

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

<u>IN RE ASBESTOS LITIGATION:</u>	)	
	)	
ANITA COSNER	)	C.A. No. N10C-12-100 ASB
	)	
Limited to: York International Corp.	)	

ORDER

Defendant's moved for summary judgment on product nexus, component parts, and misrepresentation and conspiracy. The court ruled on product nexus and misrepresentation and conspiracy at oral argument. This order is to clarify those rulings and rule on the component part issue. For the reasons stated below, Defendants motion for summary judgment on product nexus is **DENIED**, on component parts is **GRANTED**, and on misrepresentation and conspiracy is **GRANTED**.

The court found a genuine issue of material fact existed as to product nexus and therefore, summary judgment was denied. Upon Defense counsel's urging, the court agreed to consider the record again after the hearing. The court has done so and continues to find the existence of a genuine issue of material fact as to product nexus. According summary judgment on this ground is **DENIED**.

Defendant moved for summary judgment and argued it did not have a duty to Plaintiff for asbestos-containing products added to its products after sale. Plaintiffs allege such a duty does exist. Plaintiffs further assert that

“Massachusetts courts have not answered the question of whether a manufacturer may be held liable for a plaintiff’s exposure to third-party asbestos replacement parts used with its equipment.”¹ Plaintiffs also argue that they have presented evidence of York specifying and/or recommending asbestos-containing replacement parts and therefore the component parts defense does not apply.²

The Massachusetts Superior Court examined this issue in *Dombrowski v. Alfa Laval, Inc.*³ Contrary to Plaintiffs’ argument, a Massachusetts court has answered this question. The court set forth, “Massachusetts courts ‘have never held a manufacturer liable . . . for failure to warn of risks created solely in the use or misuse of the product of another manufacturer.’”⁴ The court stated that finding a duty existed “would exceed all reasonable limits.”⁵ Although Plaintiffs claim to have presented evidence of Defendant recommending asbestos-containing replacement parts, they did not offer any citation to the record for that assertion. Accordingly, the court can not find those facts exist without speculating. The court finds *Dombrowski* controlling and accordingly summary judgment is **GRANTED** as to parts added to Defendant’s products after sale.

For the reasons stated on the record at oral argument, the motion for summary judgment as to misrepresentation and conspiracy is **GRANTED** as unopposed.

¹ Plaintiff’s Memorandum in Opposition to Defendant York International Corporation’s Motion for Summary Judgment, at 9-10.

² *Id.* at 10.

³ Massachusetts Asbestos Docket Middlesex C.A. 08-1938 (Mass. Super. July 1, 2010) (Hely, J.).

⁴ *Dombrowski*, C.A.08-1938, at 2 (quoting *Mitchell v. Sky Climber, Inc.*, 396 Mass. 629, 631 (Mass. 1986)).

⁵ *Dombrowski*, C.A.08-1938, at 3.

IT IS SO ORDERED.

John A. Parkins, Jr.
Superior Court Judge

Dated: May 14, 2012

oc: Prothonotary
cc: All counsel via e-file