IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYDIA PINE, EXECUTRIX OF ESTATE OF JOSEPH PINE, DECEASED AND AND LYDIA PINE, IN HER OWN RIGHT Plaintiffs,	:	
v.	:	**Civ. No. 18-927**
JOHN CRANE INC., et al., Defendants.	:	

ORDER

After the mesothelioma-related-death of her husband Joseph Pine, Lydia Pine sued John Crane Inc. and several other asbestos manufacturers alleging that Joseph's exposure to their asbestos products caused his mesothelioma. The only remaining defendant in this suit, John Crane Inc., moves for summary judgment and to strike Plaintiff's jury demand. I will grant in part and deny in part the Motion for Summary Judgment. I will deny the Motion to Strike Plaintiff's Jury Demand.

I. LEGAL STANDARDS

Upon motion of any party, summary judgment is appropriate "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party must initially show the absence of any genuine issues of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986). An issue is material only if it could affect the result of the suit under governing law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). In deciding whether to grant summary judgment, I "must view the facts in the light most favorable to the non-moving party," and take every reasonable inference in that party's favor. Hugh v. Butler County Family YMCA, 418 F.3d 265 (3d Cir. 2005). If, after viewing all

reasonable inferences in favor of the non-moving party, I determine that there is no genuine issue of material fact, summary judgment is appropriate. See Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

II. BACKGROUND

Joseph Pine served as a fireman on the USS Constellation between 1965 and 1967. (Doc. 219-1 at 32.) Pine worked on auxiliary equipment including, pumps, generators, valves, and steam-driven machinery. (Doc. No. 219-2 at 5-15.) He regularly installed gaskets by cutting the sheet gasket to size, exposing himself to the internal aspects of the sheet gaskets, including asbestos. (Doc. No. 219-5 at 8, 16.) He also removed gaskets by scraping out pieces with a putty knife, exposing him to asbestos dust. (Id. at 12-14.)

Pine was diagnosed with malignant mesothelioma in 2015, and died approximately one month after his diagnosis. (Doc. Nos. 219-1 at 5, 234-3 at 10-11.) In October 2016 Lydia sued several suppliers and manufacturers of asbestos-containing products in the Philadelphia Common Pleas Court. (Doc. No. 1.) Westinghouse Electric Corp. removed the case to federal court, at which time it was assigned to Judge Robreno as part of MDL 875. (Id.; see Dkt.) I was reassigned this case on May 5, 2021. (Doc. No. 252.) JCI is the only remaining defendant in this case. (See Dkt.)

III. DISCUSSION

A. Product Identification and Causation

I agree with the Parties and the earlier decisions of this Court that—because Pine "was a sea-based Navy worker, and the allegedly defective product . . . was produced for use on a sea vessel"—maritime law governs this case. See, e.g., Nelson v. A.W. Chesterton Co., No. 10-00065, 2012 WL 7761243, at *1 n.1 (E.D. Pa. Oct. 19, 2012) (maritime law applied where Navy

serviceman was exposed to asbestos onboard vessel on navigable waters); Conner v. Alfa Laval, Inc., 799 F. Supp. 2d 455, 466-69 (E.D. Pa. 2011) (same).

To establish causation under maritime law, a plaintiff must show that "(1) he was exposed to the defendant's product[;] (2) the product was a substantial factor in causing the injury he suffered;" and (3) "the defendant manufactured or distributed the asbestos-containing product to which exposure is alleged." Lindstrom v. A–C Prod. Liab. Trust, 424 F.3d 488, 492 (6th Cir. 2005) (citing Stark v. Armstrong World Indus., Inc., 21 F. App'x 371, 375 (6th Cir. 2001)); Nelson, 2012 WL 7761243, at *1 n.1 (citing Conner, 842 F. Supp. 2d at 791 and Abbay v. Armstrong Int'l., Inc., No. 10–83248, 2012 WL 975837, at *1 n. 1 (E.D. Pa. Feb. 29, 2012)).

Substantial factor causation is determined with respect to each individual defendant. Stark, 21 F. App'x. at 375. "A mere 'minimal exposure' to a defendant's product is insufficient to establish causation." Id. (citing Lindstrom, 424 F.3d at 492). "Likewise, a mere showing that defendant's product was present somewhere at plaintiff's place of work is insufficient." Id. (citing Lindstrom, 424 F.3d at 492). Rather, the plaintiff must show "a high enough level of exposure that an inference that the asbestos was a substantial factor in the injury is more than conjectural." Lindstrom, 424 F.3d at 492. The question of "substantiality" is best left to the jury. Redland Soccer Club, Inc. v. Dep't of Army, 55 F.3d 827, 851 (3d Cir. 1995).

Viewed in the light most favorable to Plaintiff, Joseph's coworkers' descriptions of JCI "products and the work that [Joseph] performed on such products and the dust to which he was exposed, is sufficient to raise a genuine issue of material fact as to whether asbestos attributable to Defendant was a substantial factor in causing his mesothelioma." Nelson, 2012 WL 7761243, at *1 n.1.

JCI's only gaskets approved for sale to the Navy at the time—2150 compressed asbestos

sheet gaskets—contained asbestos. (Doc. Nos. 219-3 at 28, 234-6 at 27.) JCI contends that its gaskets were not listed on the Navy's qualified product list, which the Navy consulted in determining gaskets for use on its ships, and Joseph's coworker Glenn Goffena, recalled working with Garlock gaskets. (Doc. No. 219-2 at 16.) JCI gaskets were regularly used by the Navy, however. (Doc. No. 219-3 at 20.) Moreover, Joseph's coworker Raymond Killham recalled that he and Joseph regularly used only JCI gaskets during their one year working together. (Doc. No. 219-5 at 8, 33, 42, 43, 52). Both Killham and Goffena testified at length as to Joseph's need to remove, cut, and fabricate gaskets, resulting in the inhalation of asbestos dust. (See Doc. Nos. 219-1, 219-5.) Because Killham recalls using only JCI gaskets, the evidence demonstrates that dust Joseph inhaled from the removal and fabrication of gaskets could be attributable to JCI. (Doc. Nos. 234-3 at 16, 234-6 at 42.) Accordingly, summary judgment is improper. Cf. Mullis v. Armstrong Intern, Inc., 2013 WL 5538902, at *1 n.1 (E.D. Pa. Sept. 18, 2013) (granting summary judgment for JCI where evidence showed decedent used gaskets and that JCI gaskets were one of brands used but not that decedent used JCI gaskets).

B. Survival, Non-Pecuniary, and Punitive Damages

JCI moves for summary judgment on non-pecuniary and punitive damages, arguing that they are not recoverable under maritime law and the Death on the High Seas Act and that Pennsylvania law does not apply.

DOHSA applies only to conduct occurring in international waters or the territorial waters of a foreign nation. Much of the conduct at issue here occurred while the USS Constellation was docked at a San Diego port. (Doc. No. 234-1 at 15.) Accordingly, general maritime law—not DOHSA—applies to Plaintiff's survival claims. Bell v. Foster Wheeler Energy Corp., No. CV 15-6394, 2017 WL 889074, at *3 (E.D. La. Mar. 6, 2017) ("[W]here a seaman dies from an indivisible

injury which occurred both in territorial waters and on the high seas, [the] prohibition on survival actions in DOHSA cases does not apply and the plaintiff may pursue a survival action under general maritime law."); Hays v. John Crane, Inc., No. 09-81881, 2014 WL 10658453, at *2 (S.D. Fla. Oct. 10, 2014) ("The Court is unaware of any case that has held that DOHSA restricts the recoverable damages for an indivisible injury in a case where some of the exposure to asbestos-containing products occurred on the high seas and some occurred in territorial waters.")

Damages are available under general maritime law only if: (1) the damages "have traditionally been awarded" for the claim; (2) "conformity with parallel statutory schemes would require such damages;" or (3) the court is "compelled on policy grounds" to allow damages. Dutra Grp. v. Batterton, 139 S. Ct. 2275, 2283 (2019).

Although several courts have awarded pecuniary and survival damages, there is no "clear historical pattern of awarding survival damages [or non-pecuniary damages] in general maritime negligence or wrongful death actions." Mullinex v. John Crane, Inc., 606 F. Supp. 3d 239, 294-97 (E.D. Va. 2022) (citing to Miles v. Apex Marine Corp., 498 U.S. 19, 29-33 (1990)); see Miles, 498 U.S. at 33 ("Under traditional maritime law, as under common law, there is no right of survival; a seaman's personal cause of action does not survive the seaman's death.")); Boesenhofer v. Aecome, et al., 2:17-cv-1072, 2021 WL 11736668, at *1 n.1 (E.D. Pa. June 22, 2021) (denying same damages sought here); see also Dooley v. Korean Air lines Co., Ltd., 524 U.S. 116 (1998) (relatives of decedents may not recover nonpecuniary damages under general maritime law); Rogers v. A.O. Smith Corporation, 602 F. Supp. 3d 748, 761-62 (E.D. Pa. 2022) (dismissing loss of consortium claims); Bell, 2017 WL 889074 at *4 (collecting cases); Wade v. Clemco Indus. Corp., No. 16-502, 2017 WL 434425, at *5 (E.D. La. Feb. 1, 2017) ("[I]n wrongful death cases brought under general maritime law, a survivor's recovery from employers and non-employers is

limited to pecuniary losses.").

Further, parallel federal statutory schemes do not require the award of such damages. Miles, 498 U.S. at 37 (recovery for loss of society in general maritime law is not supported by the Jones Act or DOHSA); Dooley, 524 U.S. at 118 (DOHSA "allows certain relatives of the decedent to sue for their pecuniary losses[ ] but does not authorize recovery for the decedent's pre-death pain and suffering"); Mullinex, 606 F. Supp. 3d at 296 ("[P]arallel statutory schemes do not require recovery for pre-death pain and suffering or medical expenses in maritime wrongful death actions by seamen against non-employer manufacturers.").

Moreover, "[p]olicy considerations do not compel recognition of survival damages for pre-death pain and suffering or medical expenses in maritime wrongful death actions." Id. Congress enacted both the Jones Act and DOHSA the same year. It thus appears that Congress deliberately created the distinctions between the statutes: survival damages in the employment context but not in other circumstances. See Atlantic Sounding Co. v. Townsend, 557 U.S. 404, 419 (2209) ("Congress' judgment must control the availability of remedies for wrongful-death actions brought under general maritime law."). Had "Congress wanted to permit survival damages for seamen in all maritime wrongful death actions—not just in claims against employers—it could have. Similarly, if Congress wanted to permit survival damages in all maritime wrongful death actions—regardless of a plaintiff's classification—it could have." Mullinex, 606 F. Supp. 3d at 296-97. Accordingly, I "cannot confidently import Congress' approach in the employment context to wrongful death claims against non-employer defendants, even if the plaintiff is a 'seaman.'" Id. (citing Miles, 498 U.S. at 36.).

"This preclusion extends to punitive damages." Boesenhofer, 2021 WL 11736668, at *1 n.1 (citing Batterton, 139 S. Ct. at 2278 and In re Asbestos Products Liability Litig., 2014 WL

3353044, at *11 (E.D. Pa. July 9, 2014)); Scarborough v. Clemco Industries, 391 F.3d 660 (5th Cir. 2004) (seaman may not recover punitive damages in a general maritime law claim against third-party non-employer); cf. Townsend, 557 U.S. at 404 (punitive damages available only for willful refusal to pay maintenance and cure). I will thus grant Defendants' Motion for Summary Judgment with respect to Plaintiff's claim for nonpecuniary and punitive damages.

Because Pine was a seaman, general maritime law remedies may not be supplemented by applicable state law remedies. Bell, 2017 WL 889074 at *4; Hays, 2013 WL 10658453, at *2-5; cf. Yamaha Motor Corp. v. Calhoun, 516 U.S. 199, 214-15 (1996) (general maritime wrongful death action does not preempt state remedies in cases involving the death of a nonseafarer in territorial waters); Calhoun v. Yamaha Motor Corp., U.S.A., 40 F.3d 622, 640 (3d Cir. 1994), aff'd, 516 U.S. 199 (1996) ("Both DOHSA and the Jones Act preempt state wrongful death statutes."). Accordingly, I will not assess damages available under Pennsylvania law and will grant JCI's motion.

C. Motion to Strike Jury

Under Rule 38(e), there is no right to a jury trial in cases sounding solely in admiralty. Fitzgerald v. U. S. Lines Co., 374 U.S. 16, 18–19 (1963). Where a claim is also within this Court's subject-matter jurisdiction on other grounds, and the pleading does not explicitly designate the claim as under a court's admiralty jurisdiction, however, the claim may be heard by a jury. 28 U.S.C. § 1333; Muhs v. River Rats, Inc., 586 F. Supp. 2d 1364, 1371 (S.D. Ga. 2008) ("If a party fails to identify the claim as one in admiralty, instead averring diversity jurisdiction, the right to a jury trial is preserved through the 'saving to suitors' clause." (citing Wilmington Tr. v. U.S. Dist. Ct., 934 F.2d 1026, 1029–32 (9th Cir. 1991)).

Here, Plaintiff brought Pennsylvania tort claims in state court. (Doc. No. 1.) Westinghouse

Electric Corp. removed the case to federal court based on diversity jurisdiction and demanded trial by jury. (Id.) Plaintiff later amended her complaint, again bringing Pennsylvania claims and demanding trial by jury. (See Doc. No. 115.) Because there is an independent ground for jurisdiction, I will deny JCI's motion to strike Plaintiff's jury trial demand.

IV. CONCLUSION

In sum, I grant in part and deny in part JCI's Motion for Summary Judgment. I will also deny JCI's motion to strike Plaintiff's jury demand.

* * *

AND NOW, on this 24th day of October, 2023, it is hereby **ORDERED** that:

1. Defendants' Motion for Summary Judgment (Doc. No. 249) is **DENIED** as to causation and **GRANTED** as to damages.
2. Defendant's Motion to Strike the Jury Demand (Doc. No. 249) is **DENIED.**

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.