

Krameisen v Air & Liquid Sys. Corp.

2012 NY Slip Op 30248(U)

January 30, 2012

Sup Ct, NY County

Docket Number: 190429/10

Judge: Sherry Klein Heitler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SHERRY KLEIN HEITLER
Justice

PART 30

Index Number : 190429/2010
KRAMEISEN, STANLEY
vs.
AIR & LIQUID SYSTEMS
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. 190429/10
MOTION DATE _____
MOTION SEQ. NO. 001

(CRANE)

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the
memorandum decision dated 1-30-12

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

FEB 01 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1-30-12



_____, J.S.C.
HON. SHERRY KLEIN HEITLER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

----- X
MURIEL KRAMEISEN, as Executrix of the Estate of
STANLEY KRAMEISEN,

Index No. 190429/10
Motion Seq. 001

Plaintiff,

DECISION AND ORDER

-against-

AIR & LIQUID SYSTEMS CORP., et al.,

FILED

Defendants.

FEB 01 2012

----- X
SHERRY KLEIN HEITLER, J.:

NEW YORK
COUNTY CLERK'S OFFICE

Defendant Crane Co. moves for summary judgment on the ground that there is no evidence that plaintiff's decedent, Mr. Stanley Krameisen, was exposed to asbestos from a Crane Co. product. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); CPLR 3212(b). The motion is granted because neither the testimony nor the documentary evidence submitted in opposition raise a triable issue of fact as to Crane Co.'s liability. *See Reid v Georgia Pacific Corp.*, 212 AD2d 462, 463 (1st Dept 1995).

Mr. Krameisen was deposed on March 22, 2011 and April 7, 2011. A copy of his deposition transcript is submitted as defendant's exhibit C ("Deposition"). Mr. Krameisen testified that he served as a parachute rigger in the United States Navy from 1952 to 1956 aboard the USS Leyte and the USS Kula Gulf. Although Mr. Krameisen testified that he never worked with or observed others working with asbestos in his vicinity, he claimed that he was nonetheless exposed to asbestos-containing insulation which he saw throughout these two vessels (Deposition pp. 44-47, 52-53):

Q: When you were aboard the "Leyte" on the various occasions --

A: Yes.

Q: – Do you believe you were exposed to asbestos?

A: I know I was exposed to asbestos.

Q: How were you exposed?

A: Every pipe and everything you saw was encased in asbestos.

* * * * *

Q: Did you personally have to work with asbestos when you were aboard the “Leyte”?

A: No, no.

Q: Did you ever observe anyone else working with asbestos on the “Leyte”?

A: I don’t know. I didn’t pay attention to that. I had my own job to consider.

* * * * *

Q: Did you ever see dust from the asbestos --

A: Oh, yeah.

Q: – that you saw everywhere?

A: Oh yeah. If I had occasion to go to one of our aircraft there, because I was going to get – take out a PK2 or whatever it was, because I went for inspection, and if they were firing off guns, you saw this white stuff flying all over the place, and I presume it was asbestos. It looked like snow in the air.

* * * * *

Q: Where was the dust coming from, was it from the pipes?

A: No, that had nothing to do with the pipes. When they fired off shells for practice and so forth, it came from the guns.

* * * * *

Q: When you were aboard the “Kula Gulf”, do you believe you were exposed to asbestos in any way?

A: Yes.

Q: How do you believe you were exposed?

A: It was the same thing, everywhere you looked. I had a bunk there for that week. There was just asbestos all over the place. I didn’t go down to the engine room. I didn’t make any friends there. There was no time.

Q: Did you ever observe anyone working with asbestos aboard the “Kula Gulf”?

A: I don’t know. I didn’t pay attention to that.

Mr. Krameisen also testified that he was exposed to asbestos-containing insulation from the pipes located above his bed rack that he grabbed to help pull himself up each morning

(Deposition p. 45-46, objection omitted):

Q: Did you ever see with regard to the pipes on the ship any of the pipe covering broken off or hanging off of the pipes?

A: Occasionally.

Q: And you told me, sir, that you would have to touch the pipe covering every day on – above your bunk; is that correct?

A: It made life easier to pull myself up holding onto something.

Q: And did that cause dust when you did that?

A: Of course.

During the course of his deposition, Mr. Krameisen did not identify Crane Co. as a manufacturer or supplier of any of the products to which he was allegedly exposed. In light of this shortcoming, plaintiff submits ship records which purport to demonstrate that Crane Co. valves were present aboard the USS Leyte and USS Kula Gulf during the relevant time period. However, the mere presence of an asbestos-containing product at the plaintiff's work place is not sufficient to show proximate cause. *Cawein v Flintkote Co.*, 203 AD2d 105, 106 (1st Dept 1994); *Diel v Flintkote Co.*, 204 AD2d 53, 54 (1st Dept 1994). Instead, the plaintiff must demonstrate that he was exposed to asbestos from the defendant's product. *See Cawein, supra.*

Here, plaintiff has shown that Mr. Krameisen may have been exposed to friable asbestos fibers from the insulation which covered the pipes above his bed and from the artillery on the USS Leyte ship deck. But it simply cannot be reasonably inferred from the testimony or from the ship records that such asbestos was supplied by Crane Co. or that it was used to insulate a Crane Co. product. *See Reid, supra.*

Accordingly, it is hereby

ORDERED that Crane Co.'s motion for summary judgment is granted, and that this action and any cross-claims related to this defendant are severed and dismissed in their entirety; and it is further

ORDERED that this case shall continue against the remaining defendants, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the court.

FILED

FEB 01 2012

DATED: *January 30, 2012*



NEW YORK COUNTY CLERK'S OFFICE

SHERRY KLEIN HEITLER
J.S.C.