

**Krauss v 3M Co.**

2013 NY Slip Op 33436(U)

December 2, 2013

Supreme Court, New York County

Docket Number: 190020/12

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 : 190020/2012  
KRAUSS, WILLIAM E.

INDEX NO. 190020/12

vs  
3M COMPANY  
Sequence Number : 014  
SUMMARY JUDGMENT

MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 014

(JOHN CRANE INC)

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**

**12-2-13  
FILED  
DEC 04 2013  
NEW YORK  
COUNTY CLERK'S OFFICE**

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

Dated: 12-2-13

[Signature], 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  
WILLIAM E. KRAUSS and JEANNE KRAUSS,

Index No.: 190020/12  
Motion Seq. 014

Plaintiffs,

**DECISION & ORDER**

-against-

**FILED**

3M COMPANY, et al.,

DEC 04 2013

Defendants.

**NEW YORK  
COUNTY CLERK'S OFFICE**

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

In this asbestos personal injury action, defendant John Crane Inc. ("JCI") moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims asserted against it on the ground that JCI did not manufacture, sell, or distribute asbestos-containing gaskets as described by the plaintiff, Mr. William Krauss. As more fully set forth below, the motion is denied.

Mr. Krauss was deposed over the course of eight days in February and March of 2012. He sat for a videotaped deposition on April 10, 2012.<sup>1</sup> Mr. Krauss testified that from 1951 to the early 1970's and from 1978 to 1986 he worked as a union sheet metal worker installing HVAC systems and associated duct work throughout New York City. He offered extensive testimony concerning his alleged exposure to asbestos-containing products and identified the manufacturers and suppliers of numerous types of equipment and products which he believed contributed to his injuries.

With respect to his alleged asbestos exposure from JCI gasket materials, Mr. Krauss testified in part as follows (Deposition pp. 827, 831-32, 833, 1103-04, 1114-15, 1075-76):

Q. What products do you associate with Crane?

A. An asbestos gasketing. . . .

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<sup>1</sup> Portions of Mr. Krauss' oral and videotaped deposition transcripts are submitted as exhibit D to the moving papers. Complete copies thereof were submitted at the request of the court ("Deposition").

Q. What specific projects do you associate Crane gasketing with?

A. Well, mostly it was fireproofing material that we'd have to use on duct connections, particularly any kind of kitchen exhaust for fire prevention.

\* \* \* \*

Q. Did it come in rolls or sheets?

A. Rolls.

Q. Always?

A. What I've experienced; yes, sir. Occasionally, it wasn't very often, occasionally it would come in a sheet that would cover the whole duct just to check that everything was tight, and then we'd cut it out after it was tested.

Q. So what was the size of that sheet, when you say it would go over the whole ductwork?

A. It would be anywhere from 10-by-10 to, oh, like 6-foot by 3-to-4-foot deep, depended on what part you were testing.

Q. You say 10-by-10. Is that 10-by-10 feet or inches?

A. Inches. It was all inches. . . .

Q. How often did you work with those sheets?

A. I would say probably 75 to 80 percent -- oh, the sheets?

Q. Yes.

A. Maybe about a quarter of the time, a quarter of the time that I was in the industry.

\* \* \* \*

Q. Do you recall on how many jobs total that you used the sheets?

A. I would say anywhere probably from 15 to 25 different job sites. I don't recall them right offhand.

Q. Which brands do you associate with the sheets?

A. I thought it was Crane, but I'm not positive on that.

\* \* \* \*

Q. What product or products do you associate with John Crane?

A. I associated it with gasketing material.

Q. Which gasket material do you associate it with?

A. In what respect?

Q. I think you told us about some different kinds. What kind of gasketing material did John Crane, do you associate John Crane with?

A. Well, what I basically used was the asbestos gasketing.

Q. So, that was the first one we spoke about that came on a spool (indicating)?

A. Yes, sir.

Q. Made out of cloth?

A. Yes, sir.

\* \* \* \*

Q. The John Crane, what color, the John Crane material, what color was it?

A. That grayish-white color.

\* \* \* \*

Q. The material itself, what was it made out of, if you know?

A. It was like a material type of . . . it was just like (indicating) a piece of material but it was much rougher.

Q. I saw you feeling your, like, a sweat shirt you're wearing?

A. Yes, sir.

Q. The material was like your sweat shirt?

A. It would be similar to that, but it was (indicating) much coarser.

Q. What color was it?

A. That whitish-grayish color. . . .

Q. What did you guys call this?

A. We guys called it asbestos gasketing.

Plaintiffs allege that Mr. Krauss was exposed to asbestos from two different types of JCI gasket materials: a narrow rolled-up cloth and a wide sheet blanket. JCI argues that it is entitled to summary judgment because its rolled gasket materials were asbestos-free and because its sheet gasket materials were not designed to be used in the manner in which Mr. Krauss testified that he used them.

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 La d'Amiante du Quebec, Ltee*, 297 AD2d 528, 528-529 (1st Dept 2002). In an asbestos personal injury action, should the moving defendant make a *prima facie* showing of entitlement to summary judgment as a matter of law, the plaintiff must then demonstrate that he was exposed to asbestos fibers released from the defendant's product. *Cawein v Flintkote Co.*, 203 AD2d 105, 106 (1st Dept 1994). It is sufficient for plaintiffs 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). All reasonable inferences should be resolved in the plaintiff's favor. *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 205 (1st Dept 1990).

JCI's motion rests on an affidavit by its Assistant Corporate Secretary, Mr. George Springs,<sup>2</sup> who attests that JCI never manufactured or sold gasket or packing material for the purpose of insulating the connections between ductwork as described by Mr. Krauss. Notably, however, Mr. Springs' affidavit makes no reference to the rolled gasket material at issue. Pursuant to court direction, the parties deposed Mr. Springs on August 1, 2013.<sup>3</sup> He testified, and the documentary evidence submitted on this motion confirms (plaintiffs' exhibit B), that JCI sold rolled gasket materials made of Teflon, not asbestos (Spring Deposition pp. 17-18):

- Q. Okay. Did John Crane manufacture gaskets, sir, that . . . come on the roll or spool and are a width of one to two inches?
- A. Not on a spool, no. We had some ribbon-type gasketing, not necessarily asbestos-containing, that would come in a box that was coiled, but not on a spool.
- Q. And can we agree, sir, that it was coiled, that it was rolled?
- A. Well, it was in a coil. As I recall his testimony, he said it was on a roll like a toilet paper and we didn't have anything like that. . . .
- Q. What gaskets did John Crane manufacture that came in a ribbon type on a roll?
- A. Several different kinds depending on what you are trying to seal. For this kind of service that this gentleman dealt with, it would have been rubber. But it didn't come on a roll. It came in sheets.

However, Mr. Springs testimony also revealed that JCI sold asbestos-containing sheet gasket materials that could be used for various different purposes, including HVAC ductwork (Springs Deposition pp. 29-30, objection omitted):

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<sup>2</sup> Mr. Springs' affidavit, sworn to March 29, 2013, is submitted as defendant's exhibit E. In it he concludes that the "product and material described by Mr. Krauss is not a product or material ever manufactured or sold by John Crane, Inc." (*Id.* at ¶ 11).

<sup>3</sup> A copy of Mr. Springs' deposition transcript is submitted as exhibit A to JCI's letter brief of September 6, 2013 ("Spring Deposition").

- Q. We can agree that John Crane sold gasket material that would not just be used for pumps and valves, correct, sir?
- A. We sold sheet gasket material for use in whatever the customer wanted to use it for, but the descriptions of what this man said he used was not what we sold.
- Q. Okay. Did you sell a sheet gasket material that could be used for compressors? . . .
- A. Again, the sheet gasket material we sold could be used on whatever a customer chose to use it on. But none of it matched the description of what this man said he used.

In support of this motion for summary judgment, JCI argues that it would have been impractical for Mr. Krauss to use such materials to insulate ductwork. However, JCI's arguments really go to the weight to be given to both Mr. Krauss' and Mr. Springs' testimony, which as a matter of law may not be determined by this court, but by the trier of fact. *See Ferrante v American Lung Assn*, 90 NY2d 623, 631 (1997); *Asabor v Archdiocese of N.Y.*, 102 AD3d 524, 527 (1st Dept 2013); *Alvarez v NY City Hous. Auth.*, 295 AD2d 225, 226 (1st Dept 2002); *Dollas v W.R. Grace & Co.*, 225 AD2d 319, 321, (1st Dept 1996).

Accordingly, it is hereby

ORDERED that John Crane, Inc.'s motion for summary judgment is denied in its entirety.

This constitutes the decision and order of the court.

DATED: 12-2-13

**FILED**  
 DEC 04 2013  
 NEW YORK  
 COUNTY CLERKS OFFICE  
 \_\_\_\_\_  
 SHERRY KLEIN HEITLER  
 J.S.C.