

Battaglia v Amalie Oil Co.

2025 NY Slip Op 30827(U)

March 12, 2025

Supreme Court, New York County

Docket Number: Index No. 158327/2023

Judge: Richard G. Latin

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

PRESENT: HON. RICHARD G. LATIN PART 46M

Justice

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DEAN BATTAGLIA, JEAN BATTAGLIA,

Plaintiff,

- v -

AMALIE OIL COMPANY, AMREP, INC., ASHLAND, LLC.
F/K/A ASHLAND, INC.,AUTOZONE, INC.,BG PRODUCTS,
INC.,BP PRODUCTS NORTH AMERICA INC.,BRENNTAG
NORTHEAST, LLC,F/K/A BRENNTAG NORTHEAST,
INC.,CONOCOPHILLIPS COMPANY, CRC INDUSTRIES,
INC.,ENERGIZER AUTO MANUFACTURING,
INC.,INDIVIDUALLY AND AS SUCCESSOR IN INTEREST
TO THE ARMOR ALL/STP PRODUCTS COMPANY,
GENUINE PARTS COMPANY D/B/A NAPA, HENKEL US
OPERATIONS CORP, INDIVIDUALLY AND SUCCESSOR
IN INTEREST TO LOCTITE CORPORATION, HESS
CORPORATION, HYUNDAI MOTOR AMERICA, ILLINOIS
TOOL WORKS, INC.,D/B/A PERMATEX, D/B/A GUMOUT,
M. SPIEGEL & SONS OIL CORP., NATIONAL
AUTOMOTIVE PARTS ASSOCIATION LLC,SAFETY-
KLEEN SYSTEMS, INC.,SCHRADER-BRIDGEPORT
INTERNATIONAL, INC.,INDIVIDUALLY AND AS
SUCCESSOR-IN-INTEREST TO BRIDGE PRODUCTS,
INC.,BRIDGEPORT BRASS COMPANY AND H.B. EGAN
MANUFACTURING COMPANY, SHELL USA, INC. F/K/A
SHELL OIL COMPANY, SUNOCO R&M, LLC F/K/A
SUNOCO, INC. R&M F/K/A SUN COMPANY, INC. F/K/A
SUN OIL COMPANY, INC.,THE B'LASTER
CORPORATION, THE BERKEBILE OIL COMPANY,
INC.,THE SHERWIN-WILLIAMS COMPANY,
INDIVIDUALLY AND D/B/A THE MARTIN SENOUR
COMPANY, UNITED STATES STEEL CORPORATION,
UNIVAR SOLUTIONS USA, INC.,INDIVIDUALLY F/K/A
AND SUCCESSOR IN INTEREST TO UNIVAR USA,
INC.,CHEMCENTRAL CORP. AND VAN WATERS &
ROGERS,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 37,
38, 39, 40, 41, 42, 43, 47, 181, 182, 183, 184, 185, 186

were read on this motion to/for DISMISS.

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MOTION DATE 04/11/2024

001 002 003
004 005 006
MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 48, 49, 50, 51, 52, 53, 54, 73, 187, 188, 189, 190, 191, 192

were read on this motion to/for _____ DISMISS _____.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 19, 20, 21, 22, 55, 56, 57, 58, 59, 60, 61, 74, 193, 194, 195, 196, 197, 198

were read on this motion to/for _____ DISMISS _____.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 23, 24, 25, 26, 91, 92, 93, 94, 95, 96, 97, 108, 199, 200, 201, 202, 203, 204

were read on this motion to/for _____ DISMISS _____.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 64, 65, 66, 67, 68, 98, 99, 100, 101, 102, 103, 104, 109, 205, 206, 207, 208, 209, 210

were read on this motion to/for _____ DISMISS _____.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 76, 77, 78, 79, 80, 110, 111, 112, 113, 114, 115, 116, 117, 217, 218, 219, 220, 221, 222

were read on this motion to/for _____ DISMISS _____.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 69, 70, 71, 72, 118, 119, 120, 121, 122, 123, 124, 126, 211, 212, 213, 214, 215, 216

were read on this motion to/for _____ DISMISS _____.

Upon the foregoing documents, and after the oral argument on April 11, 2024, the Sherwin-Williams Company's (Sherwin-Williams) seq. no. 001 motion to dismiss is granted in part and denied in part. Univar Solutions USA Inc.'s (Univar) seq. no. 002, CRC Industries, Inc.'s (CRC) seq. no. 003, BP Products North America Inc.'s (BPPNA) seq. no. 004, Energy Transfer (R&M), LLC, F/K/A Sunoco (R&M), LLC's (Sunoco) seq. no. 005, M. Spiegel & Sons Oil Corp.'s (M. Spiegel) seq. no. 006, and Ashland Inc.'s (Ashland) seq. no. 009 motions to dismiss are granted.

Here, plaintiff, Dean Battaglia, alleges that he was exposed to benzene-containing products during his employment from 1968 to 2017, which directly caused his diagnosis of Acute Myeloid Leukemia (NYSCEF #43). Moving defendants have now filed motions for partial dismissal pursuant to CPLR 3211(a)(7) based on plaintiffs' breach of warranty claim falling outside the

statute of limitations, the fraudulent misrepresentation claim being insufficiently pleaded, and the demand for punitive damages being excessive.

Standard

When reviewing a motion to dismiss, the Court must give the plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Barnes v Hodge*, 118 AD3d 633, 633-34 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

Statute of Limitations for Breach of Warranty Claim

Sherwin-Williams' motion to dismiss the breach of implied warranty claim is granted. Likewise, the moving defendants' motions to dismiss the breach of warranty claim are granted. In New York, a cause of action alleging breach of warranty is governed by a four-year statute of limitations (NY UCC 2-725; *Coakley v Regal Cinemas, Inc.*, 188 AD3d 796 [2d Dept 2020]). Both during the oral argument and in legal memoranda submitted to the Court, plaintiffs have agreed to withdraw their claim for breach of implied warranty and breach of warranty against defendants for claims prior to August 22, 2019 (NYSCEF #43). Since plaintiff was only employed from 1968 to 2017, and the statute of limitations bars all claims prior to August 22, 2019, these claims are dismissed in their entirety.

Fraudulent Misrepresentation

The moving defendants' motions to dismiss the fraudulent misrepresentation claim are granted. A fraudulent misrepresentation claim requires a plaintiff to allege that (1) defendant made a materially false representation; (2) defendant intended to defraud plaintiffs; (3) plaintiffs reasonably relied upon the misrepresentation and (4) plaintiffs suffered damages as a result (*see J.A.O. Acquisition Corp. v Stavitsky*, 18 AD3d389 [1st Dept 2005]). To sufficiently plead fraudulent misrepresentation, the circumstances constituting the wrong must be stated in detail. CPLR 3016(b) imposes a heightened standard in which general and conclusory allegations are insufficient.

Here, plaintiffs allege that defendants had specific and constructive knowledge that benzene exposure leads to a high risk of injury or death and that they purposely failed to warn the plaintiff and public. In the complaint, plaintiffs claim that defendants' participation in industry conferences and their supposed knowledge of public safety publications is sufficient to establish intent to defraud (NYSCEF #1). However, the Court finds that these allegations are not stated in sufficient detail because plaintiffs have not explicitly linked the existence of research on the health effects of benzene with the defendants' practices during the plaintiff's employment. The Court finds plaintiffs' assertions to be conclusory and insufficient to plead fraudulent misrepresentation.

Punitive Damages

Sherwin-Williams' request to strike plaintiffs' demand for punitive damages is denied because the demand does not constitute a cause of action. While the court believes that punitive damages should be awarded in rare circumstances, in this case, the punitive damages demand should survive because defendants did not move to dismiss plaintiffs' gross negligence claim. If the gross negligence claim is successful, plaintiffs may have a proper claim for punitive damages

(see e.g. *11 Essex Street Corp. v Tower Ins. Co. of New York*, 81 AD3d 516 [1st Dept 2011] [where allegations of gross negligence implicate public safety, punitive damages may be awarded if allegations are ultimately proven]). Nevertheless, the Court notes that at this stage, discovery into defendants' assets is premature.


Accordingly, it is hereby,

ORDERED that moving defendants' motions to dismiss plaintiffs' breach of warranty claim are granted; and it is further

ORDERED that moving defendants' motions to dismiss plaintiffs' fraudulent misrepresentation claim are granted; and it is further

ORDERED that Sherwin-Williams' motion to dismiss plaintiffs' punitive damages demand is denied.

This constitutes the Decision and Order of the Court.

<u>3/12/2025</u> DATE	 RICHARD G. LATIN, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER