

<b>Lamenta v Akzo Nobel, Inc.</b>
2021 NY Slip Op 31117(U)
April 1, 2021
Supreme Court, New York County
Docket Number: 190312/2017
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ADAM SILVERA PART IAS MOTION 13**

*Justice*

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ANTONIETTA LAMENTA, ANTONIETTA LAMENTA,

Plaintiff,

- v -

**INDEX NO. 190312/2017**  
**MOTION DATE 09/22/2020**  
**MOTION SEQ. NO. 001**

AKZO NOBEL, INC., ARMSTRONG PUMPS INC., BMCE INC., F/K/A UNITED CENTRIFUGAL PUMP, BORGWARNER MORSE TEC LLC., BOSTIK, INC., BURNHAM LLC, INDIVIDUALLY AND AS SUCCESSOR TO BURNHAM CORPORATION, CARRIER CORPORATION, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO BRYANT MANUFACTURING, CBS CORPORATION FKA VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION FKA WESTINGHOUSE ELECTRIC CORPORATION, CONWED CORPORATION, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO WOOD CONVERSION COMPANY, COPES-VULCAN INC., CRANE CO., CROWN BOILER CO., F/K/A CROWN INDUSTRIES, INC., EMPIRE ACE INSULATION MANUFACTURING CORP., FLOWSERVE U.S., INC., SOLELY AS SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT COMPANY, FMC CORPORATION ON BEHALF OF ITS FORMER PEERLESS PUMP DIVISION AND CHICAGO PUMP DIVISION, FOSTER WHEELER ENERGY CORPORATION, GENERAL ELECTRIC COMPANY, GENUINE PARTS COMPANY, GEORGIA PACIFIC LLC F/K/A GEORGIA PACIFIC CORPORATION, GOULDS PUMPS INCORPORATED, GRINNELL LLC., H.B. FULLER COMPANY, HONEYWELL INTERNATIONAL, INC. FKA ALLIED SIGNAL INC./BENDIX, IMO INDUSTRIES INC. INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO DELAVAL TURBINE INC., INGERSOLL-RAND COMPANY, INTERNATIONAL PAPER COMPANY INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO US PLYWOOD, ITT CORPORATION FORMERLY KNOWN AS ITT INDUSTRIES INC. INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT COMPANY AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC. AND AS SUCCESSOR TO GRINNELL VALVE CO., INC., KAMCO SUPPLY COMPANY, KOHLER COMPANY, L & L MFG INC., PEERLESS INDUSTRIES, INC., THE FAIRBANKS COMPANY, THE PEP BOYS MANNY MOE AND JACK OF CALIFORNIA, INC., TRANE US INC FKA AMERICAN STANDARD INC. INDIVIDUALLY AND AS SUCCESSOR IN

**DECISION + ORDER ON MOTION**

INTEREST TO KEWANEE BOILER CORPORATION,  
UNION CARBIDE CORPORATION, WEIL MCLAIN,  
WEYERHAEUSER COMPANY, 3M COMPANY, AMERICAN  
BILTRITE INC., INDIVIDUALLY AND AS SUCCESSOR TO  
AMTICO FLOORS, ATWOOD & MORRILL COMPANY  
D/B/A ATWOOD & MORRILL CO., INC., COLUMBIA  
BOILER COMPANY, DAP, INC., DOMCO PRODUCTS  
TEXAS, L.P., F/K/A AZROCK INDUSTRIES, INC., GATES  
CORPORATION, ZY-TECH GLOBAL INDUSTRIES, INC., L  
& M MFG., INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 188

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that defendant General Electric Company’s motion for summary judgment to dismiss the instant action is granted without opposition.

The standards of summary judgment are well settled. To grant summary judgment, it must be clear that no material or triable issues of fact are presented. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case”. *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]”. *Zuckerman v City of New York*, 49 NY2d 557, 560 (1980).

Here, defendant General Electric Company moves to dismiss plaintiff’s complaint arguing that plaintiff failed to produce any evidence to link moving defendant’s product with plaintiff’s asbestos exposure. In support of its motion, defendant General Electric Company

proffers, *inter alia*, plaintiff's deposition transcript as well as plaintiff's answers to interrogatories. A review of such documents reveals that plaintiff did not identify any products manufactured, sold, or distributed by defendant General Electric Company which exposed plaintiff to asbestos. Thus, moving defendant has established entitlement to summary judgment of dismissal on the ground that it did not contribute to, or cause plaintiff to, be exposed to asbestos, and, thus, is not liable for any injury or harm suffered by plaintiff as a result of asbestos exposure.

As moving defendant met its prima facie burden, the burden shifts to plaintiff to establish a genuine triable issue of fact. In a products liability case, plaintiff must "come forward with evidence of an evidentiary nature to...creat[e] a reasonable inference that [plaintiff was exposed to asbestos] from [defendant's] product." *Cawein v Flintkote Co.*, 203 AD2d 105, 106 (1<sup>st</sup> Dep't 1994). Here, plaintiff failed to oppose the instant motion such that no issues of fact have been raised. As such, defendant General Electric Company's motion for summary judgment of dismissal is granted without opposition.

Accordingly, it is

ORDERED that defendant General Electric Company's motion for summary judgment to dismiss this action as against it is granted and this action is dismissed as to defendant General Electric Company only; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant General Electric Company dismissing the claims and cross-claims made against it in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs, and amend the caption to remove defendant General Electric Company only; and it is further

ORDERED that the said claims against the remaining defendants are severed and the balance of the action shall continue; and it is further

ORDERED that within 30 days of entry, defendant General Electric Company shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

4/1/2021  
DATE

  
ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE