UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

| | |
|---|---|
| EVELYN CONERLY HUTCHINS, ET AL. | CIVIL ACTION |
| VERSUS | NO: 19-11326<br>c/w 21-369 |
| ANCO INSULATIONS, INC., ET AL. | SECTION: "J"(5) |

**ORDER**

Before the Court are two motions for summary judgment **(Rec. Docs. 373 and 379)** filed by Plaintiffs, Evelyn Conerly Hutchins, Derek Hutchins, and Dolan Hutchins in this case. The first motion regarding Johns-Manville (Rec. Doc. 373) was opposed by Defendant, Huntington Ingalls, Inc. ("Avondale"). The second motion regarding Westinghouse was opposed by both Avondale and Third-Party Plaintiff, Continental Insurance Company. The Court considers each of the motions and legal memoranda in turn, as well as the record and applicable law.

**FACTS AND PROCEDURAL BACKGROUND**

Plaintiffs allege that the decedent, Raymond Hutchins, Jr. ("Mr. Hutchins"), was exposed to asbestos while aboard vessels owned and operated by his employer, Lykes Bros. Steamship Company. ("Lykes Bros.") Mr. Hutchins allegedly worked aboard multiple Lykes Bros. vessels which were built by Avondale Shipyard pursuant to contracts with the United States Maritime Administration (MARAD). Originally, Plaintiffs filed suit in state court against more than 30 defendants, including Huntington Ingalls, Avondale's successor. In response, on June 21, 2019, Huntington

Ingalls removed the case to federal court, asserting federal officer jurisdiction. Subsequently, on February 24, 2020, Plaintiff filed a separate suit in state court against Continental, Lykes Bros.' alleged insurer. Continental removed the case to this Court on February 19, 2021, also asserting federal officer jurisdiction, and this new case was subsequently consolidated with the original case. Plaintiffs have now moved for summary judgment against numerous Defendants, arguing that there is no evidence that Mr. Hutchins was exposed to asbestos manufactured, sold, or supplied by any of the Defendants named in these motions.

## LEGAL STANDARD

Summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (citing FED. R. CIV. P. 56); *see Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). When assessing whether a dispute as to any material fact exists, a court considers "all of the evidence in the record but refrains from making credibility determinations or weighing the evidence." *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.,* 530 F.3d 395, 398 (5th Cir. 2008). All reasonable inferences are drawn in favor of the nonmoving party, but a party cannot defeat summary judgment with conclusory allegations or unsubstantiated assertions. *Little*, 37 F.3d at 1075. A court ultimately must be satisfied that "a reasonable jury could not return a verdict for the nonmoving party." *Delta*, 530 F.3d at 399.

If the dispositive issue is one on which the moving party will bear the burden of proof at trial, the moving party "must come forward with evidence which would 'entitle it to a directed verdict if the evidence went uncontroverted at trial.'" *Int'l Shortstop, Inc. v. Rally's, Inc.,* 939 F.2d 1257, 1264-65 (5th Cir. 1991). The nonmoving party can then defeat the motion by either countering with sufficient evidence of its own, or "showing that the moving party's evidence is so sheer that it may not persuade the reasonable fact-finder to return a verdict in favor of the moving party." *Id.* at 1265.

If the dispositive issue is one on which the nonmoving party will bear the burden of proof at trial, the moving party may satisfy its burden by merely pointing out that the evidence in the record is insufficient with respect to an essential element of the nonmoving party's claim. *See Celotex*, 477 U.S. at 325. The burden then shifts to the nonmoving party, who must, by submitting or referring to evidence, set out specific facts showing that a genuine issue exists. *See id.* at 324. The nonmovant may not rest upon the pleadings but must identify specific facts that establish a genuine issue for trial. *See id.* at 325; *Little*, 37 F.3d at 1075.

Under Louisiana law, in an asbestos exposure case, the claimant must show that (1) "he had significant exposure to the product complained of," and that (2) the exposure to the product "was a substantial factor in bringing about his injury." *Rando v. Anco Insulations, Inc.*, 16 So. 3d 1065, 1091 (La. 2009) (quoting *Asbestos v. Bordelon, Inc.*, 726 So. 2d 926, 948 (La. App. 4 Cir. 1998)). The plaintiff bears the burden of proof on both elements. *Vodanovich v. A.P. Green Indus., Inc.*, 869 So. 2d

930, 932 (La. App. 4 Cir. 2004). When there are multiple causes of injury, "a defendant's conduct is a cause in fact if it is a substantial factor generating plaintiff's harm." *Adams v. Owens-Corning Fiberglas Corp.*, 923 So. 2d 118, 122 (La. App. 1 Cir. 2005) (citing Vodanovich, 969 So. 2d at 932).

"Because there is a medically demonstrated causal relationship between asbestos exposure and mesothelioma, every non-trivial exposure to asbestos contributes to and constitutes a cause of mesothelioma." *Labarre v. Bienville Auto Parts, Inc.*, No. 21-89, 2022 WL 293250, at *3 (E.D. La. Feb. 1, 2022) (citing *McAskill v. Am. Marine Holding Co.*, 9 So. 3d 264, 268 (La. App. 4 Cir. 2009)). Thus, as the Fifth Circuit has explained, "[e]ven if the plaintiff was only exposed to asbestos for a 'short period for an employer[,] and he had longer exposure working for others, it cannot be said the relatively short asbestos exposure was not a substantial factor in causing his mesothelioma.'" *Williams v. Boeing Co.*, 23 F.4th 507, 512 (5th Cir. 2022) (quoting *Rando*, 16 So. 3d at 1091). To defeat a motion for summary judgment in an asbestos case, the non-movant "need only show that a reasonable jury could conclude that it is more likely than not that [plaintiff] inhaled defendant's asbestos fibers, even if there were only 'slight exposures.'" *Id.* (citing *Held v. Avondale Indus., Inc.*, 672 So. 2d 1106, 1109 (La. App. 4 Cir. 1996)). The same causation standard (the substantial factor test) is used in cases involving product liability defendants and premises owner defendants. *Thomas v. A.P. Green Indus., Inc.*, 05-1064, pp. 22-23 (La. App. 4 Cir. 5/31/06), 933 So.2d 843, 860 (citing *Zimko v. American Cyanamid*, 2003-0658, p. 26

(La. App. 4 Cir. 6/8/05), 905 So.2d 465, 485, *writ denied*, 2005-2102 (La. 3/17/06), 925 So.2d 538).

**PLAINTIFFS' MOTIONS**

Plaintiffs have filed numerous, virtually-identical motions for summary judgment. Each of Plaintiffs' motions presents the reverse of a typical motion for summary judgment. In each of these instances, Plaintiffs' have moved for summary judgment as to their own claims against the Defendants, arguing that there is no evidence that Mr. Hutchins was exposed to asbestos that was manufactured, sold, or supplied by any of these entities. In most if not all of these cases, it appears that Plaintiffs have already settled with these Defendants. Continental Insurance Company, the alleged insurer of Mr. Hutchins' employer, Lykes Bros., has opposed each of Plaintiffs' motions, arguing that there are genuine issues of material fact as to whether Mr. Hutchins was exposed because of the Defendant and whether this exposure was a substantial contributing factor to his mesothelioma. Continental also argues that Plaintiffs are merely trying to preclude the allocation of comparative fault and maximize their recovery against Lykes Bros. and its insurer, Continental. Avondale has also opposed many of Plaintiffs' motions, again asserting that there are genuine issues of material fact.

1. ***Motion for Partial Summary Judgment as to Johns-Manville*** **(Rec. Doc. 373)**

Plaintiffs argue that "none of the evidence in this case establishes that Mr. Hutchins worked with or around products for which Johns-Manville is responsible, much less that any product allegedly sold, supplied and/or distributed by any settling Defendant or non-party was a source of his asbestos exposures." (Rec. Doc. 373, at 4).

