

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

EVELYN CONERLY HUTCHINS,  
ET AL.

CIVIL ACTION

VERSUS

NO: 19-11326

c/w 21-369

ANCO INSULATIONS, INC., ET  
AL.

SECTION: "J"(5)

**ORDER**

Before the Court are several motions for summary judgment (**Rec. Docs. 367, 369, 371, 377, and 378**) filed by Plaintiffs, Evelyn Conerly Hutchins, Derek Hutchins, and Dolan Hutchins in this case. These motions are either opposed by Third-Party Plaintiff, Continental Insurance Company or Defendant, Huntington Ingalls, Inc. ("Avondale") and many are opposed by both. Plaintiffs also filed reply memoranda to many of the motions. 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 General Electric (Rec. Doc. 367)**

Plaintiffs argue that “none of the evidence in this case establishes that Mr. Hutchins worked with or around products for which General Electric (“GE”) 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. 367, at 4).

Continental and Avondale both oppose this motion. (Rec. Docs. 417, 448). Continental argues that GE made the turbine engines that were on the *Allison Lykes* as well as other Lykes vessels. (Rec. Doc. 418, at 2). Continental points to the testimony of William Kammerzell who testified that GE made the turbine engines which were aboard the *Allison Lykes* during the period that both Mr. Kammerzell and Mr. Hutchins worked on the vessel. *Id.* Furthermore, Continental points to testimony from Horace George and Mr. Kammerzell that these turbine engines were covered in lagging made of asbestos. *Id.* at 2, 3.

In its opposition, Avondale points to the testimony of David Skinner, GE’s corporate representative, who stated that GE offered asbestos packing and asbestos-containing gaskets in its turbines and that asbestos insulation was essential to prevent the turbines from overheating. (Skinner Deposition, Rec. Doc. 417-7, at 6, 12). Avondale also points to the testimony of Troy Corbin and Dr. Richard Kradin who both opined that Mr. Hutchins would have been exposed to asbestos if he worked around GE turbines and that this exposure would have been a substantial

contributing factor to his mesothelioma. (Rec. Doc. 417, at 7). Mr. Hutchins worked in and around engine rooms on various Lykes ships while serving as a first, second, and chief engineer, and therefore would have worked on and around these GE turbines.

Therefore, Defendants have pointed out genuine issues of material fact as to whether Mr. Hutchins was exposed to GE 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 General Electric (Rec. Doc. 367)* is **DENIED**.

**2. *Motion for Partial Summary Judgment as to Goulds Pumps (Rec. Doc. 369)***

Plaintiffs again argue that “none of the evidence in this case establishes that Mr. Hutchins worked with or around products for which Goulds Pumps 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. 369, at 4).

Only Continental Insurance has opposed this motion. (Rec. Doc. 438). Continental points to the testimony of John Fitzpatrick, a former co-worker of Mr. Hutchins, who testified that Goulds Pumps was one of the manufacturers of pumps aboard the *Elizabeth Lykes* and identified maintaining these pumps as one of the duties Mr. Hutchins would have had as first engineer. (Fitzpatrick Deposition, Rec. Doc. 438-3, at 42-45). Therefore, Continental has produced testimony that Mr. Hutchins directly worked on Goulds Pumps' asbestos-containing products.

Defendants have pointed out genuine issues of material fact as to whether Mr. Hutchins was exposed to Goulds Pumps' 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 Goulds Pumps* (**Rec. Doc. 369**) is **DENIED**.

**3. *Motion for Partial Summary Judgment as to Hopeman Brothers* (Rec. Doc. 371)**

Plaintiffs again argue that “none of the evidence in this case establishes that Mr. Hutchins worked with or around products for which Hopeman Brothers 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. 371, at 4).

Continental and Avondale both oppose this motion. (Rec. Docs. 427, 440). Continental cites the testimony of Bertram Cornelius Hopeman who confirmed that Hopeman Brothers worked with asbestos products at Avondale between 1964 and 1977. (Rec. Doc. 440, at 2). Mr. Hopeman also identified the various asbestos-containing products that Hopeman Brothers used such as Marinite, Micarta, and asbestos paper. (Hopeman Deposition, Rec, Doc. 440-4, at 17). Continental also points to the testimony of Charles Johnson, a former vice-president of Hopeman Brothers, who testified that Hopeman Brothers worked on Lykes vessels during the period in which the *Genevieve Lykes*, *Dolly Turman*, and *Elizabeth Lykes* were constructed. (Johnson Deposition, Rec. Doc. 440-3, at 43).



