship. (*Id.*) Again, Moore's statement in deposition does not directly contradict his general statement in his report. (ECF No. 178-4 at 37; ECF No. 197-6 at 148.)

General Electric's other citations to Moore's deposition statements are presented without explanation as to how they discredit his report, and the Court finds these statements provide no reason to exclude his report. (*Id.* at 4-5.)

In sum, the Court has considered General Electric's objection to the Moore report and finds the challenge lacks merit. Accordingly, [*8] General Electric's objection to the Moore report is OVERRULED.

III. STANDARD OF LAW

A. Summary Judgment

Summary judgment is appropriate when the moving party demonstrates no genuine issue of any material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). Under summary judgment practice, the moving party always bears the initial responsibility of informing the district court of the basis of its motion, and identifying those portions of "the

pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits, if any," that it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[W]here the nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the pleadings, depositions, answers to interrogatories, and admissions on file." *Id.* at 324 (internal quotation marks omitted). Indeed, summary judgment should be entered against a party who does not make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

If the moving party meets [*9] its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact does exist. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585-87 (1986); *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968). In attempting to establish the existence of a factual dispute, the opposing party may not rely upon the denials of its pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. Fed. R. Civ. P. 56(c). The opposing party must demonstrate that the fact in contention is material, *i.e.*, the fact might affect the outcome of the suit under the governing law, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), and that the dispute is genuine, *i.e.*, the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* at 251-52.

In the endeavor to establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *First Nat'l Bank of Ariz.*, 391 U.S. at 288-89. Thus, the "purpose of summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.'" [*10] *Matsushita Elec. Indus. Co.*, 475 U.S. at 587 (quoting Rule 56(e) Advisory Committee Note (1963)).

In resolving a summary judgment motion, the court examines the pleadings, depositions, answers to interrogatories, and admissions on file, together with any applicable affidavits. Fed. R. Civ. P. 56(c); *SEC v. Seaboard Corp.*, 677 F.2d 1301, 1305-06 (9th Cir. 1982). The evidence of the opposing party is to be believed and all reasonable inferences that may be drawn from the facts pleaded before the court must be drawn in favor of the opposing party. *Anderson*, 477 U.S. at 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. *Richards v. Nielsen Freight Lines*, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), *aff'd*, 810 F.2d 898 (9th Cir. 1987). Finally, to demonstrate a genuine issue that necessitates a jury trial, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Id.* at 587.

B. Maritime Law

The parties do not dispute federal maritime law — "an amalgam of traditional common-law rules, modifications of those rules, and newly created rules" — governs this case. *McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1173 (9th Cir. 2016) (quoting *E. River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858, 865 (1986)); (ECF No. 179-1 at 15 n.8; see generally ECF Nos. 134, 199.) Application [*11] of federal maritime law "does not result in automatic displacement of state law." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 545 (1995). Rather, state law may be used to supplement federal maritime law where it is "compatible with substantive maritime policies." *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 207 (1996). However, state law is not generally applied where it would be "inconsonant with the substance of federal maritime law." *Id.* at 207.

IV. ANALYSIS

The Court begins by examining General Electric's Motion for Summary Judgment before turning to Plaintiffs' Motion for Summary Adjudication.

A. General Electric's Motion for Summary Judgment

General Electric argues four separate and independent grounds entitle it to summary judgment. (ECF No. 179 at 2.) First, Plaintiffs lack evidence of exposure to an asbestos-containing product made or supplied by General Electric sufficient to prove causation of Mr. Payne's alleged injury under maritime law. (*Id.*) Second, there is no causal connection between any failure to warn and Mr. Payne's injury. (*Id.*) Third, General Electric owed no duty to warn under the Supreme Court's decision in *Air & Liquid Sys. Corp. v. DeVries*, 586 U.S. 446 (2019). (*Id.*) Fourth, Plaintiffs' claims for non-pecuniary loss and loss of consortium are not available under maritime law. (*Id.*) The Court addresses these arguments in turn.

*i. Causation [*12] under Maritime Law*

First, General Electric argues there is no credible evidence demonstrating Mr. Payne was exposed to any asbestos related to a turbine manufactured by General Electric, let alone that he was regularly exposed to a specific asbestos-containing product over an extended period of time aboard the Golden Bear II. (ECF No. 179-1 at 16.) Plaintiffs disagree and argue they have presented substantial evidence sufficient to show asbestos from General Electric's products was a substantial factor in the development of Mr. Payne's mesothelioma. (ECF No. 199 at 17-19.)

In reply, General Electric argues Plaintiffs rely on four generic and/or unsworn expert reports which do not establish causation.⁶ (ECF No. 209 at 8.) According to General Electric, there is no admissible evidence demonstrating Mr. Payne was exposed to any asbestos related to a turbine manufactured by General Electric. (*Id.* at 9.)

Under maritime law, to establish causation for an asbestos claim, Plaintiffs must show that (1) Mr. Payne was actually exposed to an asbestos-containing product related to General Electric's turbine, and (2) the product was a substantial factor in causing the injury Mr. Payne suffered. See [*13] *McIndoe*, 817 F.3d at 1174.

a) Actual Exposure

It is undisputed that Golden Bear II was propelled by a single General Electric turbine consisting of a high pressure section, a low pressure section, and a reduction gear. (ECF No. 199-1 at 5.) Therefore, the question before the Court is whether Plaintiffs have presented sufficient evidence for a reasonable jury to find Mr. Payne was exposed to an asbestos-containing product related to the turbine. While General Electric argues Plaintiffs have offered nothing other than "unsupported allegations and speculation[.]" to show Mr. Payne was exposed, the Court disagrees. (See ECF No. 179-1 at 16.)

First, Plaintiffs cite to Mr. Payne's deposition where he states he observed an inspection on the General Electric turbines in March 1975 aboard the Golden Bear II. (ECF No. 199 at 19 (citing ECF No. 199-7 at 3, 6-8).) Mr. Payne states that while he was observing the inspection, gaskets had to be removed, along with lagging and insulation blankets. (ECF No. 199-7 at 6-8.) Mr. Payne further stated he could see dust from the maintenance work and one of his classmates blew the asbestos insulation off of the casing of the turbine. (*Id.* at 6, 10.) Mr. Payne's classmate, Michael O'Callaghan, [*14] who was also present on the Golden Bear II during the inspection in March 1975, confirmed that during the inspection, the insulation was removed from the turbine and studs were disassembled and lifted in order to access the turbine. (ECF No. 199-8 at 4-5.)

Plaintiffs also provide photographs Mr. Payne took during the inspection. (ECF No. 199-9.) Plaintiffs' expert, Michael Poulson ("Poulson"), who did asbestos insulation abatement work on the Golden Bear II in the early 1980s,

⁶General Electric argues Plaintiffs submit two expert reports — by Dr. Barry Horn and Dr. David Zhang — that are unsworn, contain no declaration under penalty of perjury, and should be stricken as inadmissible. (ECF No. 209 at 8 n.5.) Plaintiffs made no attempt to cure these issues. As such, the Court STRIKES the Horn and Zhang reports and does not consider these reports in deciding the instant motion for summary judgment.

examined these photographs during his deposition and testified that in his opinion, the insulation around General Electric's turbine was asbestos insulation.⁷ (ECF No. 199-13 at 9.)

Taken together, this is sufficient evidence — that goes beyond unsupported allegations and speculation — for a reasonable jury to find Mr. Payne was exposed to asbestos insulation related to General Electric's turbines.

b) Substantial Factor

Having found there is sufficient evidence for a reasonable jury to find exposure, the next question is whether such exposure was a substantial contributing factor to Mr. Payne's mesothelioma. "[M]inimal exposure" is insufficient — Plaintiffs must show Mr. Payne had "a high enough level of exposure [*15] that an inference that the asbestos was a substantial factor in the injury is more than conjectural." *McIndoe*, 817 F.3d at 1174 (quoting *Lindstrom*, 424 F.3d at 492 (internal citation omitted)).

In *McIndoe*, the Ninth Circuit affirmed the district court's decision that plaintiffs had failed to demonstrate exposure to asbestos for a substantial amount of time. 817 F.3d at 1176. The Ninth Circuit found that at most, the evidence showed, "McIndoe was 'frequently' present during the removal of insulation" and "present 20-30 times during such removal" and this was insufficient under the substantial factor prong. *Id.* In making this decision, the Ninth Circuit emphasized that plaintiffs failed to present any evidence regarding the amount of exposure or duration of asbestos exposure during any of these incidents. *Id.*

Here, Plaintiffs argue they have provided much more substantial evidence than in *McIndoe*. (ECF No. 199 at 17-19.) Specifically, Plaintiffs present evidence that Mr. Payne worked directly on the General Electric turbine during his time at the California Maritime Academy and he personally came into contact with the insulation on the turbine "all the time" from which there was dust that he could see. (ECF No. 199-7 at 3, 5-6.) Plaintiffs also present evidence [*16] that in March 1975 there was an inspection of the General Electric turbine that took approximately four to seven days and Mr. Payne spent "hours" on watch approximately ten feet away. (*Id.* at 8, 13.)

As to the amount of exposure, Plaintiffs also provide evidence that "no amount of exposure to asbestos above the background levels present in the ambient air has been established as too low to induce mesothelioma." (ECF No. 199-17 at 23.) Specifically, Plaintiffs cite an expert report which indicates removal of asbestos insulation can appear dusty and lead to exposure concentrations of 1.4 to 3.0 million parts per cubic foot. (ECF No. 199-15 at 50.) According to Plaintiffs' expert, the work Mr. Payne performed and the work he observed on General Electric's turbines aboard the Golden Bear II would lead to the release of high concentrations of airborne asbestos fibers above background concentration levels. (*Id.* at 91.)

Drawing all reasonable inferences in Plaintiffs' favor, the Court finds Plaintiffs have presented more evidence than in *McIndoe* from which a reasonable jury could infer the amount and duration of Mr. Payne's asbestos exposure. While this may be a close call, when viewing the evidence [*17] in the light most favorable to Plaintiffs, the Court finds there is a triable issue of fact as to whether exposure to asbestos-containing products related to General Electric's turbine was a substantial factor in causing his injuries. Accordingly, General Electric's Motion for Summary Judgment on the matter of causation is DENIED.

ii. Causal Connection

⁷ General Electric objects to Poulson's opinion as an inadmissible opinion under Federal Rule of Evidence ("Rule") 702 because Poulson provides no data or other acceptable foundation upon which he bases his opinion. (ECF No. 209-1 at 4-5.) This objection is OVERRULED. During his deposition, Poulson explained how he was able to determine the insulation was asbestos-based — by the way the insulation was applied and by the way it looked. Given Poulson's background as an asbestos abatement expert, the Court finds this testimony satisfies the requirements of Rule 702.

Next, General Electric argues there is no causal connection between any failure to warn and Mr. Payne's injury. (ECF No. 179-1 at 17.) According to General Electric, no warning it could have put on the bare metal turbines it delivered in 1940 would have prevented Mr. Payne's injury. (*Id.* at 17-18.) Relying on *Conti v. Ford Motor Co.*, General Electric argues the evidence must "support a reasonable inference, rather than a guess, that the existence of an adequate warning may have prevented the accident." (*Id.* at 17 (quoting 743 F.2d 195, 197 (3d Cir. 1984)).)

In opposition, Plaintiffs argue there were multiple opportunities for General Electric to provide warnings that may have prevented Mr. Payne's injury. (ECF No. 199 at 16-17.) Specifically, Plaintiffs contend General Electric could have put a warning in the instruction book that was provided with the turbine or taken [*18] advantage of its ongoing relationship with the Maritime Academy and MARAD and warned either entity. (*Id.* at 16.) Alternatively, Plaintiffs posit General Electric's representative could have issued a warning when the representative saw the students at the Maritime Academy were working on the turbine without taking precautions. (*Id.*) Further, Plaintiffs point to Mr. Payne's testimony where he stated that if he had known about the hazard asbestos posed and had been warned about it, he would have utilized a protective breathing mask. (*Id.* (citing ECF No. 199-7 at 21).)

In reply, General Electric maintains there is nothing it could have placed on a turbine in 1940 that would have caused Mr. Payne to alter his behavior in 1975.⁸ (ECF No. 209 at 9.) Further, General Electric disputes that one of its representatives saw Maritime Academy students being exposed to asbestos. (*Id.*) General Electric then goes on to claim that the General Electric technician who went onboard the Golden Bear II was not hired to train, tutor, or teach the cadets and was at all times under the direction and control of the Maritime Academy shipboard officers. (*Id.* at 10.)

The Court finds the issue of whether General Electric [*19] could have provided a warning that may have avoided Mr. Payne's injury presents a question of fact for the jury to decide. During his deposition, when asked how he would have responded to an individual from General Electric stating there was a hazard with respect to the asbestos in certain materials that were being disturbed, Mr. Payne stated "I'm not sure I can answer how I would have reacted 45 years ago to something like that. Because I have so much more knowledge about the hazards of asbestos now. It's just - I - I - I can't answer that. I don't know what I would have done back then." (ECF No. 183 at 83-84.) However, Mr. Payne also stated that if he had been told about the hazards with asbestos-containing products, he would have taken that information "seriously and put on some kind of protective breathing mask[.]" (ECF No. 199-7 at 21.)

The Court finds Mr. Payne's deposition testimony is sufficient to establish a dispute of fact as to whether a warning may have prevented Mr. Payne's injuries.⁹ Accordingly, General Electric's Motion for Summary Judgment on the matter of the causal connection between any failure to warn and Mr. Payne's injury is DENIED.

iii. Duty to Warn under DeVries [*20]

In *DeVries*, the Supreme Court held that in the maritime tort context, a product manufacturer, such as General Electric, "has a duty to warn when (i) its product requires incorporation of a part, (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (iii) the manufacturer has no reason to believe that the product's users will realize that danger." 586 U.S. at 457. General Electric argues it owed no duty to warn under *DeVries* because Plaintiffs have not and cannot prove any of the requisite elements. (ECF No. 179-1 at 18-21; ECF No. 209 at 5-8.) Plaintiffs disagree. (ECF No. 199 at 14-16.) The Court examines each element in turn.

⁸ As detailed later, the Court finds this argument unavailing. General Electric had a continuing duty to warn that did not end when it delivered the turbine in 1940.

⁹ Given this finding, the Court does not resolve General Electric's arguments in reply regarding Plaintiffs' additional pieces of evidence. (ECF No. 209 at 9-10.)

a) Whether General Electric's Turbines Required Incorporation of Asbestos-Containing Parts

In *DeVries*, the Supreme Court noted several scenarios would satisfy this "requirement" element. 586 U.S. at 457. These include where a manufacturer directed the part to be incorporated, the manufacturer itself made the product with a part that the manufacturer knew would require replacement with a similar part, or where the product would be useless without the part. *Id.*

General Electric argues the undisputed facts demonstrate it did not direct the [*21] asbestos insulation be used with the turbine, and its turbines would not be useless without the asbestos insulation.¹⁰ (ECF No. 179-1.) In opposition, Plaintiffs contend General Electric did direct that asbestos-containing parts be incorporated, and the turbine could not have been used without asbestos insulation at the time. (ECF No. 199 at 15.) To support this, Plaintiffs cite the 1939 Maritime Commission/Mississippi Shipping vessel construction specifications directed to Bethlehem Steel, which state the "high and low pressure turbines shall be installed in accordance with manufactures' practice and to the satisfaction of the Maritime Commission and the Owner." (*Id.* (citing ECF No. 199-11 at 202).) Next, Plaintiffs cite Michael Poulson's deposition testimony where he stated the turbine "required insulation" and at the time, "the preferred choice was asbestos insulation because it was readily available[.]" (*Id.* (citing ECF No. 199-13 at 97).) Finally, Plaintiffs cite Arnold Moore's report, which stated General Electric likely built the turbines for the Golden Bear II the same way it built the turbines for DD 692 Class Destroyers. (*Id.* (citing ECF No. 178-4 at 13).) According to Moore's [*22] report, the turbines aboard the DD 692 Class Destroyers required the use of asbestos sheet gaskets, asbestos fiber insulation spacers, and removable asbestos insulating pads. (ECF No. 178-4 at 13.)

