



STATE OF NEW YORK
UNIFIED COURT SYSTEM
FIRST JUDICIAL DISTRICT
SUPREME COURT, CIVIL BRANCH
60 CENTRE STREET
NEW YORK, NY 10007-1474
(646) 386-3211
FAX (212) 227-2919

A. GAIL PRUDENTI
Chief Administrative Judge

SHERRY KLEIN HEITLER
Administrative Judge for Civil Matters
First Judicial District

FERN A. FISHER
Deputy Chief Administrative Judge
New York City Courts

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TO: MICHAEL S. CROMER, ESQ.
Barry McTiernan & Moore
AMBER R. LONG, ESQ.
Levy Konigsberg

FAX: (212) 608-8902

FAX: (212) 605-6290

FROM: VALERIE QUALLS
FOR: HON. SHERRY KLEIN HEITLER

RE: CASAREGOLA v. 3M COMPANY
(CLEAVER-BROOKS)
INDEX # 190420/11 (Motion Seq. 030)

Faxed herewith is a copy of an Order rendered with regard to the above referenced matter.
Please notify all other interested parties.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 30

-----X
SUSAN MIANO, Individually and as Executrix
for the Estate of COSMO CASAREGOLA,

Plaintiffs,

-against-

3M COMPANY, f/k/a Minnesota Mining &
Manufacturing Co., et al.,

Defendants.
-----X

SHERRY KLEIN HEITLER, J.:

In this asbestos personal injury action, defendant Cleaver-Brooks, Inc. (hereinafter "CB") moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims asserted against it on the ground that there is no evidence to show that plaintiffs' decedent Cosmo Casaregola was exposed to an asbestos-containing CB or "Aqua-Chem"¹ product. For the reasons set forth below, the motion is granted.

Cosmo Casaregola, a master carpenter, worked at the Brooklyn Navy Yard from 1958 through 1985 under the employment of several ship repair companies, including Monti Marine and Arthur Tickle Engineering. Many years later Mr. Casaregola contracted mesothelioma, and in October of 2011 he commenced this action to recover for personal injuries allegedly caused by his occupational exposure to asbestos. Although Mr. Casaregola died on September 9, 2012 without having been deposed, plaintiffs produced two of Mr. Casaregola's former co-workers as fact witnesses, Giorgio Giordina and Ronald Beebe.

¹ There is no dispute on this motion that CB bears responsibility for the Aqua-Chem line of products.

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Mr. Giordino testified² that he and Mr. Casaregola worked together as carpenters for Monti Marine aboard the General Patch and the USS Kennebec. He identified numerous manufacturers whose products he believed contributed to Mr. Casaregola's exposure but not did not identify CB or Aqua-Chem.

Former Arthur Tickle marine superintendent Ronald Beebe recalled³ working in Mr. Casaregola's vicinity in the engine spaces of several Moore-McCormack owned Mormac Constellation ships, including the Rigel, the Altair, the Draco, and the Sun. Mr. Beebe testified that he and Mr. Casaregola were exposed to asbestos dust from insulation and packing associated with equipment in these ships' engine rooms, specifically turbines and piping. He too was able to identify several manufacturers of such equipment but at no point associated Mr. Casaregola's exposure with a CB or Aqua-Chem product (defendant's exhibit G, pp. 23, 52-53):

Q. What were your duties?

A. I was a marine supervisor. I took men out on the ships, I would take a crew of 50, 60 sometimes men out onto a ship. We'd get everything. We did all kinds of repairs, anything from, well, I don't want to use the word soup to nuts, but plumbing, steam lines, oil lines, pipe replacement, welding, burning, fitting, ship fitting, repairing, repairs on the deck, repairs in the engine room . . . we did a lot of turbine openings, boiler inspections, it goes on and on.

* * * *

Q. Do you know what the specific source of the asbestos was that you're saying was in the air?

A. When turbines are opened up, they have a very thick coating of asbestos encasing the turbine. That is usually covered over with some kind of asbestos cloth like a cheese cloth, all right, because it will fracture. It's almost like plaster, all right? But you won't be able to operate anything on that coating because the heat's absolutely ferocious. So it was a heat shield more than anything, ok? In that particular instance, it was a heat shield. They had to break it up in pieces.

² Mr. Giordina was deposed on January 29, 2012.

³ Mr. Beebe was deposed on February 10, 2012.

Q. Sir, my question was actually much more limited than that. Let's make sure we're staying on the same page. You told me you believe the source of the dust came from that asbestos covering and cloth that was located on the turbine?