Only Avondale has opposed this motion. (Rec. Doc. 459). Johns-Manville produced Marinite, a product that was combined with Micarta to produce the laminate wallboards used on all Lykes ships constructed at Avondale. (Rec. Doc. 459, at 10). Although Avondale does not cite to the testimony of Harry Marsh, Mr. Corbin, or Dr. Kradin in their opposition to this particular motion for summary judgment, their testimony pertaining to International Paper is also relevant. (Rec. Doc. 519). In opposition to Plaintiffs' Motion for Summary Judgment as to International Paper (Rec. Doc. 372), Avondale pointed to the testimony of Harry Marsh who worked as an electrician and junior engineer aboard Lykes Bros. vessels. Mr. Marsh testified that copious amounts of dust were created whenever the wallboards containing both International Paper-supplied Micarta and Johns-Manville Marinite were cut into, both at sea and shoreside. (Rec. Doc. 429-13, at 3, 4). Additionally, Avondale points to the testimony of Dr. Richard Kradin who testified that Mr. Hutchins would have been exposed to asbestos from the Micarta/Marinite containing wallboards. Dr. Kradin further opined that this would have been a significant contributing factor in the development of his mesothelioma. (Rec. Doc. 434, at 10). In this Court's order

concerning International Paper (Rec. Doc. 519), the Court found it instructive that wallboards containing Micarta and Marinite were present aboard all Lykes Bros.' vessels and that any work on this dust producing material would have exposed Mr. Hutchins to asbestos.

Therefore, for the same reasons as regarding International Paper, Defendants have pointed out genuine issues of material fact as to whether Mr. Hutchins was exposed to Johns-Manville asbestos from the wallboards aboard every Lykes Bros. vessel he worked on and whether this asbestos was a substantial factor in causing his mesothelioma due to his active work with asbestos-containing materials. *See McAskill v. Am. Marine Holding Co.*, 9 So. 3d 264, 268 (La. App. 4 Cir. 2009). Therefore, Plaintiffs' *Motion for Partial Summary Judgment as to Johns-Manville* **(Rec. Doc. 373)** is **DENIED.**

2. ***Motion for Partial Summary Judgment as to Westinghouse*** **(Rec. Doc. 379)**

Plaintiffs argue that "none of the evidence in this case establishes that Mr. Hutchins worked with or around products for which Westinghouse is responsible, much less that any product allegedly sold, supplied and/or distributed by any settling Defendant or non-party was a source of his asbestos exposures." (Rec. Doc. 379, at 4).

Continental and Avondale both oppose this motion. (Rec. Docs. 428, 434). Continental points to the testimony of Charles Johnson, a former vice president of Hopeman Brothers, who identified Westinghouse as the manufacturer of Micarta. Continental also argues that ship specifications aboard the *Allison Lykes* mandated

that ship bulkheads and linings were to be constructed using Micarta as manufactured by Westinghouse. (Rec. Doc. 428-6). Therefore, Continental argues, there is evidence that Westinghouse products were aboard the vessels upon which Mr. Hutchins served.

In its opposition, Avondale argues that Westinghouse Micarta was the only government-approved product of its kind until the early 1970's and was ubiquitous at Avondale. (Rec. Doc. 434, at 5). Therefore, it would have been present aboard all Lykes vessels. Turning back to this Court's order regarding International Paper, the supplier of Westinghouse's Micarta, this Court again finds the testimony of Harry Marsh and Dr. Kradin instructive. Mr. Marsh testified that tradesmen doing wallboard work on would create a very dusty environment. *Id.* at 9. This fact, along with Dr. Kradin's opinion that Mr. Hutchins would have been exposed to asbestos from wallboards and that this exposure would have been a substantial contributing factor to his mesothelioma is sufficient to establish a genuine issue of material fact as to whether Mr. Hutchins was exposed to Westinghouse asbestos and whether this asbestos was a substantial factor in causing his mesothelioma due to his active work with asbestos-containing materials. *See McAskill*, 9 So.3d at 268. Therefore, Plaintiffs' *Motion for Partial Summary Judgment as to Westinghouse* **(Rec. Doc. 379)** is **DENIED.**

## CONCLUSION

Accordingly, **IT IS HEREBY ORDERED** that Plaintiffs' Motions for Partial Summary Judgment **(Rec. Docs. 373 and 379)** are **DENIED**.

New Orleans, Louisiana, this 17th day of May, 2023.

CARL J. BARBIER
UNITED STATES DISTRICT JUDGE