Drawing all reasonable inferences in Plaintiffs favor, the Court finds the evidence presents a triable issue of fact as to whether General Electric required incorporation of asbestos-containing parts for its turbines.

b) Whether General Electric Knew or Had Reason to Know the Integrated Turbine was likely to be Dangerous for its Intended Uses

The next *DeVries* element requires General Electric to have known or had reason to know that its integrated product was likely to be dangerous for its intended uses. 586 U.S. at 457. General Electric argues no evidence demonstrates it would have known in 1940 that the removal of insulation from its turbine would exceed threshold asbestos values and cause disease to a bystander. (ECF No. 179-1 at 20.) In opposition, Plaintiffs contend General Electric did know about the hazards of asbestos and failed to warn users of those hazards. (ECF No. 199 at 15.) Specifically, Plaintiffs cite to a letter in 1972 where General Electric warned a purchaser of its product that [*23] "stripping" the product to expose the conductor could result in airborne asbestos fiber concentrations that exceeded the limits established by the Occupational Safety and Health Act Standard.¹¹ (*Id.* at 13 (citing ECF No. 199-21 at 2).) In reply, General Electric contends the time period at issue for evaluating this *DeVries* factor "logically must be when the turbines were made and sold to the Navy." (ECF No. 179-1 at 20 n.9 (citing *Joesphs v. Harris Corp.*, 677 F.2d 985, 988 (3rd Cir. 1982)).) The Court disagrees.

In *DeVries*, the Supreme Court held a manufacturer has a duty to warn "when the manufacturer knows or has reason to know that a required later-added part is likely to make the integrated product dangerous for its intended uses[.]" 586 U.S. at 455-56 (emphasis added). In reaching its conclusion, the Supreme Court noted it was guided in

¹⁰ General Electric also argues it did not incorporate the asbestos insulation itself. (ECF No. 179-1 at 19.) Plaintiffs do not contest this in opposition, so the Court does not address this argument. (*See generally* ECF No. 199 at 15.)

¹¹ General Electric objects to this letter arguing it is irrelevant, misleading, confuses issues, and wastes time. (ECF No. 209-1 at 9.) At the summary judgment stage, the focus is not on the "admissibility of the evidence's form," but rather on the "admissibility of its contents." *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003). Here, the Court finds the letter's contents admissible and therefore OVERRULES this objection.

part by "[m]aritime law's longstanding solicitude for sailors[.]" *Id.* at 456. Courts in this district have looked to evidence after the product was sold to evaluate this *DeVries* factor. *See e.g., Spurlin v. Air & Liquid Sys. Corp.*, 537 F. Supp. 3d 1162, 1174 (S.D. Cal. 2021) (examining evidence of defendants' knowledge around the time plaintiff served in the Navy). Given this, it does not logically follow from *DeVries* that General Electric's duty to warn under these circumstances stopped in 1940, particularly given the fact General Electric [*24] provided some level of technical advice to its product users over the lifetime of the turbine. (ECF No. 199 at 10 (citing ECF No. 199-10 at 21, 27-28).)

Given this continuing duty to warn, the Court finds the 1972 letter creates a triable issue of fact as to whether General Electric would have known or had reason to know that the turbine aboard the Golden Bear II was dangerous for its intended use.

c) Whether General Electric had Reason to Believe the Turbine's Users Would Realize the Danger

As for the third and final element of *DeVries*, the Court examines whether General Electric had any reason to believe that the turbine's users would realize the asbestos danger. 586 U.S. at 457. General Electric argues Plaintiffs cannot establish the third element, because the evidence demonstrates General Electric had every reason to believe the Navy, MARAD, Coast Guard, California, and California Maritime Academy were fully aware of the potential hazards posed by asbestos. (ECF No. 179-1 at 20-21.) However, again, the Court finds Plaintiffs have raised triable issues of fact as to whether the end user of the product — Mr. Payne — would realize the asbestos hazards to which he was exposed. *See Spurlin*, 537 F. Supp. 3d at 1174 (similarly examining knowledge [*25] of product's end user: Naval sailors).

Plaintiffs cite to Mr. Payne's deposition where he recalls a General Electric representative ("representative") who came aboard the Golden Bear II in 1975 and observed the inspection of the turbine. (ECF No. 199 at 8 (citing ECF No. 199-7 at 12-13).) The representative's report states he arrived while the turbine cover was still on. (*Id.* (citing ECF No. 199-23; ECF No. 199-24).) He then "inspected the turbine internally" and made recommendations. (ECF No. 199-24 at 5.) According to Plaintiff, the representative would therefore have seen the lack of precautions being taken by the students. (*Id.*) From this, a jury could find General Electric had reason to believe the end users were unaware of the danger, because the General Electric's representative witnessed Plaintiff and other students working on the turbine without taking appropriate precautions. Accordingly, the Court therefore finds a genuine dispute of material fact as to whether General Electric had any reason to believe the end users would realize the dangers of the integrated product. For these reasons, General Electric's Motion for Summary Judgment as to duty to warn under *DeVries* is DENIED.

