

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

IN RE ASBESTOS LITIGATION:)
)
FREDERICK PARENTE and)
PATRICIA PARENTE)
)
Limited to: Crane Co.)

C.A. No. N10C-11-140 ASB

CORRECTED MEMORANDUM OPINION

Appearances:

A. Dale Bowers, Esquire
Law Office of A. Dale Bowers, P.A.,
Newport, Delaware
Counsel for Plaintiffs

Francis C. Gondek, Esquire
Swartz Campbell LLC
Wilmington Delaware
Counsel for Defendant Crane Co.

JOHN A. PARKINS, JR., JUDGE

Plaintiff, Frederick Parente, worked as a union electrician at various sites from 1966-2010. Plaintiff alleges asbestos exposure from Defendant's valves, pumps, and boilers. Defendant moves for summary judgment on product nexus grounds and asserts it did not owe a duty to Plaintiff for asbestos-containing parts added to their products after sale under Connecticut law. Based on the reasoning below, the court finds Plaintiff has not made a *prima facie* case for product nexus and Defendant is not liable for the asbestos-containing component parts added to its products after sale under Connecticut law. Therefore, summary judgment is **GRANTED**.

FACTS

Plaintiff worked as a union electrician at various sites from 1966-2010 in Connecticut. He was the only product identification witness. He testified to working on Crane Co. ("Crane") valves, pumps, and boilers in a manner that could have exposed him to asbestos. He recalled being present when others worked on a Crane boiler in his parents' basement. The boiler had a green cover and Plaintiff believes the cover contained asbestos. His belief is based on the age of the boiler. He could not offer evidence as to who manufactured the insulation. Plaintiff alleges exposure to exterior asbestos insulation on the Crane valves and pumps. He could not identify the manufacturer of any of the external insulation for the pumps or valves. He also did not know the maintenance histories of the Crane products.

Plaintiffs point to an undated catalog that indicates at least some of Defendant's valves contained asbestos and Defendant provided some asbestos containing replacement parts. Defendant admits so much in interrogatories. The record, however, contains no evidence that the specific types of valves or pumps on which Plaintiff worked were among those that contained asbestos. Plaintiff does not direct the court to any document in which Defendant requires or recommends asbestos-containing replacement parts for its products. The court finds the undated documentation that has not been identified as relating to Plaintiff's work irrelevant to the issue at hand.

STANDARD OF REVIEW

In considering a motion for summary judgment the court views the facts in the light most favorable to the nonmoving party and will only grant summary judgment when "the moving party has demonstrated that there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law."¹ The question of whether a legal duty exists "is a question of law for the Court to determine."²

¹ *Bantum v. New Castle County Co-Tech Educ. Ass'n*, 21 A.3d 44, 48 (Del. 2011) (citations omitted).

² *Riedel v. ICI Americas Inc.*, 968 A.2d, 17, 20 (Del. 2009) (citing *New Haverford P'ship v. Stroot*, 772 A.2d 792, 798 (Del. 2001)); see *Simonetta v. Viad Corp.*, 197 P.3d 127, 131 (Wash. 2008) (en banc).

ANALYSIS

Defendant directed the court to *In re Asbestos Litigation: Taska*³ a decision of this court that applied Connecticut law. *Taska* deals with facts similar to the case at hand and is directly on point. Noticeably, Plaintiff did not attempt to distinguish *Taska* or even address it.⁴

The plaintiff in *Taska* alleged exposure from Crane pumps during renovations to a hospital where she worked.⁵ Her fiancé was a repairman at the hospital and the plaintiff spent time around the pumps while visiting him.⁶ “He did not identify the manufacturer of any external insulation or paste he saw used on the pumps. He also lacked knowledge of the pumps’ maintenance histories, and did not identify Crane as the manufacturer of any gaskets he removed or replaced.”⁷ Under Connecticut law, “a plaintiff is required to show that a particular defendant’s product was used as [sic] the plaintiff’s job site, and that the plaintiff was in proximity to that product at the time of use.”⁸ Additionally, “plaintiff ‘must produce evidence sufficient to support an inference that [he] inhaled asbestos dust from the defendant’s product.’”⁹ Judge Ableman concluded,

Even considering the record in the light most favorable to Plaintiff, the evidence fails to raise a factual question as to whether she inhaled asbestos dust from any Crane product. Neither the deposition testimony nor the evidence supplied by Plaintiff

³ 2011 WL 379327 (Del. Super).

⁴ Plaintiff did not address *Taska* even though it was cited in the moving papers.

⁵ *Id.* at *1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* (citing *Cormier v. 3M Corp.*, 2005 WL 407641, at *2 (Conn. Super. Ct.)).

⁹ *Taska*, 2011 WL 379327, *1 (quoting *Peerman v. Georgia-Pacific Corp.*, 35 F.3d 284, 287 (7th Cir. 1994)) (emphasis in original).

indicating that certain Crane products contained asbestos establishes that Taska was exposed to asbestos emanating from an original Crane component, or that Crane manufactured or supplied insulation, gaskets, packing, or any other asbestos-containing components removed from or replaced in the Crane valves and pumps in use at the hospital.¹⁰

She also found nothing in Connecticut law to support the imposition of liability on a defendant for a plaintiff's "exposure to a product it did not manufacture, distribute, or sell."¹¹

The evidence supports a finding that Plaintiff worked on Defendant's valves and pumps and that he was around Defendant's boiler while it was being worked on by someone else. However, there is no evidence in the record to support a finding that Plaintiff was exposed to asbestos attributable to Defendant. Based on Judge Ableman's decision in *Taska* and the majority trend¹², the court finds that Crane does not owe a duty for other manufacturers' asbestos-containing products added to their products after sale. A reasonable jury could not find that Plaintiff was exposed to Defendant's asbestos without speculation. Accordingly, summary judgment is **GRANTED**.

IT IS SO ORDERED.

Dated: March 2, 2012

Judge John A. Parkins, Jr.

¹⁰ *Taska*, 2011 WL 379327, *2.

¹¹ *Id.* (citations omitted).

¹² See *In Re Asbestos Litig. Wolfe*, C.A. N10C-08-258 ASB, at 5-11 (Del. Super. Feb. 29, 2012) (Parkins, J.) (discussing the modern trend on this issue).