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

IN RE: ASBESTOS LITIGATION	:	
	:	
Limited to:	:	
ROBERT GRIFFIN	:	C.A. No. N14C-01-295 ASB

Submitted: August 25, 2014
Decided: December 5, 2014

Upon Defendant's Motion for Judgment on the Pleadings
DENIED

A. Dale Bowers, Esquire, Kenneth L. Wan, Esquire, Law Office of A. Dale Bowers, P.A., Wilmington, Delaware *Attorneys for Plaintiff.*

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DAVIS, J.

INTRODUCTION

This is a civil tort action. In this action, Plaintiff Kelli Griffin, as executor of the estate of Robert Griffin, alleges that, due to the wrongful conduct of Defendant Union Pacific Railroad Company ("Union Pacific") and Defendant Union Carbide Corporation ("UCC"), Mr. Griffin was exposed to asbestos and, as a result of that exposure, developed asbestos-related lung cancer.

Now before the Court is the Motion of Defendant Union Pacific Railroad Company for Judgment on the Pleadings (the "Motion"). In the Motion, Union Pacific contends that this action must be dismissed on the ground that the action violates the claim-splitting doctrine by impermissibly seeking recovery for the same asbestos exposure alleged and previously litigated against other defendants in a civil tort action filed on December 15, 2011 (the "2011 Action").

Ms. Griffin opposes the Motion, arguing that the claim-splitting doctrine is not applicable to the facts here. According to Ms. Griffin, the claim-splitting doctrine is intended to prevent a plaintiff from filing a cause of action arising out of the same facts against a defendant in different jurisdictions, such as federal and state courts. Ms. Griffin notes that neither Union Carbide nor UCC were defendants in the 2011 Action. Ms. Griffin then argues that the claim-splitting doctrine does not apply to the situation where the plaintiff does not assert claims against defendants in a second suit that were, or should have been, asserted in the first suit.

For the reasons set forth in this opinion, the Motion is **DENIED**.

FACTUAL BACKGROUND

Ms. Griffin alleges that Mr. Griffin developed lung cancer as a result of occupational exposure to asbestos-containing products from 1969 to 2009. On December 15, 2011, Mr. Griffin filed the 2011 Action. After Mr. Griffin's death, Ms. Griffin, who is the executor of Mr. Griffin's estate, was substituted in as the plaintiff in the 2011 Action. On January 31, 2014, Ms. Griffin filed the instant civil tort action (the "2014 Action"). Union Pacific and UCC are named defendants in the 2014 Action.

The 2011 Action does not arise out of one single transaction or incident. Instead, the 2011 Action relies on allegations that Mr. Griffin was exposed to asbestos fibers during (i) his employment from 1970 through 1999 and (ii) non-occupational projects, including, but not limited to, working on his personal automobiles. The 2011 Action alleges that Mr. Griffin was employed by Union Pacific from 1973 through 1999. The 2011 Action asserts five separate causes of action against twenty-four defendants. The 2011 Action does not contain any claims under 45 *U.S.C.* §56.

Ms. Griffin litigated the 2011 Action for over two years. According to Union Pacific, Ms. Griffin has settled with or dismissed all but one of the defendants in the 2011 Action. Moreover, Union Pacific contends that Ms. Griffin is negotiating a settlement with the remaining defendant in the 2011 Action. In the 2011 Action, Ms. Griffin alleged that Mr. Griffin was exposed to asbestos during his employment with Union Pacific in Oregon from 1973 to 1999 while working as a brakeman/conductor. While Union Pacific is mentioned in the allegations of the 2011 Action, Union Pacific and UCC are not parties in the 2011 Action.

The 2014 Action alleges six separate causes of actions against two defendants – Union Pacific and UCC. The 2014 Action asserts a cause of action against Union Pacific under 45 *U.S.C.* §56.

STANDARD OF REVIEW

A party may move for judgment on the pleadings pursuant to Superior Court Civil Rule 12(c).[1] "[T]he nonmoving party is entitled to the benefit of any inferences that may fairly be drawn from its pleading."[2] "The motion should be granted when no material issues of fact exist and the movant is entitled to judgment as a matter of law."[3]

DISCUSSION

In its Motion, Union Pacific argues that the claim-splitting doctrine bars Mr. Griffin's claims.

