

**Reeves v Amchem Prods., Inc.**

2024 NY Slip Op 32601(U)

July 25, 2024

Supreme Court, New York County

Docket Number: Index No. 190006/2020

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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

*Justice*

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JOHN P REEVES,

Plaintiff,

- v -

AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC  
AG COMPANY, N/K/A BAYER CROPSCIENCE INC,  
BLACKMER, BORGWARNER MORSE TEC LLC, CBS  
CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY  
MERGER TO CBS CORPORATION, F/K/A  
WESTINGHOUSE ELECTRIC CORPORATION,  
CERTAINTIED CORPORATION, CRANE CO, DAP, INC,  
GENERAL ELECTRIC COMPANY, GRINNELL  
LLC, HONEYWELL INTERNATIONAL, INC., F/K/A ALLIED  
SIGNAL, INC. / BENDIX, IMO INDUSTRIES, INC, ITT LLC.,  
INDIVIDUALLY AND AS SUCCESSOR TO BELL &  
GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE  
MANUFACTURING CO., INC, PFIZER, INC. (PFIZER), U.S.  
RUBBER COMPANY (UNIROYAL), UNION CARBIDE  
CORPORATION, WEIL-MCLAIN, A DIVISION OF THE  
MARLEY-WYLAIN COMPANY, A WHOLLY OWNED  
SUBSIDIARY OF THE MARLEY COMPANY, LLC,

Defendant.

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INDEX NO. 190006/2020  
MOTION DATE 06/11/2024  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 82, 83, 84

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is hereby ordered that Defendant DAP, Inc.'s (hereinafter referred to as "DAP") motion for summary judgment is denied for the reasons set forth below.

The case at issue arises from plaintiff's 2019 diagnosis of lung cancer, which plaintiff alleges was caused by DAP asbestos containing caulk from serving in the U.S. Navy aboard the USS Forrestal from 1961 to 1964, as well as caulking work plaintiff performed on various occasions in his home, and DAP asbestos containing window glazing from renovating his home

between 1966 and 1967. DAP moves to dismiss this action on the basis that plaintiff's claim is "speculative" because not all DAP caulks historically contained asbestos, and that plaintiff failed to establish specific causation. *See* Memorandum of Law in Support of Defendant DAP, Inc. k/n/a La Mirada Products Co., Inc.'s Motion for Summary Judgment, p. 2. Plaintiff opposes, arguing that moving defendant did not prove that its products could not have caused asbestos-related illness to plaintiff and highlighting plaintiff's testimony, as well as that of plaintiff's experts. Defendant replies and withdraws its speculation argument.

The Court notes that summary judgment is a drastic remedy and should only be granted if the moving party has sufficiently established that it is warranted as a matter of law. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). "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). Despite the sufficiency of the opposing papers, the failure to make such a showing requires denial of the motion. *See id.* at 853. Additionally, summary judgment motions should be denied if the opposing party presents admissible evidence establishing that there is a genuine issue of fact remaining. *See Zuckerman v City of New York*, 49 NY2d 557, 560 (1980). "In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility." *Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 (1st Dep't 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dep't 1990). The court's role is "issue-finding, rather than issue-determination". *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957) (internal quotations omitted).

As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979). Furthermore, the Appellate Division, First Department has held that on a motion for summary judgment, it is moving defendant's burden "to unequivocally establish that its product could not have contributed to the causation of plaintiff's injury". *Reid v Georgia-Pacific Corp.*, 212 AD2d 462, 463 (1st Dep't 1995).

As to causation, DAP's expert affidavit and report from Robert C. Adams, CIH, CSP, FAIHA, is not case-specific and forms no opinions based on plaintiff's actual exposure and work timeline. *See Memorandum of Law in Support, supra*, Exh. K, Affidavit and Report of Robert C. Adams, CIH, CSP, FAIHA, dated October 5, 2023 and September 19, 2023, respectively. This is plainly insufficient to meet defendant's burden at summary judgment. Contrarily, plaintiff's expert, Dr. Mark Ginsburg, specifically reviewed plaintiff's exposure and occupational history to provide causation analysis. *See Affirmation in Support, supra*, Exh. M, Report and Affidavit of Dr. Mark Ginsburg's, MD, dated March 13, 2023 and April 3, 2023, respectively.

Moreover, the appropriate standard at summary judgment for defendant DAP can be found in *Dyer v Amchem Products Inc.*, 207 AD3d 408, 40 (1st Dep't 2022). In *Dyer*, defendants were granted summary judgment not by "simply argu[ing] that plaintiff could not affirmatively prove causation" but by "affirmatively prov[ing], as a matter of law, that there was no causation." *Id.* The Appellate Division, First Department, recently affirmed this Court's decision in *Sason v Dykes Lumber Co., Inc., et. al.*, 2023 NYSlipOp 05796 (1st Dep't 2023), stating that "the parties' competing causation evidence constituted the classic 'battle of the experts'" sufficient to raise a question of fact, and to preclude summary judgment. Here, defendant DAP fails to meet their burden on summary judgment as set forth in *Dyer*.

As a reasonable juror could decide that asbestos exposure from DAP products was a contributing cause of plaintiff's illness, sufficient issues of fact exist to preclude summary judgment.

Accordingly, it is

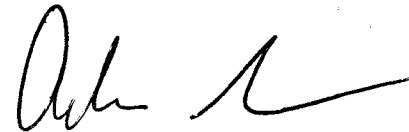
ORDERED that defendant DAP's motion for summary judgment is denied in its entirety; and it is further

ORDERED that within 30 days of entry plaintiff shall serve all parties with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

7/25/2024

DATE



ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: