

<b>Griffin v A.P. Servs., Inc.</b>
2013 NY Slip Op 32290(U)
September 20, 2013
Sup Ct, NY County
Docket Number: 190361/12
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 : 190361/2012  
GRIFFIN, ROBERT  
vs.  
A.P. SERVICES, INC.  
SEQUENCE NUMBER : 001  
SUMMARY JUDGMENT *(WILLIAM POWELL)*

INDEX NO. 190361/12  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001

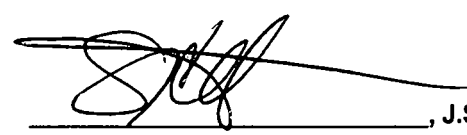
The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

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

**is decided in accordance with the  
memorandum decision dated 9.20.13.**

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

Dated: 9.20.13

  
\_\_\_\_\_, 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 GRIFFIN

Index No. 190361/12  
Motion Seq. 001

Plaintiffs,

-against-

**DECISION & ORDER**

A.P. SERVICES, Inc., et al.,

Defendants.  
-----X

**SHERRY KLEIN HEITLER, J:**

In this asbestos personal injury action, defendant The William Powell Company (“Powell”) moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims asserted against it on the ground that plaintiff Robert Griffin has not provided any evidence of asbestos exposure from a Powell product. For the reasons set forth below, the motion is denied.

Plaintiff alleges that he developed mesothelioma as a result of his occupational exposure to asbestos while serving in the United States Navy from 1950 to 1954. At his deposition, which took place on November 7-8, 2012 and March 5, 2013<sup>1</sup>, Mr. Griffin testified that he served aboard the USS Eberle, a destroyer that was used primarily as a Naval reserve training ship. Mr. Griffin was principally stationed in the USS Eberle’s boiler room as a boiler tender for approximately 18 months where he was responsible for repairing valves and changing packing and gaskets (plaintiff’s exhibit B, pp. 28, 36-37, 38-39, 40, 43, plaintiff’s exhibit A, p. 52, 53-54):

- Q. What -- of those different types of equipment that you mentioned, what types of equipment did you actually have to repair and maintain the most?
- A. Well, pumps and valves was a lot of what I did pretty well.

\* \* \* \*

<sup>1</sup> Mr. Griffin’s deposition transcripts are submitted as plaintiff’s exhibit A.  
A transcript of his videotaped deposition is submitted as plaintiff’s exhibit B.

Q. You also mentioned valves, that that was part of what you maintained in these boiler rooms. Is there any way you can give the jury some sense of just how many valves were in these boiler rooms?

A. A lot. I don't know what to say. There's a lot of valves.

Q. Okay. And just, can you very generally explain to the jury what you are talking about when you say a valve? Can you describe what they do?

A. Well, a valve is going to regulate whatever it's attached to, whether it's oil or water or steam. You open it up, most of it comes out, you close it down, you slow it down. It regulates the flow.

\* \* \* \*

Q. And the packing that you worked with on valves, how did -- how did the appearance -- how did the appearance of that packing compare to the packing you worked with on pumps?

A. Well, it would come out in little pieces because it was all dried up and broken, so you had to sort of work at it to get it -- to get it the heck out.

\* \* \* \*

Q. When you did that work, blowing it out and scraping and pulling it out with a hook, what, if anything, would you see?

A. You would see the dust and the little pieces coming up. The closer you get to blow it out, the closer it gets to your face and your nose.

Q. And you come into contact with that?

A. Absolutely.

Q. Did you breathe that in?

A. I'm sure I did.

\* \* \* \*

Q. And how often would you have to do work that you've been describing on valves?

A. Can't put a number on it, but it's quite often that you did this kind of work. That's what I did.

\* \* \* \*

Q. ... I want to learn plenty about the valves that you worked on as much as you can remember.

A. The valves that I remember was a Crane valve and another one was A&M valves.

\* \* \* \*

Q. Do you think you were exposed to asbestos from your work on the Crane valves?

- A. I think working on the valves I probably was . . . when you do the packing you have to take a part of it out and then you have to dig the packing out of it. And when you're digging that out it's pretty much dried up and that's why you're replacing it.

Summary judgment 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'Amiante du Quebec, Ltee*, 297 AD2d 528, 528-29 (1st Dept 2002). In asbestos-related litigation, should the defendant make a *prima facie* showing of its entitlement to summary judgment, the plaintiff must then demonstrate that there was exposure to asbestos fibers released from the defendant's product. *Cawein v Flintkote Co.*, 203 AD2d 105, 106 (1st Dept 1994). Such a plaintiff need only 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). It is axiomatic that all reasonable inferences must be given in favor of the non-moving party, *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 205 (1st Dept 1990), but that the non-movant cannot rely on conjecture or speculation. *Roimesher v Colgate Scaffolding*, 77 AD3d 425, 426 (1st Dept 2010).

Defendant's *prima facie* case is that Mr. Griffin failed to identify any Powell product as a source of his exposure. In response the plaintiff submits documents which show that Powell valves utilized asbestos-containing components and that they were in operation inside the USS Eberle's boiler room during the relevant time period. Notably, Powell's interrogatory responses in this case show that only in "some instances" did the company brand or mark its products (plaintiff's exhibit H, p. 13). In addition, Powell's interrogatory responses show that at least some of its valves were sold with asbestos gaskets and packing (plaintiff's exhibit H, pp. 7-8, 10-13). This is borne out by the testimony in an unrelated asbestos matter venued in King County, Washington of former Powell manufacturing manager William Joseph McClure (plaintiff's exhibit J, pp. 26-27, 51):

- Q. What is the purpose of packing?

A. Packing is to seal the interior of the valve from the atmosphere.

Q. Can you tell us how packing is installed?

A. In the plant, we put the packing in the bonnet, and as we install the packing, we buy packing rings, Powell buys packing rings, and always has, as a separate ring. It's a dye-formed ring. And the packing that we primarily used was John Crane 187-1, which is a packing that stayed flexible over high temperatures and over a considerable period of time . . .

Q. What was this packing made of? What did it consist of?

A. John Crane 187-1 is a -- was a packing that was made with asbestos with some inhibitors to prevent pitting. It was reenforced with inconel wire and was lubricated with graphite. It was heavily lubricated so that when you picked the packing up, what you really got was the graphite.

Q. Did you have some packing that was nonasbestos?

A. We used Teflon packing for some of -- for the bronze valves, particularly in the small valves, and in the stainless steel, they were primarily Teflon.

\* \* \* \*

Q. Would you agree with me that the earliest time that you've been able to determine that asbestos containing components were used in William Powell valves probably went back to the 1930s?

A. Yes.

Q. And they continued to use asbestos packing, I think you told William Powell's lawyer until 1991?

A. Yes.

Q. And most valves that came out of the William Powell plant until at least 1987 had asbestos packing in them; correct?

A. Asbestos packing, right.

A John Crane advertisement confirms that 187-I packing was "braided from long-fiber asbestos with an Inconel insert that side tracks pitting . . ." (Plaintiff's exhibit J). This description corroborates Mr. Griffin's deposition testimony that the packing used in the USS Eberle's boiler room was "made out of a material that looks like string but it's asbestos, and some of them have graphite and stuff embedded in them . . ." (Plaintiff's exhibit B, p. 29).

Communications between the Supervisor of Shipbuilding and the Bureau of Ships regarding the subcontractors and material providers for the USS Eberle establish that Powell manufactured

and supplied valves for use in that ship's steam heating system, fuel burning system, auxiliary steam and exhaust piping system, and main and auxiliary feed system. (Plaintiff's exhibit D, pp. 16-18, 20-21). Navy documents show that these systems were connected to the boiler systems that were maintained by Mr. Griffin.<sup>2</sup> *See, e.g.*, Navy Training Course Manual (plaintiff's exhibit E, pp. 104-06, 108; feed systems are so named because they "feed" the boilers) and 1947 Naval Machinery manual (plaintiff's exhibit G, p. xiv; the "prime movers of certain pumps, the ship's electric dynamo and other auxiliaries require steam for their operation. This steam is supplied from the boiler via the auxiliary steam line").

Plaintiff's documentary submissions raise a material issue of fact whether asbestos-containing Powell valves were present in the USS Eberle's boiler room during the relevant time period. Taken together, the testimonial and documentary evidence creates a sufficient nexus between the plaintiff and the defendant's products to preclude summary judgment. *See Reid, supra; Cawein, supra.*

Accordingly, it is hereby

ORDERED that the William Powell Company's motion for summary judgment is denied in its entirety.

This constitutes the decision and order of the court.

DATED:

9.20.13

  
 \_\_\_\_\_  
 SHERRY KLEIN HEITLER  
 J.S.C.

<sup>2</sup> While the defendant argues that these naval records are irrelevant because they pre-date the relevant time period, there is no evidence on this motion that the Powell valves referenced therein were replaced.