*iv. [*26] Claims for Non-Pecuniary Loss under Maritime Law*

Lastly, General Electric argues maritime law bars Plaintiffs' claims for loss of consortium and punitive damages because historical evidence suggests such damages are not available. (ECF No. 179-1 at 21 (citing *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990); *The Dutra Group v. Batterton*, 588 U.S. 358, 370 (2019).) Plaintiffs disagree and argue the Supreme Court's decision in *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 414 (2009) and Ninth Circuit authority demonstrate "punitive damages have long been available for egregious conduct and wanton recklessness under general maritime law." (ECF No. 199 at 21-22 (citing *In re Exxon Valdez*, 270 F.3d 1215, 1244 (9th Cir. 2001).) Plaintiffs also cite several district court cases outside this circuit that declined to find punitive damages were barred under maritime law. (*Id.* (citing *Cook v. Foster Wheeler Energy Corp.*, No. 1:21-CV-11362-ADB, 2023 WL 5672896, at *3 (D. Mass. Sept. 1, 2023); *Pelton v. John Crane, Inc.*, No. 1:21-CV-4316, 2024 WL 361425, at *10 (N.D. Ill. Jan. 31, 2024).) In reply, General Electric argues Plaintiffs concede that loss of consortium damages are not permitted. (ECF No. 209 at 10.) As for punitive damages, General Electric contends Plaintiffs mischaracterize the Supreme Court's holding in *Townsend* and fail to provide evidence that punitive damages were ever historically available for any of their claims under general maritime law. (*Id.* at 11 (citing 557 U.S. 404).)

To determine which types of damages plaintiffs may seek under general maritime law, courts look to: (1) whether the relief sought [*27] has "long been available"; (2) whether conformity with parallel statutory schemes would require such damages; and (3) whether policy grounds compel the court to allow punitive damages. *Batterton*, 588 U.S. at 369.

At the outset, the Court notes Plaintiffs do not provide evidence or argument regarding the historical availability for loss of consortium damages. (See ECF No. 199 at 21-23.) Absent a showing from Plaintiffs that a clear historical pattern exists, the Court finds General Electric is entitled to summary judgment on the loss of consortium claim. See also *Smith v. Trinidad Corp.*, 992 F.2d 996, 996 (9th Cir. 1993) (agreeing with the Fifth Circuit that the Supreme Court's decision in *Miles* "effectively overruled" loss of consortium claims filed under the Jones Act or under general admiralty law); *Elorreaga v. Rockwell Automation, Inc.*, No. 21-CV-05696-HSG, 2022 WL 2528600, at *5 (N.D. Cal. July 7, 2022) (noting the Ninth Circuit has found "actions for loss of consortium are precluded under both the Jones Act and under general maritime law").

As for showing that punitive damages have been traditionally recoverable in general maritime actions, Plaintiffs rely on the Supreme Court's decision in *Townsend*. (ECF No. 199 at 21.) However, as General Electric notes in reply, *Townsend* is distinguishable from the instant matter. (See ECF No. 209 at 10.) In *Townsend*, the Supreme Court held an injured [*28] seaman was not precluded from recovering punitive damages for his employer's willful failure to pay maintenance and cure because historically such damages had been available in general maritime actions. 557 U.S. at 407. Here, General Electric did not employ Mr. Payne and Plaintiffs do not bring any claim on the basis of failure to pay maintenance and cure. However, *Townsend* did not limit punitive damages under maritime law to *only* maintenance and cure claims as General Electric appears to suggest. Instead, in making its finding, the Supreme Court reasoned, "[h]istorically, punitive damages have been available and awarded in general maritime actions[.]" *Id.*

In 2019, the Supreme Court considered whether punitive damages were available in unseaworthiness actions. *Batterton*, 588 U.S. at 361. There, the Court noted that plaintiff presented "no decisions from the formative years of the personal injury unseaworthiness claim in which exemplary damages were awarded." *Id.* at 372. Without such decisions, the Court concluded "unlike maintenance and cure, unseaworthiness did not traditionally allow recovery of punitive damages." *Id.*

Here, the Court finds Plaintiffs have presented sufficient caselaw addressing the historical availability of punitive damages [*29] for negligence claims under maritime law. Plaintiffs cite *In re Exxon Valdez*, a Ninth Circuit case that arose after an oil tanker crashed into the Bligh Reef in Alaska, spilling eleven million gallons of oil. (ECF No. 199 at 22 (citing 270 F.3d 1215, 1221 (9th Cir. 2001).) Exxon stipulated that its negligence caused the oil spill. *In re Exxon Valdez*, 270 F.3d at 1225. Following trial, the jury awarded \$5 billion in punitive damages against Exxon. *Id.* On appeal, the Ninth Circuit found punitive damages were allowable, but the award was too high. *Id.* at 1246-47. The Ninth Circuit expressly rejected Exxon's argument on the availability of punitive damages, citing *The Amiable Nancy*, 16 U.S. 546, 558 (1818) and other cases where punitive damages were allowable under maritime law. *Id.* at 1226. The Court therefore finds Plaintiff has sufficiently established punitive damages have historically been awarded in general maritime cases for negligence.

The Court notes that District courts are split on whether negligence has historically permitted punitive damages under maritime law. See *Pelton*, 2024 WL 361425, at *10 n.11 (collecting cases). However, because the Court finds Plaintiffs have sufficiently met their burden by showing punitive damages have been traditionally awarded in maritime negligence cases, the Court finds punitive damages are available for Plaintiffs' [*30] negligence claim under general maritime law. Cf. *Spurlin v. Air & Liquid Sys. Corp.*, 537 F. Supp. 3d 1162, 1181 (S.D. Cal. 2021) (finding Plaintiff provided no evidence that punitive damages were traditionally awarded in maritime negligence cases and granting defendants' motion for summary judgment on that basis).

Turning to whether conformity with parallel statutory schemes would require such damages, Plaintiffs argue no such statute exists, General Electric provides no evidence to the contrary, and the Court is unaware of any such statutory scheme. (ECF No. 199 at 22.)

As for whether public policy grounds should compel this Court to allow for punitive damages, Plaintiffs argue such damages would deter other asbestos manufacturers from "ignoring the safety of their products in search of higher profits." (*Id.* at 22-23.) General Electric does not respond to this argument in reply and the Court is persuaded by Plaintiffs' reasoning that public policy compels the allowance for punitive damages under the circumstances.

In sum, the Court DENIES General Electric's Motion for Summary Judgment as to punitive damages and GRANTS General Electric's Motion for Summary Judgment as the loss of consortium claim.

B. Plaintiffs' Motion for Summary Adjudication

Plaintiffs seek summary [*31] adjudication as to various affirmative defenses raised by General Electric and Redco.¹² (ECF No. 178.) The Court examines each defense in turn.

i. Government Contractor Affirmative Defense

First, Plaintiffs seek summary adjudication as to General Electric and Redco's (collectively, "Defendants") government contractor defense.¹³ (ECF No. 178 at 8-12.) This defense "immunizes contractors who supply military equipment to the Government from the duties imposed by state tort law." *In re Hawaii Fed. Asbestos Cases ("In re Hawaii")*, 960 F.2d 806, 810 (9th Cir. 1992). For this defense to apply, Defendants must establish: "(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 the United States." *Boyle v. United Techs. Corp.*, 487 U.S. 500, 512 (1988). In opposition, both Defendants argue disputes of fact preclude summary adjudication. (ECF No. 197 at 17; ECF No. 196 at 6-9.) The Court examines each prong of the defense in turn.

a) Prong One: United States Approval of Specifications

At the outset, Plaintiffs argue Defendants cannot prove that the United States approved reasonably precise specifications for the Golden Bear II. (ECF No. 178 at [*32] 9.) Relying on Moore's report, Plaintiffs argue the Golden Bear II was built under a U.S. Maritime Commission contract as the S.S. Del Orleans by the Bethlehem Steel Shipyard and was operated by the Mississippi Shipping Company before being acquired by the Navy. (*Id.* (citing ECF No. 178-4 at 5).) Plaintiffs contend the Golden Bear II was not built for the Navy, was not in the Navy's possession during Mr. Payne's exposure, and therefore Naval specifications did not apply. (*Id.*)

In opposition, General Electric argues Plaintiffs ignore the Navy's involvement in approving the ship design and equipment capabilities of the S.S. Del Orleans. (ECF No. 197 at 18.) Citing Christopher P. Herfel's report, General Electric argues the Navy had control over the design and equipment capabilities of the S.S. Del Orleans because the S.S. Del Orleans was required to meet the Navy's specifications and plans. (*Id.* at 19 (citing ECF No. 197-10 at 601).)

Given the conflicting expert reports, the Court finds there is a dispute of fact as to whether the United States approved reasonably precise specification that applied to the S.S. Del Orleans.

b) Prong Two: Conforming Equipment

Even if Navy specifications applied, [*33] Plaintiffs argue this defense fails because Defendants' equipment did not conform to the Navy specification requiring them to warn of hazards from their products. (ECF No. 178 at 9-10.)

¹² Redco Corporation was formerly known as Crane Co. (ECF No. 196 at 6.)

¹³ Plaintiffs title the heading "Sophisticated User Affirmative Defense" but given the context, the Court construes this section to relate to the Government contractor defense.

Plaintiffs cite again to Moore's report where he discussed the evolution of military specifications, which starting in 1936, "required manufacturers to provide installation, operating and maintenance instructions as well as 'safety precautions' as an essential part of Instruction Books for machinery and electrical equipment." (*Id.* (citing ECF No. 178-4 at 41).)

In opposition, General Electric argues Plaintiffs' citation to Moore's report is unavailing because Moore previously testified that he was not aware of any document issued by the Navy requiring an asbestos warning.¹⁴ (ECF No. 197 at 20.) The Court finds this testimony does not contradict or otherwise undermine Moore's report. Rather, this evidence raises a question of fact— a reasonable juror could conclude that "safety precautions" requirement includes warnings about asbestos even if not explicitly stated. As such, the Court finds this prong is another question for the jury.

c) Prong Three: Warning

Finally, Plaintiffs argue the contractor defense [*34] fails under the third prong because the Navy did not consider asbestos to be a hazard during the relevant time period. (ECF No. 178 at 11.) Plaintiffs cite to General Electric's expert who concluded that the government did not consider Navy-related asbestos exposure hazardous until the implementation of Occupational Safety and Health Administration regulations in the 1970s. (*Id.* (citing ECF No. 178-6 at 7).)

In opposition, both Defendants argue the evidence demonstrates it was not aware of hazards of which the government was unaware.¹⁵ (ECF No. 197 at 21-22; ECF No. 196 at 9.) Redco cites an expert report that states the Navy knew as much, if not more than Crane Co. (now Redco) about the dangers of asbestos. (ECF No. 196 at 9.) Redco also argues third-party manufacturers would not have been allowed to include warnings relating to asbestos on equipment or products. (ECF No. 196 at 8 (citing ECF No. 196-4 at 28).)

Based on the evidence presented, a genuine issue of fact remains as to: (1) whether Defendants were aware of dangers associated with the use of their equipment of which the United States was not aware; and (2) whether Defendants would have been able to warn the United States about [*35] asbestos on the equipment or products.

In sum, because disputes of fact remain for each of the prongs of the government contractor defense, Plaintiffs' Motion for Summary Adjudication as to this defense is DENIED.

ii. Sophisticated User Affirmative Defenses

Next, Plaintiffs seek summary adjudication on Defendants' sophisticated user defenses. (ECF No. 178 at 12-13.) At the outset, the Court notes the parties' briefing also raises issues concerning the "sophisticated intermediary" or "sophisticated purchaser" defense. (*See id.*; ECF No. 196 at 10-16.) Courts "have at times referred to these terms interchangeably and/or inconsistently." *Cabasug v. Crane Co.*, 988 F. Supp. 2d 1216, 1219 (D. Haw. 2013). For clarity, this Court begins by discussing the sophisticated user defense, before turning to the sophisticated purchaser or intermediary defense.

¹⁴ The Court acknowledges General Electric provides a string cite of cases from the Eastern District of Pennsylvania that it claims found defendants in asbestos cases were entitled to summary judgment on the government contractor defense. (ECF No. 197 at 21.) General Electric does not explain how the analysis in those opinions apply here. On this record, genuine disputes of fact exist as to each prong of the *Boyle* test.

¹⁵ General Electric also argues that if Plaintiffs are correct that the Navy did not consider asbestos packing and gaskets to be hazardous in the 1930s, then Plaintiffs' argument that any warning was required for those products is "frivolous." (ECF No. 197 at 22.) The Court finds this argument unconvincing. Whether the Navy considered General Electric's products to be hazardous has no bearing on General Electric's own duty to warn users of hazards known to General Electric. What the Navy knew and did with that knowledge, and what General Electric knew and did with that knowledge, are separate matters.

For the sophisticated user defense to apply, Defendants must establish that the ultimate end-user of the product — Mr. Payne — was a "sophisticated user of the product." *Cabasug*, 988 F. Supp. 2d at 1219. A "sophisticated user" is an "end user who either knew or belonged to a class of users who, by virtue of training, education, or employment could reasonably be expected to know of the hazards of the product at issue." *Mack v. Gen. Elec. Co.*, 896 F. Supp. 2d 333, 343 (E.D. Pa. 2012).

General Electric withdrew [*36] this defense in opposition "given evidence elicited since the filing of its answer[.]" (ECF No. 197 at 26.) However, Redco maintains its defense arguing the evidence demonstrates Mr. Payne was a sophisticated user of asbestos-containing products and components. (ECF No. 196 at 10-16.) In reply, Plaintiffs argue Redco has provided no evidence that Mr. Payne was a "sophisticated user" as to the hazards of asbestos. (ECF No. 207 at 9.)

The Court disagrees with Plaintiffs. To support its position, Redco presents several pieces of evidence. First, Redco presents testimony from Mr. Payne's classmate at the California Maritime Academy who recalled hearing during instruction that "asbestos [was] hazardous. And it could .. [cause] permanent breathing problems[.]" (*Id.* at 15 (citing ECF No. 196-7 at 3, 4).) Second, Redco points to another one of Mr. Payne's classmates who testified that the students at the California Maritime Academy "should have received more training about the dangers and exposure of asbestos" because people in the industry were aware of the dangers of asbestos but could not recall receiving such training. (*Id.* (citing ECF No. 196-8 at 22, 107-08).) Third, Redco notes Mr. Payne [*37] testified that information about asbestos was "widely known in the mid- 1970s" and the California Maritime Academy "should have warned us." (*Id.* (citing ECF No. 196-6 at 4).) Viewing the evidence in the light most favorable to Redco, the Court finds there is triable issue of material fact as to whether Mr. Payne was aware and/or reasonably should have been aware about the dangers of asbestos. Therefore, Plaintiffs' Motion for Summary Adjudication as to Redco's sophisticated user defense is DENIED. Further, the Court finds Plaintiffs' Motion for Summary Adjudication as to General Electric's sophisticated user defense moot.

iii. Sophisticated Purchaser Affirmative Defense

The Court however finds summary adjudication is warranted on the sophisticated purchaser defense. Under the sophisticated "purchaser" or "intermediary" defense, Defendants are not liable for harm caused to an ultimate-end user — Mr. Payne — if they establish that they: (1) knew that an intermediary —such as the Navy or the California Maritime Academy — was aware of the dangers of asbestos, and (2) reasonably concluded that the intermediary would provide warnings to its employees. *Cabasug*, 988 F. Supp. 2d at 1219. Here, Plaintiffs argue this Court should [*38] follow *Mack*, 896 F. Supp. 2d 333. (ECF No. 178 at 12-13.) In *Mack*, the court determined that due to several policy considerations, the sophisticated intermediary defense was not available under maritime law. 896 F. Supp. 2d at 342. The court there reasoned allowing this defense would run counter to the goals of maritime law because it could "discourage work at sea" and leave Navy seamen and their survivors with no remedy. *Id.* at 342-43.

In opposition, Redco argues this Court should depart from *Mack* and instead follow *Cabasug*, where the District of Hawaii found the sophisticated purchaser defense was available under maritime law under certain circumstances. (ECF No. 196 at 13 (citing 988 F. Supp. 2d at 1219).) There, the court examined *Mack* as well as other cases decided under different state laws. 988 F. Supp. 2d at 1226. From these decisions, the *Cabasug* court "distill[ed] the following principles: Defendants cannot take benefit of the sophisticated purchaser defense unless they can establish that they knew that the Navy was aware of the dangers of asbestos and that Defendants reasonably concluded that the Navy would provide warnings to its employees." *Id.* at 1228. "[E]vidence of the Navy's knowledge of the dangers of asbestos, on its own, is insufficient to sustain the sophisticated purchaser defense under maritime law." [*39] *Id.* Rather, in the asbestos context, "there must be some reason, beyond the employer's sophistication, for the defendant's belief that the employer will provide warnings to its employees." *Id.*

The Court finds it need not undertake an extensive inquiry into the availability of the sophisticated purchaser defense under maritime law because even if the Court were to agree with Redco and follow *Cabasug* as Redco requests, summary adjudication is still warranted. While Redco produces evidence of the Navy's knowledge about

the dangers of asbestos, it does not produce evidence that Redco: (1) warned the Navy or the California Maritime Academy (collectively "intermediaries") about the dangers of asbestos; (2) determined the intermediaries' knowledge; or (3) determined or otherwise concluded that the intermediaries would warn Mr. Payne regarding the asbestos dangers. *See Cabasug*, 988 F. Supp. 2d at 1228 (finding defendants cannot establish the sophisticated purchase defense because they failed to provide this evidence). As such, Plaintiffs' Motion for Summary Adjudication as to Redco's sophisticated purchaser defense is GRANTED.

iv. Superseding Cause Affirmative Defense

Finally, Plaintiffs seek summary judgment as to Defendants' [*40] superseding cause defense. (ECF No. 178 at 13-15.) Relying on *In re Hawaii*, Plaintiffs argue Defendants have not established California Maritime Academy's actions were unforeseeable. (*Id.* at 13.)

In opposition, both Defendants argue the evidence demonstrates the California Maritime Academy knew of the asbestos dangers aboard their ships.¹⁶ (ECF No. 197 at 23-24; ECF No. 196 at 16.) In reply, Plaintiffs argue Defendants have not established California Maritime Academy's actions were unforeseeable. (ECF No. 207 at 8-9.) Further, Plaintiffs contend the General Electric representative physically present during the work on the turbine saw that no safety precautions were taken when Mr. Payne was exposed. (*Id.* at 9.)

"The doctrine of superseding cause is applied where the defendant's negligence in fact substantially contributed to the plaintiff's injury, but the injury was actually brought about by a later cause of independent origin that was not foreseeable. It is properly applied in admiralty cases." *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 837 (1996). It "operates to cut off the liability of an admittedly negligent defendant." *Id.* at 837-38.

In *In re Hawaii*, the Ninth Circuit considered defendant asbestos insulation manufacturers and suppliers' argument [*41] that actions of the Navy were a superseding cause of plaintiffs' injuries. 960 F.2d at 814. The Ninth Circuit determined that regardless of the Navy's failure to provide proper warnings and safety devices to its workers, there was no evidence to suggest that the manufacturers and suppliers could not have foreseen the Navy's omissions. *Id.* at 815. Because Hawaii law dictated a third party's superseding actions only cut off an earlier tortfeasor's liability when the third party's conduct was so unusual, out of the ordinary, or unforeseeable, the Ninth Circuit upheld the district court's ruling that the Navy's actions were not a superseding cause. *Id.*

Relevant here, California law follows the Restatement (Second) of Torts § 442. *See Pappert v. San Diego Gas & Elec. Co.*, 137 Cal. App. 3d 205, 210 (1982). Section 442 lists several considerations relevant to determining whether an intervening force is a superseding cause. Pertinent here are: "(a) [w]hether the intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence"; and "(b) [t]he fact that its operation or the consequence thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation[.]" Restatement (Second) of Torts § 442.

Defendants have not produced any evidence demonstrating [*42] the California Maritime Academy's — or any other entity's — failure to warn produced a harm "different in kind" or was "extraordinary." Moreover, as Plaintiffs' note, there is evidence to suggest General Electric's representative saw Mr. Payne and others aboard the Golden Bear II work on the turbine without taking safety precautions. (ECF No. 208 at 20.) Plaintiffs' Motion for Summary Judgment as to Defendants' superseding cause defense is therefore GRANTED. *See Smargisso v. Air & Liquid Sys. Corp.*, 750 F. Supp. 3d 1046, 1069 (N.D. Cal. 2024) (similarly granting plaintiffs' motion for summary judgment as to superseding cause defense due to defendants' failure to produce evidence that the Navy's failure to warn was unforeseeable).

¹⁶ General Electric also argues it has presented evidence that it did not direct the incorporation of asbestos insulation onto its turbine, nor did it incorporate the asbestos insulation itself. However, as discussed above, these facts are in dispute.

V. Conclusion

For the foregoing reasons, the Court GRANTS in part and DENIES in part General Electric's Motion for Summary Judgment (ECF No. 179) and GRANTS in part and DENIES in part Plaintiffs' Motion for Summary Adjudication (ECF No. 178) as follows:

- GRANTS General Electric's Motion for Summary Judgment for the loss of consortium claim and DENIES General Electric's Motion on all other grounds;
- DENIES Plaintiffs' Motion for Summary Adjudication as to Defendants' government contractor defense;
- DENIES Plaintiffs' Motion for Summary Adjudication [*43] as to Redco's sophisticated user defense and finds Plaintiffs' Motion for Summary Adjudication as to General Electric's sophisticated user defense moot;
- GRANTS Plaintiffs' Motion for Summary Judgment as to Redco's sophisticated purchaser defense and Defendants' superseding cause defense.

The parties are hereby ordered to file a Joint Notice of Trial Readiness within thirty (30) days of the electronic filing date of this Order indicating their readiness to proceed to trial on Plaintiffs' remaining claims.

IT IS SO ORDERED.

Date: September 25, 2025

/s/ Troy L. Nunley

TROY L. NUNLEY

CHIEF UNITED STATES DISTRICT JUDGE