

Unger v A.W. Chesterton Co.
2022 NY Slip Op 31495(U)
May 6, 2022
Supreme Court, New York County
Docket Number: Index No. 190098/2020
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART 13

Justice

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EDWARD UNGER, LISA UNGER,

Plaintiff,

INDEX NO. 190098/2020
MOTION DATE 04/11/2022
MOTION SEQ. NO. 030

- v -

A.W. CHESTERTON COMPANY, ABB, INC., ALL ACQUISITION CORPORATION, LLC, AIR & LIQUID SYSTEMS CORPORATION, ALFA LAVAL, INC., ALLEN-BRADLEY COMPANY, INC., AMTROL, INC., ARMSTRONG INTERNATIONAL, INC., ATWOOD & MORRILL CO., INC., AURORA PUMP COMPANY, BLACKMER PUMP, BURNHAM CORPORATION, BW/IP INTERNATIONAL CO., CARRIER CORPORATION, CATERPILLAR INC., CBS CORPORATION, CLARK RELIANCE CORPORATION, CLEAVER-BROOKS COMPANY, CRANE CO., CROWN BOILER CO., CUMMINS ENGINE COMPANY, INC., CUMMINS INC., CUMMINS NORTHEAST, INC., DEZURIK, INC., EATON CORPORATION, ELECTROLUX HOME PRODUCTS, INC., ELLIOTT TURBOMACHINERY CO., INC., FLOWSERVE US, INC., FMC CORPORATION, FOSTER WHEELER, LLC, GENERAL ELECTRIC COMPANY, GENUINE PARTS COMPANY, GOULD ELECTRONICS, INC., GOULDS PUMPS, INC., GREENE, TWEED & CO., INC., GRINNELL CORPORATION, HENRY TECHNOLOGIES, INC., HONEYWELL INTERNATIONAL, INC., HOWDEN BUFFALO, INC., I.T.T. INDUSTRIES, INC., INGERSOLL RAND, INC., JENKINS BROS., LENNOX INDUSTRIES, INC., LIGHTOLIER INCORPORATED, METROPOLITAN LIFE INSURANCE COMPANY, MORSE TEC LLC, NAPA AUTO PARTS, NASH ENGINEERING COMPANY (THE), NEW ENGLAND INSULATION CO., PNEUMO ABEX CORPORATION, PNEUMO-ABEX LLC, PROGRESS LIGHTING, INC., RHEEM MANUFACTURING COMPANY, INC., ROCKWELL AUTOMATION, INC., SCHNEIDER ELECTRIC USA, INC., SPENCE ENGINEERING COMPANY, INC., SPIRAX SARCO, INC., SPX COOLING TECHNOLOGIES, INC., SUPERIOR LIDGERWOOD MUNDY CORP., THRUSH CO., INC., TUTHILL CORPORATION, UNION CARBIDE CORPORATION, VELAN VALVE CORP., WARREN PUMPS LLC, WEIL MCLAIN, WILLIAM POWELL COMPANY (THE), YORK INTERNATIONAL CORPORATION, BARNES & JONES, INC., MUELLER CO., O.C. KECKLEY COMPANY, SKIDMORE PUMP, WATTS REGULATOR COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO WARREN

**DECISION + ORDER ON
MOTION**

WEBSTER, WATTS WATER TECHNOLOGIES, INC., CAMERON INTERNATIONAL CORPORATION INDIVIDUALLY AND AS SUCCESSOR TO PENNSYLVANIA PUMP & COMPRESSOR COMPANY AND COOPER BESSEMER, SID HARVEY INDUSTRIES, INC., SID HARVEY SUPPLY, INC., SIEMENS CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MURRAY & FURNAS, DISTRIBUTOR CORPORATION OF NEW ENGLAND, EMERSON SWAN, INC., HAJOCA CORPORATION, HAJOCA PLUMBING SUPPLY COMPANY, PEABODY SUPPLY CO., ECR INTERNATIONAL, INC., INDIVIDUALLY AND AS SUCCESSOR TO DUNKIRK, DUNKIRK BOILERS AND UTICA BOILERS, KOHLER CO., HUBBELL INCORPORATED (DELAWARE), GRUNDFOS CBS INC., INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND PACIFIC PUMPS, PACO PUMPS, INC., PCC FLOW TECHNOLOGIES, INC., F/K/A PCC FLOW TECHNOLOGIES LP, INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND PACIFIC PUMPS, PCC FLOW TECHNOLOGIES LP, AS SUCCESSOR IN INTEREST TO PACO PUMPS, INC., PRECISION CASTPARTS CORP., INDIVIDUALLY AND AS SUCCESSOR TO PACIFIC PUMPS AND PACO PUMPS, SULZER PROCESS PUMPS (US), INC., INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND SULZER PUMPS, HOUSTON, INC., SULZER PUMPS (US), INC., INDIVIDUALLY AND AS SUCCESSOR TO JOHNSTON PUMP AND AHLSTROM PUMPS AND PACO PUMPS AND SULZER PUMPS, HOUSTON, INC., SIEMENS INDUSTRY, INC., SUCCESSOR IN INTEREST TO SIEMENS ENERGY & AUTOMATION, INC., AERMOTOR PUMPS, INC., INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP AND WEINMAN PUMP, AMW PUMP COMPANY, INC., INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP, AERMOTOR, AND WEINMAN, GRINNELL CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP AND WEINMAN PUMP, JIM WALTER CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MUELLER CO., MUELLER WATER PRODUCTS AND MUELLER PUMP, MUELLER PUMP COMPANY, MUELLER WATER PRODUCTS INC., INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP COMPANY, AMW PUMPS, AND WEINMAN PUMP, MUELLER STEAM SPECIALTY, I.G. MARSTON CO., INC., COOPER CAMERON CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO PENNSYLVANIA PUMP & COMPRESSOR COMPANY AND COOPER BESSEMER AND GROVE REDUCER VALVES;, PRATT & WHITNEY POWER SYSTEMS, INC., UNITED TECHNOLOGIES CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO PRATT & WHITNEY (PRATT & WHITNEY/AIRCRAFT DIVISION), RAYTHEON TECHNOLOGIES CORPORATION F/K/A UNITED TECHNOLOGIES CORPORATION, BLAKE

GROUP HOLDINGS, INC., F.W. WEBB COMPANY,
 INDIVIDUALLY AND AS SUCCESSOR TO BERGEN
 INDUSTRIAL SUPPLY CO., FORT KENT HOLDINGS, INC.
 F/K/A DUNHAMBUSH, INC., GRUNDFOS PUMPS
 CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-
 IN-INTEREST TO PACIFIC PUMP COMPANY, JOMAR
 DISTRIBUTORS, INC., MCMASTER-CARR SUPPLY
 COMPANY, TACO, INC., TOTAL AIR SUPPLY INC., VIKING
 PUMP, INC., A UNIT OF IDEX CORPORATION, W. W.
 GRAINGER, INC., BALTIMORE AIRCOIL COMPANY,
 INC., NASH ENGINEERING HOLDINGS LLC,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 030) 955, 956, 973
 were read on this motion to/for MISCELLANEOUS

Upon the foregoing documents, it is hereby ordered that Watts Regulator Co.'s and Watts
 Water Technologies, Inc.'s (herein after collectively referred to as Watts Defendants) joint
 motion to apply New Hampshire law is denied for the reasons set forth below.

Plaintiffs Edward Unger and his wife brought suit against Watts Defendants for personal
 injuries due to alleged exposure to asbestos. Mr. Unger was deposed over the course of eight
 days, in which he testified that between 1973 and 1974, he worked with Watts gates and globe
 valves for three and a half months while at Governor's Island, New York. Mr. Unger also
 testified that over a twenty year period from 1977 to 1997, he surmises that he was exposed to
 asbestos while working with Watts valves at the Southern New Hampshire Medical Center in
 Nashua, New Hampshire. The Watts Defendants make a joint motion to apply New Hampshire
 law, in which Plaintiffs oppose. No reply papers were filed.

Preliminarily, the Court notes that plaintiffs have amply demonstrated in the opposition
 papers that the Watts Defendants failed to meet their initial "burden of showing a relevant
 conflict between the laws of New York and" New Hampshire. *Farallon v Mexvalo*, 146 AD3D
 442, 442 (1st Dept 2017). Thus, the Court need not undertake a choice of law analysis, and the

Watts Defendant's motion is denied. However, even if the Court were to consider the Watts' Defendants arguments, moving defendants' arguments would still fail, as detailed briefly below.

"In the context of tort law, New York utilizes interest analysis to determine which of two competing jurisdictions has the greater interest in having its law applied in the litigation. The greater interest is determined by an evaluation of the facts or contacts which relate to the purpose of the particular law in conflict. Two separate inquiries are thereby required to determine the greater interest: (1) what are the significant contacts and in which jurisdiction are they located; and, (2) whether the purpose of the law is to regulate conduct or allocate loss." *Padula v Lilarn Properties Corp.*, 84 NY2d 519, 521 (1994) (internal citations and quotations omitted). "If conflicting conduct-regulating laws are at issue, the law of the jurisdiction where the tort occurred will generally apply because that jurisdiction has the greatest interest in regulating behavior within its borders." *Id.* at 522. In regard to loss allocation, if "the parties to the lawsuit share a common domicile, the loss allocation rule of the common domicile will apply." *Id.*

It is undisputed that the Plaintiffs are domiciled in New Hampshire, Watts Water Technologies, Inc. is a Delaware corporation with its principal place of business in Massachusetts, and that Watts Regulator Co. is a Massachusetts corporation with its principal place of business in Massachusetts. Thus, the parties do not share a common domicile. Plaintiffs contend that "Mr. Unger was exposed to asbestos from Watts valves in both New York and New Hampshire, and thus he suffered 'injury' under clear New York law in both jurisdictions." Affirmation In Opposition To Defendants Watts Regulator Co. And Watts Water Technologies, Inc.'s Joint Motion To Apply New Hampshire Law, p. 2-3, ¶ 6 (internal emphasis omitted). The Court opines that there are significant contacts between Plaintiffs and The Watts Defendants in both New York and New Hampshire, as Plaintiff was allegedly exposed to asbestos on both

Governor's Island, New York, and in Nashua, New Hampshire by The Watts Defendants' valves.

In the instant matter, the laws at issue are conduct regulating rules rather than loss allocating rules. "Conduct-regulating rules have the prophylactic effect of governing conduct to prevent injuries from occurring." *Padula v Lilarn Properties Corp.*, 84 NY2d at 522. In contrast, "[l]oss allocating rules. . . are those which prohibit, assign, or limit liability after the tort occurs, such as charitable immunity statutes, guest statutes, wrongful death statutes, vicarious liability statutes, and contribution rules." *Id.* (internal citations omitted). Here, this is a negligence action where the plaintiff was allegedly injured through the exposure of asbestos. The purpose of such asbestos laws are not to allocate loss after the tort occurs. Therefore, "the law of the jurisdiction where the tort occurred will generally apply". *Id.* at 521.

The Watts Defendants contend that "[i]n asbestos cases, where the alleged exposure may take place over many years and in multiple locations, the place of injury is defined as the jurisdiction in which the defendant fell ill." Memorandum Of Law In Support Of Defendant Watts Water Technologies, Inc. And Watts Regulator Co.'s Motion To Apply New Hampshire Law, p. 4. (internal citations omitted). The Watts Defendants further argue, "it was [in New Hampshire] that plaintiff became ill. . . which supplied the final element of a negligence or strict liability action entitling plaintiff to sue." *Id.* (internal quotations omitted). However, Plaintiffs correctly rely upon *Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 203 (1st Dept. 2013), which states that "[w]here a defendant's negligent conduct occurs in one jurisdiction and the plaintiff suffers injuries in another, the place of the wrong is considered to be the place where the last event necessary to make the actor liable occurred, that is, where the plaintiffs' injuries occurred" (internal quotations omitted). Namely, Plaintiffs contend that "it was not necessary for Mr.

Unger to have any exposure to Watts valves in New Hampshire for Defendants to be liable to him.” Affirmation In Opposition, *supra*, at p. 9, ¶ 24. Here, the last event necessary to incur liability from the Watts Defendants was not when Plaintiff was in fact diagnosed with mesothelioma, but when the Plaintiff was allegedly first exposed to asbestos through Watts products. Mr. Unger’s place of diagnosis is inconsequential compared to where the asbestos first infiltrated his body, which was in New York. Under a conduct regulating interest analysis, the most appropriate jurisdiction to apply its law is New York. Thus, the Watts Defendant’s motion is denied.

Accordingly, it is

ORDERED that the Watts Defendants’ motion to apply New Hampshire law is denied in its entirety.

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendant with notice of entry.

This constitutes the Decision/Order of the Court.



5/6/2022

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE