

**Mata v Air & Liquid Sys. Corp.**

2024 NY Slip Op 33304(U)

September 16, 2024

Supreme Court, New York County

Docket Number: Index No. 190219/2021

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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ROBERTO MATA,

Plaintiff,

- v -

AIR & LIQUID SYSTEMS CORPORATION, AS SUCCESSOR-BY-MERGER TO BUFFALO PUMPS, INC, AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPS SCIENCE INC, AMERICAN BILTRITE INC, ARMSTRONG INTERNATIONAL, INC, AURORA PUMP COMPANY, BLACKMER, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, CBS CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CLEAVER BROOKS COMPANY, INC, COMPUDYNE CORPORATION, INDIVIDUALLY, AND AS SUCCESSOR TO YORK SHIPLEY, INC, COURTER & COMPANY INCORPORATED, CRANE CO, CROSBY VALVE LLC, CROWN BOILER CO., F/K/A CROWN INDUSTRIES, INC, DOMCO PRODUCTS TEXAS, INC, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, FOSTER WHEELER, L.L.C, GARDNER DENVER, INC, GENERAL ELECTRIC COMPANY, GOULDS PUMPS LLC, GRINNELL LLC, HEXION INC., F/K/A MOMENTIVE SPECIALTY CHEMICALS INC., F/K/A HEXION SPECIALTY CHEMICALS, INC., F/K/A BORDEN CHEMICAL, INC., F/K/A BORDEN, INC, IMO INDUSTRIES, INC, ITT INDUSTRIES, INC. INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO HOFFMAN SPECIALTY, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, LEVITON MANUFACTURING CO., INC, MORSE TEC LLC, F/K/A BORG WARNER MORSE TEC LLC AND SUCCESSOR-BY-MERGER TO BORG-WARNER CORPORATION, PFIZER, INC. (PFIZER), SEQUOIA VENTURES, INC., F/K/A BECHTEL CORPORATION, SPIRAX SARCO, INC. INDIVIDUALLY AND AS SUCCESSOR TO SARCO COMPANY, THE NASH

**INDEX NO.** 190219/2021  
**MOTION DATE** 01/02/2024  
**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

ENGINEERING COMPANY, TREADWELL CORPORATION, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, UNITED CONVEYOR CORPORATION, VELAN VALVE CORPORATION, VIKING PUMP, INC, WARREN PUMPS, LLC, WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, A WHOLLY OWNED SUBSIDIARY OF THE MARLEY COMPANY, LLC, BURNHAM, LLC, INDIVIDUALLY, AND AS SUCCESSOR TO BURNHAM CORPORATION, KOHLER CO., SLANT/FIN CORPORATION, CANVAS MW, LLC, F/K/A THE MARLEY-WYLAIN COMPANY, LLC AND CANVAS SX, LLC, F/K/A SPX, LLC, PARAMOUNT GLOBAL, F/K/A VIACOMCBS INC., F/K/A CBS CORPORATION, A DELAWARE CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, A PENNSYLVANIA CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, REDCO CORPORATION F/K/A CRANE CO., BURNHAM HOLDINGS, INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215

were read on this motion to/for

PARTIAL SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that defendant Burnham LLC's motion for partial summary judgment to dismiss plaintiff's punitive damages claim is hereby denied for the reasons set forth below.

Here, defendant Burnham moves for summary judgment arguing that plaintiff has failed to establish that moving defendants' conduct rises to the level of egregious and morally culpable conduct necessary for an award of punitive damages. According to defendant Burnham, any exposure to asbestos by plaintiff through Burnham boilers were below the regulated threshold limits and permissible exposure limits (hereinafter referred to as "PEL"). In support of its motion, defendant Burnham relies upon a study conducted by William E. Longo, Ph.D in 2007 (hereinafter referred to as the "Longo study"), arguing that plaintiff's exposure to asbestos was

below the Occupational Safety and Health Act's PEL. As such, defendant Burnham contends that its failure to warn does not rise to reckless and wanton disregard to support a claim for punitive damages. Plaintiff opposes the instant motion arguing, *inter alia*, that the Longo study is insufficient to meet defendant Burnham's initial burden on summary judgment.

During his deposition, plaintiff testified that he worked as a boiler and machinery inspector for Hartford Steam Boiler Inspection and Insurance Company from 1972 to 1974. Plaintiff further testified that he was exposed to asbestos through Burnham boilers while inspecting the boilers. Plaintiff testified that on a frequent basis, his work inspecting Burnham boilers would cause the release of asbestos dust from the boilers which he then breathed in.

The standards of summary judgment are well settled. 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). ] Despite the sufficiency of the opposing papers, the failure to make such a showing requires denial of the motion. *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 (1<sup>st</sup> Dep't 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1<sup>st</sup> 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).

The appropriate standard at summary judgment for defendant Burnham can be found in *Dyer v Amchem Products Inc.*, 207 AD3d 408, 409 (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 NY Slip Op 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.

In toxic tort cases, the New York Court of Appeals has adopted a gross negligence standard for the purposes of punitive damages, holding that punitive damages are warranted when "the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome." *Maltese v Westinghouse Elec. Corp.*, 89 NY2d 955, 956-957 (1997)(internal quotations omitted). "The purpose of punitive damages is not to compensate the plaintiff but to punish the defendant for wanton and reckless, malicious acts and thereby to discourage the defendant and other people, companies from acting in a similar way in the future". *Matter of 91<sup>st</sup> St. Crane Collapse Litig.*, 154 AD3d 139, 156 (1<sup>st</sup> Dep't 2017)(internal parentheses omitted).

Plaintiff correctly argues that the single study conducted by Dr. Longo is insufficient to support partial summary judgment on the issue of punitive damages herein. In his deposition, Dr. Longo concedes that he never conducted any studies on a Burnham boiler. *See* Affirmation in Opposition to Burnham's Motion for Partial Summary Judgment [*sic*], Exh. 6, Depo. Tr. of William E. Longo, Ph.D., dated December 16, 2015, p. 36, ln. 10-12. In *Dryer v Amchem Products Inc.*, *supra*, the Appellate Division, First Department held that to succeed on a motion for summary judgment, the moving party must support the motion with a fact specific study. Here, the Longo study provides no relevant information regarding the specific products at issue herein, and the specific circumstances in which the instant plaintiff was exposed to asbestos through defendant Burnham's boilers. Thus, defendant Burnham has failed to proffer sufficient evidence to establish entitlement to summary judgment.

Moreover, the Court notes that where a plaintiff provides evidentiary facts tending to show that defendant's warnings were in any way deficient, the adequacy of such warnings are a factual question that should be resolved by a jury. *See Eiser v Feldman*, 123 AD2d 583, 584 (1986). The New York Court of Appeals has also held that "[a] products liability action founded on a failure to warn involves conduct of the defendant having attributes of negligence which the jury may find sufficiently wanton or reckless to sustain an award of punitive damages." *Home Ins. Co. v Am. Home Products Corp.*, 75 NY2d 196, 204 (1990)(internal citations omitted). In mot. seq. no. 004, defendant Burnham Holdings, Inc. proffers the direct testimony of the corporate representative of defendant Burnham, Mr. Roger Pepper who testified that defendant Burnham never place a warning regarding the dangers of asbestos on its boilers. *See* Mot. Seq. No. 004, Notice of Motion, Exh. C, excerpts from the Tr. of Mr. Roger Pepper in *Carilli v Burnham*, dated October 6, 2017, p. 1287, ln. 5-8; p. 1417, ln. 18-25. As such, defendant

Burnham has failed to demonstrate their prima facie burden on summary judgment that punitive damages are not warranted herein. Thus, defendant Burnham's motion is denied.

Accordingly, it is

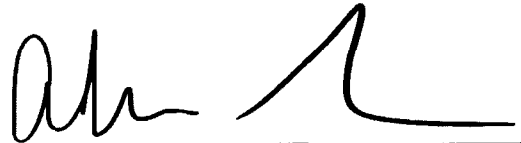
ORDERED that defendant Burnham's motion for partial summary judgment to dismiss plaintiff's claim for punitive damages is denied in its entirety; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this Decision/Order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.

9/16/2024

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