A. Right.

Q. Is that the end of your answer with respect to what the source of the dust was?

A. That's the end of my answer as to the source, and, then, of course, any piping that was being worked on at the same time with asbestos covering on it, any pumps that were being worked on at the same time that has asbestos gaskets in them and packing, okay? So you have a combination of items at the same time as a source.

A 1964 article from trade magazine "Marine Engineering/Log" indicates that Aqua-Chem manufactured the evaporators and the acid-cleaning pumps for the Mormac Cargo, the lead ship of the Moore-McCormack Constellation class of ships.⁴ Although there is no evidence to show that Mr. Casaregola ever worked on the Moremac Cargo, plaintiffs contend that each ship in the Constellation class contained the same equipment. In this regard plaintiffs submit an unsworn report from Professional Engineer Arnold Moore⁵ who opines that it is "highly likely that the same equipment and machinery manufacturers provided the same items of equipment and machinery for each ship of the class" (*id.* at 5). But, there being no evidence to support this assertion, Mr. Moore's conclusion is impermissibly speculative. Moreover, even if the court were to assume that Moore-McCormack purchased the same equipment for each of its Constellation ships, there is no evidence to demonstrate that Mr. Casaregola was exposed to asbestos therefrom.

Mr. Beebe also gave conflicting testimony about whether he worked with Mr. Casaregola aboard Farrell Lines' South African line of ships.⁶ Approximately seven months later, however, he

⁴ Plaintiffs also refer to certain fuel-oil heaters, lube-oil heaters, and a distilling plant manufactured by Davis Engineering. However, there is no evidence herein to show that CB is responsible for Davis Engineering as a whole or for any of its product lines.

⁵ Plaintiffs' exhibit D. Mr. Moore served as a Captain in the United States Naval Reserves and has been a licensed Professional Engineer for approximately 32 years.

⁶ See defendant's exhibit G, pp. 30, 125, 126.

located a notebook he used from 1978-1980 while employed by Arthur Tickle and then issued an affidavit which provides in relevant part as follows (plaintiffs' exhibit J, ¶ 13-14)⁷:

I also now remember working on the African Sun. This was a Farrell Lines ship. I remember now from looking at the notes in my book . . . that I worked on the cargo oil hatch, and that I was doing work on 19 pipe items to be worked on among at least 36 items that must have been noted on the repair order for my crew to do

As stated before in my deposition, I recall Nino and his crew around my crew while my crew worked on piping, valves, and pumps and boilers in the engine room on ships we were repairing. The notations on the African Sun in my book include work on the boiler, for example. As noted in my testimony, Nino would be doing cribbing for one piece of equipment while the repair work on the boiler and pipes was being performed by my crew.

While the notebook appears to have refreshed Mr. Beebe's recollection regarding his work with Mr. Casaregola aboard Farrell Lines' African Sun, nothing in his affidavit overcomes the lack of evidence with respect to Mr. Casaregola's alleged exposure from parts and equipment manufactured by CB.

Plaintiffs' attempt to link Mr. Casaregola to the defendant through records indicating that CB and Aqua-Chem submitted vendor plans for the African Sun's Distilling Plant is without merit. Although the CB documents which correspond to these vendor plans show that at least some of this equipment and their Aqua-Chem spare parts contained asbestos components,⁸ their purported nexus to Mr. Casaregola is highly attenuated.

In sum, plaintiffs cannot show that Mr. Casaregola was exposed to asbestos from products for which the defendant bears responsibility without resorting to speculation. *Fredette v Town of Southampton*, 95 AD3d 939 (2d Dept 2012).

⁷ The cases cited by the defendant in support of its contention that the Beebe affidavit should be disregarded in its entirety are distinguishable from the case at bar (*see Singh v Actors Equity Holding Corp.*, 89 AD3d 488 [1st Dept 2011]; *Telfeyan v City of New York*, 40 AD3d 372, 373 [1st Dept 2007]).

⁸ See plaintiffs' exhibits L, M, P & Q.

For this reason, it is hereby

ORDERED that Cleaver-Brooks, Inc.'s motion for summary judgment is granted; and it is

further

ORDERED that this action and any cross-claims against this defendant are severed and

dismissed; and it is further

ORDERED that the remainder of the action shall continue as against the remaining


defendants; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

ENTER:

DATED: 12-15-14



SHERRY KLEIN HEITLER, J.S.C.