

Engle v Air & Liquid Sys. Corp.
2012 NY Slip Op 32944(U)
December 10, 2012
Sup Ct, NY County
Docket Number: 190172/11
Judge: Sherry Klein Heitler
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. SHERRY KLEIN HEITLER

PART 30

Index Number : 190172/2011
ENGLE, ROBERT SR.

INDEX NO. 190172/11

vs

AIR & LIQUID SYSTEMS

MOTION DATE _____

Sequence Number : 003

MOTION SEQ. NO. 003

SUMMARY JUDGMENT

(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 12-10-12

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

FILED

DEC 13 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 12-10-12



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
ROBERT ENGLE, SR. and LINDA ENGLE,

Index No. 190172/11
Motion Seq. 003

Plaintiffs,

DECISION & ORDER

-against-

AIR & LIQUID SYSTEMS CORP., et al.

Defendants.

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

FILED

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NEW YORK
COUNTY CLERK'S OFFICE

In this asbestos-related personal injury action, defendant Crane Co. ("Crane") moves for summary judgment pursuant to CPLR 3212. For the reasons set forth below, the motion is denied.

BACKGROUND

Plaintiffs Robert Engle and his wife Linda Engle commenced this action on May 2, 2011 to recover for personal injuries allegedly caused by Mr. Engle's exposure to asbestos. Mr. Engle was deposed on June 7, 2011. A copy of his deposition transcript is submitted as defendant's exhibit C ("Deposition"). Mr. Engle testified that he served in the United States Navy ("USN") from 1955 to 1959 as a seaman. During this time period he served aboard the USS Harlan R. Dickson, among other vessels. At times Mr. Engle was ordered to clean in and around the ship's boiler rooms while his fellow seamen performed repair work. Plaintiffs allege that Mr. Engle was exposed to asbestos as a bystander from pipe insulation and dust that emanated from equipment worked on by others in such boiler rooms.

The defendant argues that it is entitled to summary judgment because Mr. Engle did not specifically identify any product manufactured or sold by Crane as a source of his exposure. In

opposition plaintiffs submit Mr. Engle's testimony that he was exposed to asbestos which emanated from, among other things, valves and pumps. Plaintiffs also submit archived USN ship purchase records to show that Crane valves were approved for use on the USS Harlan Dickson. Plaintiffs contend that this is sufficient evidence from which Crane's liability can be reasonably inferred. The defendant replies that even if the documents demonstrate that Crane valves were approved for use aboard the ship, they pre-date Mr. Engle's service by over a decade, do not reference asbestos, and do not indicate the presence of Crane valves in any location aboard the ship where Mr. Engle may have worked.

DISCUSSION

Summary judgement is a drastic remedy that must not be granted if there is any doubt about the existence of a triable issue of fact. *Tronlone v Lac d'Aminante du Quebec, Ltee*, 297 AD2d 528, 528-529 (1st Dept 1995). In asbestos-related litigation, once the moving defendant has made a *prima facie* showing of entitlement to judgment as a matter of law, the plaintiff must then demonstrate that there was actual exposure to asbestos fibers released from the defendant's product. *Cawein v Flintkote Co.*, 203 AD2d 105, 106 (1st Dept 1994). In this regard, it is sufficient for the plaintiff to show facts and conditions from which the defendant's liability may be reasonably inferred. *Reid v Georgia Pacific Corp.*, 212 AD2d 462, 463 (1st Dept 1995). The identity of a manufacturer of a defective product may be established by circumstantial evidence, but such evidence cannot be speculative or conjectural. *See Healey v Firestone Tire & Rubber Co.*, 87 NY2d 596, 601 (1996).

Mr. Engle testified with respect to his asbestos exposure aboard the USS Harlan Dickson in relevant part as follows (Deposition pp. 67, 68, 151, 152):

- Q. With respect to the dust that came up, do you know what the composition of that dust was, like where that dust was coming from?
- A. While they was repairing things, a volume of it. They just kept bringing it up, out of the boiler pumps, and whatever else they was working on in that area.
- Q. With respect to the dust itself, do you know where that dust was coming from, in terms of, what was the source of that dust itself?
- A. I guess while they was repairing things around the boilers and whatever else, the pumps and things they was working on.
- Q. With respect to that dust itself, do you know who manufactured any of the materials that would have created the dust?
- A. No, I do not. . . .
- Q. Okay. With respect to this equipment that you are telling me about, do you know who manufactured any of the pumps in that boiler room?
- A. No, I do not.
- Q. Do you know who manufactured any of the valves?
- A. No, I do not.

* * * *

- Q. Okay. What was going on in those boilers rooms while you were present?
- A. Well, they was working on the pieces of the -- repairing whatever.
- Q. Okay. Were they repairing --
- A. Because it was in the evening when I was down in there.
- Q. Was the work they were doing, did that create dust?
- A. Yes, it did. There was dust all over everything, pumps. . . .
- Q. Okay. And what kind of equipment was in those boiler rooms? What kind of equipment was in the boiler room?
- A. Like boilers and pumps.
- Q. Okay. Were there valves?
- A. Valves, yes.
- Q. Were the valves insulated in any way?
- A. Yes, the valves were insulated, pumps was insulated. The turbines was -- I guess the turbines was insulated.

Mr. Engle's testimony indicates that he may have been exposed to asbestos as a bystander from asbestos-dust which emanated from valves, pumps, and boilers being worked on

by others. While it is conceded that Mr. Engle himself did not specifically identify Crane valves as a source of his exposure, the blueprints submitted by plaintiffs (plaintiffs' exhibit F) show that Crane valves were integrated into the ship's boiler room during its initial construction. In addition, while such construction took place a decade before Mr. Engle began his USN service, there is no evidence to show that such valves were replaced prior to Mr. Engle's Naval career.

In light the documentary evidence produced herein, coupled with Mr. Engle's testimony, I find there is sufficient circumstantial evidence from which this defendant's liability may be reasonably inferred.

Accordingly, it is hereby

ORDERED that Crane Co.'s motion for summary judgment is denied in its entirety.

This constitutes the decision and order of the court.

DATED: 12.10.12


SHERRY KLEIN HEITLER
J.S.C.

FILED
DEC 13 2012
NEW YORK
COUNTY CLERK'S OFFICE