> The rule against claim splitting is an aspect of the doctrine of res judicata and is based on the belief that it is fairer to require a plaintiff to present in one action all

[1] The rule provides:
(c) Motion for judgment on the pleadings. -- After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.
Del. Super. Civ. R. 12(c).
[2] *Estate of Williams v. Corr. Med. Servs., Inc.*, 09C-12-126, 2010 WL 2991589, at *1 (Del. Super. July 23, 2010).
[3] *Id.*

> of his theories of recovery relating to a transaction, and all of the evidence relating to those theories, than to permit him to prosecute overlapping or repetitive actions in different courts or at different times. Thus, where a plaintiff has had a "full, free and untrammelled opportunity to present his facts," but has neglected to present some of them or has failed to assert claims which should in fairness have been asserted, he will ordinarily be precluded by the doctrine of res judicata from subsequently pressing his omitted claim in a subsequent action.[4]

There are two basic principles at work in the doctrine: (1) "no person should be unnecessarily harassed with a multiplicity of suits;" [5] and (2) litigants should be prevented from getting "two bites at the apple." [6]

The Court notes that asbestos actions are generally not single incident cases involving multiple defendants. Indeed, most, if not all, of the claim-splitting doctrine cases involve one incident or accident (i.e., one transaction) with the plaintiff initiating multiple actions.[7] The larger asbestos suits involve multiple defendants and multiple allegations of exposure over a period of years. There is no one transaction. In order to prevail in an asbestos action, a plaintiff must show specific exposure to a defendants' asbestos product at some point during the period of years.[8] As such, there is more than one "transaction" and more than one defendant in the larger asbestos cases.

Here, the Court does not hold that the claim-splitting doctrine prevents Ms. Griffin from pursuing claims against Union Pacific. In making this decision, the Court finds that the two basic principles of the claim-splitting doctrine are implicated by the 2014 Action. As to the first principle, the 2011 Action basically has no remaining defendants and, in all likelihood, will soon

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[4] *Maldonado v. Flynn*, 417 A.2d 378, 382 (Del. Ch. 1980).
[5] *J.L. v. Barnes*, 33 A.3d 902, 918 (Del. Super. 2011).
[6] *Id*.
[7] *See, e.g., Barnes*, 33 A.2d at 918-21 (one transaction); *Mells v. Billops*, 482 A.2d 759, 760-61 (Del. Super. 1984) (one transaction).
[8] *See, e.g., Lipscomb v. Champlain Cable Corp.*, 1988 WL 102966, *2-3 (Del. Super. Sept. 12, 1988) (in asbestos case involving multiple defendants, plaintiff must establish product nexus and "time" requirements in order to proceed against a specific defendant).

be closed. Therefore, Union Pacific faces little if any risk of being exposed to multiple lawsuits due to the prior case.

As for the second principle, Union Pacific was not a defendant in the 2011 Action. Ms. Griffin did not have the opportunity to litigate a case against Union Pacific in the 2011 Action. Moreover, Ms. Griffin did not assert a cause of action under 45 *U.S.C.* §56 in the 2011 Action. The 2011 Action involved a number of defendants that purportedly manufactured, mixed, distributed, sold, removed and installed asbestos or products that incorporated asbestos. Therefore, the 2014 Action is Ms. Griffin's first "bite at the apple," so to speak.

Further, Union Pacific has not shown that the claim-splitting doctrine should apply in this case. Delaware courts have held that the claim-splitting doctrine does not apply where defendants "have not demonstrated that the two lawsuits would substantially overlap or that they would suffer undue prejudice as a result."[9]

Union Pacific has not shown that this case would have substantial overlap with the 2011 case. Although Union Pacific argues that it was mentioned in the 2011 Complaint, Union Pacific has not shown that the issues litigated in the 2011 Action did or would "substantially overlap" with those in the 2014 case. In fact, the parties provided very little information regarding the actual litigation actions taken in the 2011 Action – *i.e.*, number of depositions, dispositive motions, etc. Also, Union Pacific has shown no likelihood that it could be "hauled into Court" in the 2011 Action and, therefore, be prejudiced by defending against multiple suits.

[9] *Winner Acceptance Corp. v. Return on Capital Corp.*, 2008 WL 5352063 at *18 (Del. Ch. Dec. 23, 2008).

CONCLUSION

Therefore, based on the above arguments, the Motion for Judgment on the Pleadings is **DENIED**.

IT IS SO ORDERED.

/s/ *Eric M. Davis*
Eric M. Davis
Judge