SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 15

20STCV45382 May 9, 2025
GERALD FEIGNER, et al. vs AMERICAN PRESIDENT LINES, LLC, et al. 9:00 AM

Judge: Honorable Timothy Patrick Dillon CSR: None
Judicial Assistant: K. Sandoval ERM: None
Courtroom Assistant: M. Torres Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

Other Appearance Notes: Plaintiff's counsel: David White (X); Defense counsel: Claire C. Weglarz; Richard Hogan and Rob Rodriguez (X);

NATURE OF PROCEEDINGS: Hearing on Motion for Summary Judgment for Defendant Cooper/T.Smith Stevedoring, Inc. (Feigner-20STCV45382); Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication for Defendant Western Auto Supply Company (Feigner-20STCV45382); Hearing on Motion for Summary Judgment or in the Alternative, Summary Adjudication for Defendant Vanderbilt Minerals, LLC (Feigner-20STCV45382);

Matters are called for hearing.

Hearing on Motion for Summary Judgment for Defendant Cooper/T.Smith Stevedoring, Inc.

The Court issues an oral Tentative Ruling. Counsel argue and submit.

The Court places the matter under submission and LATER issues the following Order:

ORDER RE:

DEFENDANT COOPER/T.SMITH STEVEDORING, INC.'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

ORDER RE MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

I. Background

On November 24, 2020, Plaintiffs Gerald and Ethelma Feigner filed their complaint for personal injury alleging Mr. Feigner developed mesothelioma from occupational exposure to asbestos and asbestos containing products during his work as a longshoreman between 1955 and 1990s, as well as direct non-occupational exposure to asbestos containing products doing automotive and home maintenance. On March 1, 2021, Plaintiffs filed their first amended complaint that added causes of action for maritime negligence and strict liability. On May 14, 2021, Mr. Feigner died. On May 12, 2022 Plaintiffs, Ricky Lynn Feigner, Ethelma Feigner, and Tammy Stanaland ("Plaintiffs") filed a separate lawsuit for wrongful death in case no. 22STCV15952. On August 31, 2022, the court issued an order relating these two cases such that the operative complaint in this case is the May 12, 2022 wrongful death complaint. As against Defendant Cooper/T.Smith Stevedoring, Inc. ("Defendant"), Plaintiffs allege that Mr. Feigner was exposed to asbestos from raw asbestos, asbestos-containing pipe, and asbestos containing talc rubber products while unloading those products from Defendant's ships from 1955 to 1965.

On February 18, 2025, Defendant filed its motion for summary judgment arguing that Plaintiffs' discovery responses are factually devoid as to threshold exposure. In the alternative, Defendant moves for summary adjudication of Plaintiffs' claims for punitive damages based on allegedly factually devoid discovery responses.

On April 17, 2025, Plaintiffs filed their opposition. On April 28, 2025, Defendant filed its reply. On May 9, 2025, the court held a hearing.

II. Discussion

A. Legal Standards

A defendant seeking summary judgment must "conclusively negate[] a necessary element of the plaintiff's case, or . . . demonstrate[] that under no hypothesis is there a material issue of fact that requires the process of trial." (Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th 317, 334.) To show that a plaintiff cannot establish an element of a cause of action, a defendant must make the initial showing "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 854.) "The defendant may, but need not, present evidence that conclusively negates an element of the plaintiff's cause of action. The defendant may also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence – as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (Id. at p. 855.) " 'If plaintiffs respond to comprehensive interrogatories seeking all known facts with boilerplate answers that restate their

allegations, or simply provide laundry lists of people and/or documents, the burden of production will almost certainly be shifted to them once defendants move for summary judgment and properly present plaintiff's factually devoid discovery responses.' " (Weber v. John Crane, Inc. (2006) 143 Cal.App.4th 1433, 1440.)

B. Causation

In asbestos litigation, a plaintiff is required to show causation. A plaintiff must show "some threshold exposure to the defendant's defective asbestos-containing products" and must further establish in "reasonable medical probability" that a particular exposure or series of exposures was a "legal cause" of his injury, i.e., a substantial factor in bringing about the injury. (Rutherford v. Owens-Illinois, Inc. (1997) 16 Cal.4th 953, 982.)

Defendant argues that it is entitled to summary judgment because Plaintiffs' discovery responses are factually devoid as to evidence of threshold causation. However, the substance of Defendant's argument is actually based on affirmative evidence that Mr. Feigner never unloaded asbestos containing products from Defendant's ships because it was not a shipping line. Specifically, Defendant argues: "Decedent never worked with Cooper. Decedent misidentified Cooper in his discovery responses and own deposition when he referred to Cooper as a shipping line [UMF 10, 12]. Decedent had no specific recollection of Cooper [UMF 13, 14]. Cooper was a stevedoring company who had limited operations out of the port of Long Beach beginning in 1972 [UMF 1, 2]. Cooper did not work with any asbestos or asbestos containing cargo [UMF 22]. Decedent had no witnesses or documents to show he worked with Cooper [UMF 20, 21]." (Motion at pp. 6.)

1. Defendant's Burden: Affirmative Evidence

Defendant presents insufficient affirmative to evidence to negate the element of threshold exposure. In support of its argument Defendant attaches the declaration of Edward T. Viner, in which he states: "I was employed as the Assistant Vice President of Operations for Cooper/T Smith Stevedoring Company, Inc. ("Cooper"). Virtually from the beginning of Cooper's operations in the Port of Long Beach in 1972 until the end of Cooper's stevedoring operations in the Port of Long Beach in the early 1990s I was one of the people in charge. [¶] 2. Cooper is a stevedoring company with very few west coast operations. Cooper's Long Beach based stevedoring (loading and unloading of ships) operations commenced in 1972 and ended in the early 1990s." (Viner Decl. ¶¶ 1-2.)

In opposition, Plaintiffs argue that this declaration is insufficient to satisfy Defendant's initial moving burden. Specifically, Plaintiffs argue that Mr. Viner's declaration is insufficient for three reasons. First, "Mr. Viner only had personal knowledge starting from 1972. (Id. at ¶ 1.) The affidavit does not attest that Mr. Viner reviewed any historical documents; it is solely based upon his personal knowledge. Mr. Feigner testified that his exposures from unloading asbestos products relating to defendant's ships were from 1955 to 1965. (Ex. 1, Feigner Depo., p. 98:24-99:5) What COOPER may or may not have done from 1972 forward is irrelevant to Plaintiffs' claims in this case." (Opposition at p. 8.) Second, Plaintiffs argue: "Mr. Viner only states that "to the best of his knowledge" Cooper did not load or unload any raw asbestos. Putting aside that his knowledge only began in 1972 which is not during the relevant time period in this case, Plaintiffs have presented evidence of exposure to Mr. Feigner from unloading three different asbestos-containing products; raw asbestos is only one of the three. (Ex. 1, Feigner Depo., p 33:5-18, 63:20-66:1, 76:15-77:2.) As such, this 2016 affidavit fails to address the other asbestos-containing products Mr. Feigner recalled loading and unloading from ships, asbestos cement pipe and rubber dusted with asbestos-containing talc." (Ibid.) Finally, Plaintiffs argue: "the declaration of Mr. Viner is limited to the "Port of Long Beach", as that was the port where he was one of the people in charge of Cooper's operations in Long Beach starting in 1972. (Def. Ex. A, at ¶ 1.) Mr. Feigner testified that he unloaded from four ports in the Los Angeles Harbor: Long Beach, Los Angeles, Terminal Island and Wilmington. (Ex. 1, Feigner Depo., at p. 257:11.) This affidavit completely fails to address the testimony regarding unloading of asbestos products from the other three ports." (Id. at pp. 8-9.)

In reply, Defendant maintains that its affirmative evidence is sufficient to satisfy its initial burden. Defendant argues: "Mr. Viner establishes that Cooper's stevedoring operations in Long Beach Harbor occurred from 1972 until the early 1990s. Moreover, at his deposition, Mr. Feigner acknowledged that he associated the name Cooper/T. Smith Stevedoring with "a shipping line" [UMF 12]. For his part, Ed Viner definitely states that Cooper was not a shipping line, Cooper was a stevedoring company. In fact, per Ed Viner, Cooper is and has always been a stevedoring company with very few west coast operations." (Reply at pp. 2-3.)

On this motion: "The moving party's declarations and evidence will be strictly construed in determining whether they negate (disprove) an essential element of plaintiff's claim 'in order to resolve any evidentiary doubts or ambiguities in plaintiff's [opposing party's] favor' " (See Weil & Brown et al., Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2024) § 10:241.20 [citing Johnson v. American Standard, Inc. (2008) 43 Cal.4th 56, 64].) Therefore, because Defendant is the moving party, the court is required to strictly scrutinize Defendant's evidence to determine whether it negates an essential element of Plaintiffs' causes of action.

Here, the court finds that Defendant's affirmative evidence is insufficient to satisfy its initial moving burden. The substance of Defendant's argument is that Mr. Feigner misidentified Defendant as a shipping company operating between at least 1955 to 1965, when in fact it was a stevedoring company whose Southern California operations began in Long Beach in 1972 and extended to the 1990s. However, strictly construing Mr. Viner's declaration, Defendant fails to show that Mr. Feigner was not exposed to asbestos while unloading products from Defendant's ships. As Plaintiffs argue, Mr. Viner's declaration addresses only the period from 1972 onwards, only Defendant's operations in the port of Long Beach, and only Defendant's responsibility for unloading raw asbestos during that period. (See Viner Decl. ¶ 4 ["I do not recall any discussion of asbestos containing cargos coming into the Port of Long Beach or being handled by ILWU members, despite being present at many IL WU/PMA meetings where extra charges for dangerous commodities and safety were discussed."; ¶ 5 ["To the best of my knowledge, Cooper did not itself load or unload any raw asbestos while it was operating in the Port of Long Beach."].) During his deposition, Mr. Feigner identified Defendant as a shipping company operating throughout the entirety of his career including from 1955 to 1965. (Feigner deposition 272:2-4 ["Do you associate that name, Cooper/T. Smith Stevedoring with anything? A. More of a shipping line."]; 12-19 ["Do you recall when the -- the first year you would have done any work associated with -- with Cooper/T. Smith? A. I started in '55, and I worked 'em all, coming or going, discharging or loading. It was one of the many stevedoring -- or not stevedoring outfits -- shipping lines and/or stevedoring outfits. I worked 'em all."].)

Strictly construing Defendant's evidence and taking the reasonable inferences in the light most favorable to Plaintiffs as the non-moving party, the court cannot conclude that Defendant satisfied its initial burden to negate Plaintiffs' causes of action. Defendant's declaration does not address a key 10-year period in the career of Mr. Feigner, nor does it address each of the ports Mr. Feigner worked at during this period. While one reasonable inference from Mr. Viner's declaration is that Defendant operated no business in Southern California before 1972, the court is not permitted to make inferences from the moving party's declarations on this motion. Therefore, on this motion, the court cannot infer from Mr. Viner's declaration that it never operated as a shipping line or that Defendant was never responsible for shipping an asbestos containing product that Mr. Feigner unloaded. Therefore, the court cannot find that Defendant satisfied its initial burden to negate Plaintiffs' causes of action on affirmative evidence.

2. Defendant's Burden: Factually Devoid

The court also cannot find that Plaintiffs' discovery responses were factually devoid as to

evidence of causation. Defendant fails to present evidence that it propounded comprehensive discovery against Plaintiffs. There is, for example, no evidence of a comprehensive all facts interrogatory directed towards Plaintiffs on the topic of causation. Although such a comprehensive all facts interrogatory is not required to show Plaintiffs discovery responses are factually devoid, Defendant must present sufficient evidence that the court may derive the inference that Plaintiffs lack and cannot reasonably obtain needed evidence. (See Weber v. John Crane, Inc. (2006) 143 Cal.App.4th 1433, 1438 ["The defendant may also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence—as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing. [Citation.]"]; Id. at p. 1442 ["We do not hold that a defendant never will be able to meet its initial burden of persuasion without propounding special interrogatories or engaging in extensive discovery… We do not attempt to define the minimum evidence a defendant must produce to shift the burden to the plaintiff, but we do hold the defendant must in some way show that the plaintiff does not have and cannot reasonably obtain evidence of causation."].)

Here, the deposition testimony Defendant's rely on does not give rise to the inference that Plaintiffs lack and cannot reasonably obtain needed evidence. Although Mr. Feigner's deposition is thin and somewhat equivocal, he does specifically identify Defendant as a shipping company that he worked with throughout his career. (Feigner deposition 272:2-4; 12-19.) Moreover, the court observes that the deposition testimony Defendant relies upon is all drawn from cross examination and therefore more likely to be circumspect or equivocal. Plaintiffs direct the court's attention to additional deposition testimony they argue more concretely establishes Mr. Feigner's identification of Defendant as a company with which he worked. (See, e.g., Plaintiffs' responses to separate statement nos. 11, 14, 22.) However, the pertinent excerpts of this deposition testimony were not attached to the declaration of Plaintiffs' counsel. (See Seitz Decl. Ex. A.) Even so, although the identification is somewhat thin, the court finds that deposition testimony in the record does not establish that Plaintiffs cannot show that Mr. Feigner was exposed to asbestos containing products for which Defendant was responsible. Therefore, Defendant fails to satisfy its initial burden on factually devoid discovery responses.

C. Punitive Damages

Defendant also seeks summary adjudication of Plaintiffs' claim for punitive damages. When the motion targets a request for punitive damages, a higher standard of proof is at play. "Although the clear and convincing evidentiary standard is a stringent one, 'it does not impose on a plaintiff the obligation to "prove" a case for punitive damages at summary judgment [or summary adjudication.' [Citations.] Even so, 'where the plaintiff's ultimate burden of proof will be by

clear and convincing evidence, the higher standard of proof must be taken into account in ruling on a motion for summary judgment or summary adjudication, since if a plaintiff is to prevail on a claim for punitive damages, it will be necessary that the evidence presented meet the higher evidentiary standard.' [Citation.]" (Butte Fire Cases (2018) 24 Cal.App.5th 1150, 1158 1159.) For a corporate defendant, the oppression, fraud or malice "must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code, § 3294, subd. (b).) That requirement can be satisfied " 'if the evidence permits a clear and convincing inference that within the corporate hierarchy authorized persons acted despicably in "willful and conscious disregard of the rights or safety of others." ' [Citation.]" (Morgan v. J-M Manufacturing Company, Inc. (2021) 60 Cal.App.5th 1078, 1090.)

Defendant failed to put punitive damages at issue in its notice of motion. However, in its memorandum of points and authorities, Defendant argues that Plaintiffs' discovery responses are factually devoid as to evidence of malice, fraud, or oppression by any officer, managing agent, or director of Defendant. (Motion at p. 9 ["Here, the Plaintiffs have not met the clear and convincing evidentiary burden that could allow a reasonable jury to make the requisite evidentiary finding of malice, fraud, or oppression underlying the Plaintiffs' punitive damages claim. Decedent's factually devoid deposition testimony does not identify any admissible evidence that can support Plaintiffs punitive damages claims against Cooper."].)

1. Defendant's Burden: Factually Devoid

Defendant fails to satisfy its initial burden to show that Plaintiffs' discovery responses were factually devoid as to evidence of malice, fraud, or oppression by an officer, managing agent, or director of Defendant. Defendant fails to present any evidence that it directed any comprehensive discovery concerning the issue of punitive damages. The court cannot make any inferences that Plaintiffs' discovery responses are factually devoid in the absence of evidence that Defendant sought discovery directed to a topic. (See Scheiding v. Dinwiddie Const. Co. (1999) 69 Cal.App.4th 64, 81 ["we can infer nothing at all with respect to questions which were neither asked nor answered."].) Plaintiffs' theory of punitive damages appears to be that Defendant acted with malice towards him by failing to disclose the known risks of his working with asbestos. Unlike the causation issue, the inability of Mr. Feigner to set forth facts supporting malice, fraud, or oppression, categorically does not give rise to an inference that Plaintiffs' lack and cannot reasonably obtain this evidence to support their claim for punitive damages because, under Plaintiffs' theory of the case, Mr. Feigner would have no reason to know whether any of Defendant's officers, directors, or managing agents acted with malice towards him. Defendant also fails to address its motion for summary adjudication in its reply. Accordingly, Defendant

fails to satisfy its initial burden as to its motion for summary adjudication of punitive damages.

Defendant similarly argued that Plaintiffs' discovery responses were factually devoid as to evidence to support Plaintiffs fifth cause of action for false representation under restatement of Torts section 402-B, and sixth cause of action for intentional tort. However, Defendant also presents no evidence it propounded comprehensive discovery towards this topic. Accordingly, these motions, although not noticed in the notice of motion, are likewise denied.

III. Conclusion

Defendant's motion for summary judgment is denied as follows:

The Hearing on Motion for Summary Judgment for Defendant Cooper/T.Smith Stevedoring, Inc. (Feigner-20STCV45382) scheduled for 05/09/2025 is 'Held - Motion Denied' for case 20STCV45382.

Defendant's motions for summary adjudication are denied.

Moving party Defendant Cooper/T.Smith Stevedoring Inc. is ordered to give notice of this order and is electronically notified to do so.

Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication for Defendant Western Auto Supply Company

The Court issues an oral Tentative Ruling. Counsel argue and submit.

The Court places the matter under submission and LATER issues the following Order:

ORDER RE:

WESTERN AUTO SUPPLY COMPANY'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

ORDER RE MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

I. Background

On November 24, 2020, Plaintiffs Gerald and Ethelma Feigner filed their complaint for personal injury alleging Mr. Feigner developed mesothelioma from occupational exposure to asbestos and asbestos containing products during his work as a longshoreman between 1955 and 1990s, as well as direct non occupational exposure to asbestos containing products doing automotive and home maintenance. On March 1, 2021, Plaintiffs filed their first amended complaint that added causes of action for maritime negligence and strict liability. On May 14, 2021, Mr. Feigner died. On May 12, 2022, Plaintiffs Ricky Lynn Feigner, Ethelma Feigner, and Tammy Stanaland ("Plaintiffs") filed a separate lawsuit for wrongful death in case no. 22STCV15952. On August 31, 2022, the court issued an order relating these two cases such that the operative complaint in this case is the May 12, 2022 wrongful death complaint. As against Defendant Western Auto Supply Company ("Defendant"), Plaintiffs allege that Mr. Feigner was exposed to asbestos from automotive friction products, including Bendix, Grizzly, and Raybestos brakes, Borg-Warner clutches, and Mr. Gasket and Victor brand gaskets from the 1950s to the 1960s.

On March 10, 2025, Defendant filed its motion for summary judgment arguing that Plaintiffs' discovery responses are factually devoid as to threshold exposure. However, as discussed further herein, Defendant is arguing, based on affirmative evidence from a corporate representative, it did not sell the products Plaintiffs allege it sold and Mr. Feigner purchased. In the alternative, Defendant moves for summary adjudication of Plaintiffs' fifth cause of action for false representation under Restatement of Torts section 402-B, sixth cause of action for intentional tort, and Plaintiffs' claim for punitive damages based on allegedly factually devoid discovery responses.

On April 18, 2025, Plaintiffs filed their opposition. On April 28, 2025, Defendant filed its reply. On May 9, 2025, the court held a hearing.

II. Evidentiary Objections

Plaintiffs' Objections:

Sustained:

1. The Declaration of Danny Joe Simmons is inadmissible as to Mr. Simmon's statements regarding what products Defendant sold prior to his employment by the company. As described further herein, Mr. Simmons is not an expert witness, and therefore his testimony is confined to matters within his personal knowledge. (Evid. Code § 702 (a) ["the testimony of a witness

concerning a particular matter is inadmissible unless he has personal knowledge of the matter."].) Mr. Simmon's confirms that his knowledge of the products Defendant supplied in California from the 1950s to the 1960s is as a result of his review of corporate records. (Simmons Decl. ¶¶ ¶¶ 7-12 ["I have reviewed WASC's records maintained in the regular course of business regarding sale of asbestos-containing automotive products."].) Accordingly, Mr. Simmon's is necessarily relying on hearsay, which he is not permitted to do as a non-expert witness. (Cf. LAOSD Asbestos Cases (Ramirez) (2023) 87 Cal.App.5th 939, 951 ["Although [defendant's corporate representative] does not identify any source at all for most of her information, given that she did not work at Avon until 1994, her statements involving activities before that time cannot be based on personal knowledge and must be based on hearsay."].) Defendant also does not present the underlying documents Mr. Simmons upon which is relying. Accordingly, Mr. Simmons's declaration is inadmissible for lack of foundation.

Defendant's Objections:

Overruled:

1. The deposition testimony of Gerald Feigner is admissible on this motion. Defendant's objections to the form of questions are waived to the extent they were not raised during the deposition. (See Code Civ. Proc § 2025.460.) Mr. Feigner's deposition testimony regarding his own prior purchases of products is not hearsay under Code of Civil Procedure section 2025.620. Defendant fails to identify how Mr. Feigner lacked foundation for his testimony as to his use and purchase of products from Defendant, or how his responses to these questions were speculative. Defendant similarly fails to specify how Mr. Feigner's responses assumed facts not in evidence. Accordingly, Defendant's objections as to Mr. Feigner's deposition testimony are overruled.

2-6. Further deposition testimony of Gerald Feigner is admissible for the same reasons described in no. 1.

Not relied upon:

7. The deposition of Danny Joe Simmons is not material to the disposition of this motion. As further described herein, the court finds that Defendant fails to satisfy its initial burden on affirmative evidence. Accordingly, the court need not consider Plaintiffs' affirmative evidence, including this deposition testimony.

8-11. Further deposition testimony of Danny Joe Simmons. The court need not consider this

testimony for the same reasons described in no. 7.

12. Defendant's verified form interrogatory responses in the Bartoli matter are not material to the disposition of this motion for the same reasons described in no. 7.

III. Discussion

A. Legal Standards

A defendant seeking summary judgment must "conclusively negate[] a necessary element of the plaintiff's case, or . . . demonstrate[] that under no hypothesis is there a material issue of fact that requires the process of trial." (Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th 317, 334.) To show that a plaintiff cannot establish an element of a cause of action, a defendant must make the initial showing "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 854.) "The defendant may, but need not, present evidence that conclusively negates an element of the plaintiff's cause of action. The defendant may also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence – as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (Id. at p. 855.) " 'If plaintiffs respond to comprehensive interrogatories seeking all known facts with boilerplate answers that restate their allegations, or simply provide laundry lists of people and/or documents, the burden of production will almost certainly be shifted to them once defendants move for summary judgment and properly present plaintiff's factually devoid discovery responses.' " (Weber v. John Crane, Inc. (2006) 143 Cal.App.4th 1433, 1440.)

B. Causation

In asbestos litigation, a plaintiff is required to show causation. A plaintiff must show "some threshold exposure to the defendant's defective asbestos-containing products" and must further establish in "reasonable medical probability" that a particular exposure or series of exposures was a "legal cause" of his injury, i.e., a substantial factor in bringing about the injury. (Rutherford v. Owens-Illinois, Inc. (1997) 16 Cal.4th 953, 982.)

Defendant argues that it is entitled to summary judgment because Plaintiffs' discovery responses are factually devoid as to evidence of threshold causation. However, the substance of Defendant's argument is actually based on affirmative evidence that Mr. Feigner never worked with Defendant's products. Specifically, Defendant argues: "Here, the Decedent, the lone

product identification witness against WASC, testified over a period of six deposition sessions. As discussed above, during those six deposition sessions, he only identified by name six products he allegedly purchased or obtained from WASC: Bendix brakes, Grizzly brakes, Raybestos brakes, Victor gaskets, Mr. Gasket gaskets, and Borg Warner clutches. That being said, it is undisputed that WASC did not distribute any of the brands of brakes or gaskets or clutches identified by the Decedent." (Motion at pp. 5- 6.)

1. Defendant's Burden: Affirmative Evidence

Defendant presents insufficient affirmative to evidence to negate the element of threshold exposure. In support of its motion, Defendant presents the declaration of Danny Joe Simmons in which he states that based on a review of "WASC records maintained in the regular course of business regarding sales of asbestos-containing automotive products," Defendant did not "sell, supply, distribute, market or gain any financial benefit" from "Bendix-brand brakes," "Raybestos-brand brakes," "Grizzly-brand brakes," "Borg Warner-brand clutches," "Mr. Gasket brand gaskets," or "Victor-brand gaskets" at any time in the 1950s or 1960s. (Simmons Decl. ¶¶ 7-12.)

In opposition, Plaintiffs argue that this declaration is insufficient to satisfy Defendant's initial moving burden. Specifically, Plaintiffs argue: "Western Auto attempts to argue that Mr. Feigner's testimony is worthless because of a declaration signed by Joe Simmons. However, at the summary judgment stage the Court must give Plaintiffs all reasonable inferences from the evidence, including Mr. Feigner's deposition testimony and Plaintiffs' discovery responses. This is enough for a reasonable jury to infer that Western Auto sold a variety of asbestos-containing automobile parts and Mr. Feigner purchased, used, and was exposed to the dust from them." (Opposition at p. 7.) Plaintiffs direct the court's attention to portions of their special interrogatory responses in which they state: "Mr. Feigner testified that he bought automotive parts including brakes, clutches and gaskets from Western Auto. (Id. at 171-172). He was exposed to dust from brakes, clutches and gaskets that came from Western Auto. (Id. at 176-178)… Mr. Feigner identified the automotive parts bought from Western Auto because the brand name was everywhere, on the product, on the walls of the store, on the bags, boxes, and receipts. (Id. at 179-180). Mr. Feigner testified that in the mid1950s he bought items such as brakes, clutches, and gaskets, and other auto parts at Western Auto because it was close to his house. (Id. at 561-562). He commonly bought Bendix, Raybestos, and Grizzly brands of brakes and BorgWarner clutches at Western Auto. (Id. at 636-637). He also bought gaskets, such as Victor and Mr. Gasket gaskets, at Western Auto. (Id. at 641)." (Opposition at pp. 6-7.)

In reply, Defendant maintains that its affirmative evidence is sufficient to satisfy its initial burden. Defendant argues: "Plaintiffs claim Mr. Feigner was exposed to Bendix brakes, Grizzly brakes, Raybestos Brakes, Borg Warner Clutches, Mr. Gasket gaskets, and Victor gaskets. At deposition, Decedent testified he started working with automotive parts in the 1950's and stopped in the 1960's. During that time, he allegedly used. Plaintiffs claim Mr. Feigner was exposed to Bendix brakes, Grizzly brakes, Raybestos Brakes, Borg Warner Clutches, Mr. Gasket gaskets, and Victor gaskets. At deposition, Decedent testified he started working with automotive parts in the 1950's and stopped in the 1960's. During that time, he allegedly used Bendix, Grizzly, and Raybestos-branded brakes, as well as Borg Warner clutches, and Mr. Gasket and Victor gaskets. However, the declaration of Dan Simmons is clear, admissible evidence that shows WASC did not re-manufacture, distribute, market, sell or supply those products in the 1950's or 1960's. That is admissible, competent evidence sufficient to shift the burden from WASC to Plaintiffs. The clear, unambiguous declaration of Dan Simmons is competent evidence that shifts the burden from WASC to Plaintiffs." (Reply at pp. 2-3.)

On this motion: "The moving party's declarations and evidence will be strictly construed in determining whether they negate (disprove) an essential element of plaintiff's claim 'in order to resolve any evidentiary doubts or ambiguities in plaintiff's [opposing party's] favor' " (See Weil & Brown et al., Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2024) § 10:241.20 [citing Johnson v. American Standard, Inc. (2008) 43 Cal.4th 56, 64].) Therefore, because Defendant is the moving party, the court is required to strictly scrutinize Defendant's evidence to determine whether it negates an essential element of Plaintiffs' causes of action.

Here, the court finds that Defendant's affirmative evidence is insufficient to satisfy its initial moving burden. The substance of Defendant's argument is that Mr. Feigner misidentified either the products or retailer he purchased asbestos-containing automotive products in the 1950s and 1960s because Defendant did not sell the products Mr. Feigner identified. Defendant presents the declaration of an employee who, perhaps unsurprisingly, did not work for the company during the 1950s and 1960s, and who appears to have never worked at either of the stores from which Mr. Feigner stated he bought supplies. (See Simmons Decl. ¶ 2.) Instead, Mr. Simmons bases his declaration on a review of Defendant's records. (Simmons Decl. ¶¶ 7-12 ["I have reviewed WASC's records maintained in the regular course of business regarding sale of asbestos-containing automotive products."] However, Mr. Simmons is not qualified as an expert witness; he is therefore only permitted to testify as to matters within his personal knowledge. Corporate records, even those which may otherwise be admissible hearsay under the evidence code, are not matters within his personal knowledge. Defendant also does not present the underlying corporate records Mr. Simmons reviewed. Accordingly, Mr. Simmon's lacks foundation as to his

declaration that Defendant never sold Bendix, Raybestos, or Grizzly brand brakes, Borg Warner brand clutches, or Mr. Gasket and Victor brand gaskets. The court cannot resolve on this motion whether Mr. Feigner's purchases were made at an "independently owned" location. The meaning of "independently owned" is also not clear or developed on this motion. These issues will be aired out and resolved at trial. Therefore, Defendant's inadmissible affirmative evidence is insufficient to satisfy its initial burden.

Even if the court did find that Defendant satisfies its initial burden, Plaintiffs present sufficient evidence to create a triable issue of material fact as to Mr. Feigner's exposure to these products for which Defendant is responsible. During his deposition, Mr. Feigner specifically stated that he bought Bendix, Raybestos, or Grizzly brand brakes, Borg Warner brand clutches, and Mr. Gasket and Victor brand gaskets from the Long Beach and Wilmington stores. (Feigner deposition 636:4-9 ["Okay. Do you recall the brand name of any of the brakes that you bought at that store? A. I was usually consistent with the three brands or whatever was available, and usually Bendix was there and Grizzly were there -- were popular ones. I bought everything for -- at all stores."]; 637:5-12 ["Q. Do you recall the brand name of any of the clutches that you purchased at -- at the Western Auto stores in the 1950s that you went to -- A. BorgWarner was my -- Q.-- in Wilmington? A. BorgWarner was my go-to for some reason at -- we didn't have a huge selection of products like they do now."];641:13-18 ["Okay. And do you recall the brand name or manufacturer of any of the gaskets that you purchased from Western Auto? A. From all the stores that I dealt with, Western Auto was one. I got Victor, Mr. Gasket, were the two common ones."].) Accordingly, there is a triable dispute of material fact as to what products Defendant was selling in California in the 1950s and 1960s. As Plaintiffs argue, the only way to resolve this dispute would be by making a credibility determination between the Simmons declaration and Mr. Feigner's deposition. The court cannot make such a credibility determination on this motion. (Binder v. Aetna Life Ins. Co. (1999) 75 Cal.App.4th 832, 840 ["The trial court may not weigh the evidence in the manner of a factfinder to determine whose version is more likely true. [Citation.] Nor may the trial court grant summary judgment based on the court's evaluation of credibility. [Citation.] Nor may the trial court grant summary judgment for a defendant based simply on its opinion that plaintiff's claims are 'implausible,' if a reasonable factfinder could find for plaintiff on the evidence presented."].) Therefore, because Defendant fails to satisfy its initial moving burden, and even if it satisfies its moving burden, Plaintiffs present a triable issue of material fact, Defendant's motion for summary judgment is denied.

C. Motions for Summary Adjudication

Defendant also seeks summary adjudication of Plaintiffs' fifth cause of action for false

representation under Restatement of Torts section 402-B, sixth cause of action for intentional tort, and Plaintiffs' claim for punitive damages. Plaintiffs do not mention, let alone oppose, Defendant's motions for summary adjudication in their opposition memorandum. Plaintiffs also do not dispute any of the facts underlying Defendant's motions for summary adjudication for the fifth or sixth causes of action in their responses to Defendant's separate statement. Based on Plaintiffs' non-opposition, as well as a review of Plaintiffs' special interrogatory responses discussed further herein, the court finds that Plaintiffs' discovery responses are factually devoid as specific facts to support their fifth and sixth causes of action. Plaintiffs present no evidence or argument to support those causes of action. Therefore, the court grant's defendant's motions for summary adjudication as to Plaintiffs' fifth cause of action for false representation under Restatement of Torts section 402-B and sixth cause of action for intentional tort.

However, Plaintiffs do dispute Defendant's motion for summary judgment as to punitive damages in their responses to Defendant's separate statements of undisputed facts. Accordingly, the court addresses this motion for summary adjudication separately.

D. Punitive Damages

When the motion targets a request for punitive damages, a higher standard of proof is at play. "Although the clear and convincing evidentiary standard is a stringent one, 'it does not impose on a plaintiff the obligation to "prove" a case for punitive damages at summary judgment [or summary adjudication.' [Citations.] Even so, 'where the plaintiff's ultimate burden of proof will be by clear and convincing evidence, the higher standard of proof must be taken into account in ruling on a motion for summary judgment or summary adjudication, since if a plaintiff is to prevail on a claim for punitive damages, it will be necessary that the evidence presented meet the higher evidentiary standard.' [Citation.]" (Butte Fire Cases (2018) 24 Cal.App.5th 1150, 1158 1159.) For a corporate defendant, the oppression, fraud or malice "must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code, § 3294, subd. (b).) That requirement can be satisfied " 'if the evidence permits a clear and convincing inference that within the corporate hierarchy authorized persons acted despicably in "willful and conscious disregard of the rights or safety of others." ' [Citation.]" (Morgan v. J-M Manufacturing Company, Inc. (2021) 60 Cal.App.5th 1078, 1090.)

Defendant argues: "WASC's Special Interrogatory No. 8 to Plaintiffs Ricky Feigner and Tammy Stanaland asked them to 'state all facts' to support their claim for punitive damages against WASC. In response, Plaintiffs' referred their Response to Special Interrogatory No. 1, which sets forth various conclusory allegations against WASC that were factually devoid as to the issue of

Plaintiffs' claim for punitive damages." (Motion at p. 13.)

1. Defendant's Burden: Factually Devoid

Defendant satisfies its initial burden to show that Plaintiffs' discovery responses were factually devoid as to evidence of malice, fraud, or oppression by an officer, managing agent, or director of Defendant. Defendant presents evidence it propounded special interrogatory no. 8 on Plaintiffs which asked them to "State all facts upon which YOU base YOUR contention that WASC is liable for punitive damages, as alleged in YOUR COMPLAINT" (Defendant's Index of Exhibits Ex. E at p. 9.) In response, Plaintiffs refer back to their response to special interrogatory no. 1, Defendant's "all facts" interrogatory. Plaintiffs' pertinent responses read: "Commencing in 1930 with the study of mine and mill workers at Asbestos and Thetford mines in Quebec, Canada, and the study of workers at Raybestos-Manhattan plants in Manheim and Charleston, South Carolina, Defendants knew and possessed medical and scientific information of the connection between inhalation of asbestos fibers and asbestosis, which information was disseminated. The overwhelming historical scientific literature regarding the known hazards of asbestos is too voluminous to recite in its entirety herein. Several representative examples are: . . ." (Id. at p. 4.)

In opposition, Plaintiffs dispute Defendant's characterization of their discovery responses as factually devoid. Plaintiffs argue: "This fact is not a fact at all, but rather the argumentative and conclusory assertions of Defendant's counsel. Arguments of counsel are not evidence. (Gdowski v. Gdowski (2009) 175 Cal.App.4th 128, 138-139; Duchrow v. Forrest (2013) 215 Cal.App.4th 1359, 1379-1380.)" (Plaintiffs' response to Defendant's separate statement no. 42.)

Here, the court finds Plaintiffs' discovery responses were factually devoid as to specific facts supporting their claim for punitive damages. Plaintiffs provide no specific facts to support their allegations that any specific officer, director, or managing agent of Defendant knew of the risks of asbestos. At best, Plaintiffs make general and conclusory assertions as to the knowledge of Defendant based on the existence of certain scientific studies and articles available to it. However, Plaintiffs never provide specific facts to show that Defendant, through any officer, director, or managing agent, had actual knowledge of these facts. Accordingly, Defendant satisfies its initial burden to show Plaintiffs' discovery responses were factually devoid as to evidence of malice, fraud, or oppression on the part of any officer, director, or managing agent of Defendant.

2. Plaintiffs' Burden

Plaintiffs fail to satisfy their burden to show a triable issue of material fact as to malice, fraud, or oppression on the part of any officer, director, or managing agent of Defendant. Plaintiffs do not present any affirmative evidence to support their claims for punitive damages. Moreover, as stated, Plaintiffs fail to raise any argument regarding punitive damages in their opposition. Accordingly, the court finds that Plaintiffs effectively concede their claim for punitive damages. Therefore, Defendant's motion for summary adjudication of Plaintiffs' claim for punitive damages is granted.

IV. Conclusion

Defendant's motion for summary judgment is denied as follows:

The Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication for Defendant Western Auto Supply Company (Feigner-20STCV45382) scheduled for 05/09/2025 is 'Held - Motion Denied' for case 20STCV45382.

Defendant's motions for summary adjudication of Plaintiffs' fifth cause of action for false representation under Restatement of Torts section 402-B, sixth cause of action for intentional tort, and claim for punitive damages are granted.

Moving party Defendant Western Auto Supply Company is ordered to give notice of this order and is electronically advised to do so.

Hearing on Motion for Summary Judgment or in the Alternative, Summary Adjudication for Defendant Vanderbilt Minerals, LLC

The Hearing on Motion for Summary Judgment or in the Alternative, Summary Adjudication for Defendant Vanderbilt Minerals, LLC (Feigner-20STCV45382) scheduled for 05/09/2025 is 'Held' for case 20STCV45382.

The Court issues an oral Tentative Ruling. Counsel argue and submit.

The Court sets the following: Non-Appearance Case Review Re: Ruling on Defendant Vanderbilt Minerals, LLC's Motion for Summary Judgment or in the Alternative, Summary Adjudication (Feigner-20STCV45382) is scheduled for 05/15/2025 at 09:00 AM in Department 15 at Spring Street Courthouse on case 20STCV45382.

20STCV45382 May 9, 2025
GERALD FEIGNER, et al. vs AMERICAN PRESIDENT LINES, LLC, et al. 9:00 AM

Judge: Honorable Timothy Patrick Dillon CSR: None
Judicial Assistant: K. Sandoval ERM: None
Courtroom Assistant: M. Torres Deputy Sheriff: None

Notice is deemed waived.

A copy of this minute order will append to the following coordinated case under JCCP4674: 20STCV45382.