

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FRANK J. SHELTON, ET AL.,

Plaintiffs,

vs.

**AIR & LIQUID SYSTEMS CORPORATION, ET
AL.,**

Defendants.

Case No.: 4:21-cv-04772-YGR

**ORDER GRANTING JOINT DEFENSE MOTION
FOR APPLICATION OF FEDERAL MARITIME
LAW; RESULTING DISMISSAL OF PUNITIVE
DAMAGES AND LOSS OF CONSORTIUM CAUSE
OF ACTION**

Dkt. No. 289

Plaintiffs Frank Shelton and Jennifer Schuyler filed this action asserting claims for negligence, breach of implied warranty, strict liability, fraud & concealment, conspiracy to defraud and failure to warn, loss of consortium, with a prayer for damages seeking punitive damages, amongst other relief. (Dkt. No. 1-1, Complaint, “Compl.”). Plaintiff Shelton alleges that he was exposed to asbestos while he worked on as a Machinist’s Mate while stationed abroad the USS Constellation, USS Repose, and USS Haleakala in the 1960s to the early 1970s which caused him to develop mesothelioma. (*Id.* ¶¶ 5-6.)

Currently before the Court is all of the defendants’ Joint Defense Motion for Application of Federal Maritime Law and the Resulting Dismissal of Plaintiffs’ Loss of Consortium Cause of Action and Prayer for Punitive Damages. (Dkt. No. 289, Motion, “Mot.”). This motion resulted from a comprehensive case management discussion regarding procedures and motions which would facilitate resolution of this action in the most efficient manner.

Having carefully considered the papers submitted and the pleadings in this action, and for the reasons set forth below, the Court **GRANTS** the motion.

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I. BACKGROUND

The complaint alleges the following:

Shelton served in the Navy from approximately the mid-1960s to the early 1970s. (Compl. ¶ 5.) During his time with the Navy, Shelton worked as a Machinist Mate while stationed aboard the USS Constellation, USS Repose, and USS Haleakala, where he regularly and routinely performed maintenance and repairs to various equipment in the machinery spaces to which he was assigned. (*Id.*) Shelton was tasked with disturbing, sanding, scraping, cutting and abrading asbestos-containing components of the equipment. (*Id.*) As a result, Shelton was exposed to asbestos-containing products and developed malignant mesothelioma as a result of the exposure. (*Id.* ¶ 6.)

II. WHETHER CALIFORNIA OR MARITIME LAW APPLIES

While the parties dispute whether California state law or federal maritime law applies to plaintiffs’ claims stemming from Shelton’s exposure to asbestos while working for the U.S. Navy, the parties do not dispute the general test to determine whether maritime law applies. A party seeking to invoke federal maritime law over a tort claim must satisfy conditions of both the (1) location test and (2) the connection test. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534, 115 S. Ct. 1043 (1995). First, under the location test, the court must determine “whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water.” *Id.* Next, the connection test requires two determinations. The court must determine whether (i) the incident has a “potentially disruptive impact on maritime commerce” and (ii) the “general character” of the “activity giving rise to the incident” shows a “substantial relationship to traditional maritime activity.” *Id.* at 527.

1. Location Test

The parties dispute whether the location test is satisfied. As noted, the location requires that “the tort occurred on navigable water” or that the “injury suffered on land was caused by a vessel on navigable water.” *Id.* at 534. Courts have held that exposure to asbestos as a result of work on ship is sufficient to satisfy the location test so long as the exposure occurred on a vessel on navigable waters. *See Myhran v. Johns-Manville Corp.*, 741 F.2d 1119, 1121 (9th Cir. 1984) (finding that plaintiff’s

1 “expos[ure] to asbestos products during the repair of vessels floating on navigable waters” satisfies
2 the location test).

3 Here, Shelton alleges that he was exposed to asbestos while working as a machinist mate
4 abroad the USS Constellation, USS Repose, and USS Haleakala. (Compl. ¶ 5.) As a machinist mate,
5 Shelton worked repairing and maintaining the equipment in the engine room. (Dkt. No. 289-4,
6 Shelton’s September 30, 2021 deposition (“Shelton Dep.” at 17:12-19:8).) Shelton worked and served
7 on these ships as they moved “up and down the Vietnamese coast” and typically worked on the
8 repairs that exposed him to asbestos in the engine room once the ships were docked at the port. (*Id.*
9 19:15-21, 37:19-38:15.) Accordingly, Shelton’s allegations that he was exposed to asbestos while
10 aboard ships combined with his testimony about the nature of his work on those ships are sufficient to
11 establish for these purposes that his alleged exposure to asbestos even if “suffered on land was caused
12 by a vessel on navigable water,” *i.e.* he worked on ships while in navigable waters. *Sisson v. Ruby*,
13 497 U.S. 358, 363, 110 S. Ct. 2892 (1990) (“vessel docked at marina” was on navigable waters).

14 Shelton makes a creative argument that the “tort” did not occur on navigable waters because
15 his claims focus on conduct at the manufacturing plant, such as the failure to warn and the injury, *i.e.*
16 development of mesothelioma, did not necessarily occur on navigable waters as well. The argument
17 does not persuade. Shelton cannot escape that but-for his connection and work on the ships, there
18 would be no tort to claim. Accordingly, the Court finds that the location test is met here and now
19 considers the two-part connection test.

20 **2. Connection Test**

21 *a. Whether the incident has a potentially disruptive impact on maritime commerce*

22 This first inquiry “turns . . . on a description of the incident at an intermediate level of possible
23 generality,” requiring the court to ask, “whether the incident could have been seen within a class of
24 incidents that posed more than a fanciful risk to commercial shipping.” *Grubart*, 513 U.S. at 538-539.
25 Thus, the inquiry focuses on “whether the general features of the incident could hypothetically have
26 an effect on maritime commerce. It does not require that any impact actually occurred.” *Christensen v.*
27 *Georgia-Pac. Corp.*, 279 F.3d 807, 815 n. 31 (9th Cir. 2002); *see also Grubart*, 513 U.S. at 538
28 (explaining that the inquiry goes to the “potential effects, not to the particular facts of the incident.”)

1 The Ninth Circuit has “taken an inclusive view of what general features of an incident have a
2 potentially disruptive effect on commerce.” *In re Mission Bay Jet Sports, LLC*, 570 F.3d 1124, 1128
3 (9th Cir. 2009) (collecting cases).

4 Here, cases have found that unsafe working conditions aboard a vessel under repairs or
5 maintenance poses a potentially disruptive impact upon maritime commerce. *Alderman v. Pac. N.*
6 *Victor, Inc.*, 95 F.3d 1061, 1064 (11th Cir. 1996); *Coats v. Penrod Drilling Corp.*, 61 F.3d 1113, 1119
7 (5th Cir. 1995) (en banc) (“Without a doubt, worker injuries, particularly to those involved in repair
8 and maintenance, can have a disruptive impact on maritime commerce by stalling or delaying the
9 primary activity of the vessel.”); *White v. United States*, 53 F.3d 43, 47 (4th Cir. 1995) (person injured
10 while disembarking a ship docked during repairs “poses a more than fanciful risk to a variety of
11 activities essential to maritime commerce.”); *see also Conner v. Alfa Laval, Inc.*, 799 F. Supp. 2d 455,
12 467–38 (E.D. Pa. 2011) (asbestos MDL action) (explaining that asbestos-related injuries could cause a
13 labor shortage which would “ disrupt the Navy’s ability to protect other commercial ships at sea if
14 called upon to do so” and explaining that fewer workers familiar with asbestos could lead to increased
15 ship fires).

16 The alleged unsafe conditions here fall squarely within this jurisprudence. The alleged injury
17 could be considered a “general feature of the incident,” namely “injury to a worker on U.S. Navy
18 ships on navigable waters due to the exposure of allegedly defective products.” Alternatively, the
19 alleged tort itself claims that “the use of asbestos in products and failing to warn U.S. Navy workers
20 who used those products to repair boats at sea.” In either event, the incident at issue involves injury to
21 workers on Navy ships. The exposure to unsafe products and resulting injuries “could have the
22 potential to disrupt further repairs of th[e] vessel, vessels being worked on at the same dock, or
23 vessels waiting to be worked upon. Not only could it inhibit the maritime commerce of the vessel
24 under repair, but it could easily disrupt other vessels.” *Alderman*, 95 F.3d at 1064. That disruption did
25 not actually occur is not dispositive. *Christensen*, 279 F.3d at 815 n. 31 (explaining that actual impact
26 is not required). The first prong of the connection test is satisfied.

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1 *b. Whether there is a substantial relationship to traditional maritime activity*

2 Under the second inquiry of the connection test, the Court must consider whether the “general
3 character” of the “activity giving rise to the incident” bears on a “substantial relationship to [a]
4 traditional maritime activity.” *Grubart*, 513 U.S. at 534. The Court must define what constitutes the
5 “activity giving rise to the incident.” *Id.* In identifying the activity, the focus is on the “general
6 character of the activity” as opposed to the “precise factual antecedents of the incident at issue.”
7 *Gruver v. Lesman Fisheries, Inc.*, 489 F.3d 978, 985 (9th Cir. 2007). The relevant inquiry is on “the
8 behavior of the tortfeasor . . . that is an arguably proximate cause of the injury.” *Id.* (quotations
9 omitted.) Notwithstanding that, the court must not characterize the activity “so generally as to ignore
10 the maritime context.” *Id.* at 986.

11 Here, the Court finds that the general activity giving rise to the incident is defendants’
12 manufacture of products used vessel repairs. *See Conner*, 799 F. Supp. 2d at 469. Shelton alleges that
13 he worked on products such as the “gaskets, packing, and insulation” which are all necessary to the
14 proper functioning and maintenance of ships. (Compl. ¶ 5.) Thus, the Court finds that the allegedly
15 defective products and production bear a substantial relationship to traditional maritime activity.
16 *Martinez v. Pac. Indus. Serv. Corp.*, 904 F.2d 521, 524 (9th Cir. 1990) (explaining that maritime law
17 “is concerned with what keeps a ship in good working order.”)

18 In sum, the Court finds that both the location and connection tests are met.¹ Accordingly,
19 plaintiffs’ claims are subject to maritime law. *See Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986,
20 991 (treating Navy sailor’s asbestos injury claim as a “maritime tort case”).

21 ¹ Plaintiffs argue that the reasoning in *Myhran*, 741 F.2d 1119 and *Owens-Illinois, Inc. v. U.S.*
22 *Dist. Ct. for W. Dist. of Washington, at Tacoma*, 698 F.2d 967 (9th Cir. 1983) with respect to the
23 connection test should be applied here because those decisions were never overruled and remain good
24 law. In those cases, the Ninth Circuit applied a four-part framework under the connection test and
25 found that plaintiff’s asbestos-related injuries did not meet the connection test for application of
26 maritime law. However, the Supreme Court and more recent circuit decisions have rejected the four-
27 part connection test framework analyzed in both *Myhran* and *Owens-Illinois*. *See Grubart*, 513 U.S. at
28 544 (expressly disavowing the use of the same four-factors used in *Myhran* and *Owens-Illinois*); *see*
also Sisson, 497 U.S. at 365 (disavowing of similar multi-factor test); *Gruver*, 489 F.3d at 984 n.7
(same). Because the courts’ analyses in both *Myhran and Owens-Illinois, Inc.* hinged on those four
factors as the key reasoning for rejecting maritime law, the Court does not find their application
persuasive. Moreover, *Owens-Illinois* is further distinguishable because that case involved a
“plaintiff’s land-based exposure to asbestos,” not one’s exposure at sea. 698 F.2d at 969.