Avondale also opposes summary judgment. (Rec. Doc. 427). Avondale argues that Hopeman Brothers used Micarta and Marinite to create wallboards which were installed in the crew-quarters aboard the Lykes vessels on which Mr. Hutchins served. (Johnson Deposition, Rec. Doc. 427-10, at 6). In opposition to Plaintiffs' motion for summary judgment as to International Paper (Rec. Doc. 429), 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 Micarta and Johns-Manville Marinite were cut into, both at sea and shoreside. (Rec. Doc. 429-13, at 3, 4). Therefore, it stands to reason that Hopeman Brothers would have created asbestos dust when utilizing this wallboard on Lykes vessels.

Defendants have pointed out genuine issues of material fact as to whether Mr. Hutchins was exposed to asbestos by Hopeman Brothers 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 Hopeman Brothers* (**Rec. Doc. 371**) is **DENIED**.

**4. *Motion for Partial Summary Judgment as to Taylor-Seidenbach* (Rec. Doc. 377)**

Plaintiffs again argue that "none of the evidence in this case establishes that Mr. Hutchins worked with or around products for which Taylor-Seidenbach 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. 377, at 4).

Only Continental has opposed this motion. (Rec. Doc. 450). Continental argues that there are genuine issues of material fact as to whether Mr. Hutchins was exposed to Taylor-Seidenbach asbestos and whether that asbestos was a substantial factor in causing his mesothelioma. Continental cites the testimony of Callen Dempster, an insulator and electrician who worked at Avondale from 1963-1994. (Rec. Doc. 450, at 3). Mr. Dempster testified that Taylor-Seidenbach thermal insulation was installed on commercial vessels, including the Lykes vessels during the period of Mr. Hutchins’ employment. (Dempster Deposition, Rec. Doc. 450-4). Continental also points to the testimony of Joseph Trosclair who testified in unrelated litigation that Taylor-Seidenbach supplied thermal insulation to Avondale which was then used in the engine rooms of Lykes vessels. (Trosclair Deposition, Rec. Doc. 450-5, at 51). Mr. Hutchins worked in and around engine rooms on various Lykes ships while serving as a first, second, and chief engineer.

Therefore, Defendants have pointed out genuine issues of material fact as to whether Mr. Hutchins was exposed to Taylor-Seidenbach 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 Taylor Seidenbach* (Rec. Doc. 377) is **DENIED**.

**5. Motion for Partial Summary Judgment as to Uniroyal (Rec. Doc. 378)**

Plaintiffs again argue that “none of the evidence in this case establishes that Mr. Hutchins worked with or around products for which Uniroyal 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. 378, at 4).


Both Continental and Avondale have opposed this motion. (Rec. Docs. 423, 443). Avondale argues that there is evidence that Uniroyal’s asbestos cloth was used at Avondale. (Watters Deposition, Rec. Doc. 423-5, at 4). Avondale references the deposition of Logan Lefort who testified that Uniroyal asbestos cloth was used to insulate steam pipes on Lykes vessels where Mr. Hutchins worked on and around pipes in his duties as chief, first, or second engineer. (Lefort Deposition, Rec. Doc. 423-8). Continental also points to the testimony of Troy Corbin who opined that Mr. Hutchins was exposed to asbestos from insulation and that this insulation would have increased his risk of mesothelioma. (Rec. Doc. 443-3).

Defendants have pointed out genuine issues of material fact as to whether Mr. Hutchins was exposed to Uniroyal asbestos in the form of pipe insulation aboard the Lykes vessels 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 Uniroyal (Rec. Doc. 378)* is **DENIED**.

**CONCLUSION**

Accordingly, **IT IS HEREBY ORDERED** that Plaintiffs' Motions for Partial Summary Judgment (**Rec. Docs. 367, 369, 371, 377, and 378**) are **DENIED**.

New Orleans, Louisiana, this 1st day of May, 2023.

  
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CARL J. BARBIER  
UNITED STATES DISTRICT JUDGE