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

JACKIE L. SULLIVAN, Executrix of the Estate of JOHN L. SULLIVAN, Deceased, and widow in her own right	:	CONSOLIDATED UNDER MDL 875
Plaintiff,	:	
v.	:	E.D. PA CIVIL ACTION NO. 18-cv-3622
A.W. CHESTERTON COMPANY, et al.	:	
Defendants.	:	

O R D E R

AND NOW, this **1st** day of **April, 2022**, upon consideration of the motion for summary judgment filed by Defendant General Electric Company (ECF No. 333) and the response and reply thereto, it is hereby **ORDERED** that motion is **GRANTED.**[1]

[1] Plaintiff Jackie Sullivan alleged that her husband, John L. Sullivan, was exposed to asbestos during his service in the United States Navy from 1967 to 1980. This exposure and Mr. Sullivan's resulting injuries, Plaintiff contends, was caused in part by turbines manufactured by Defendant General Electric Company ("GE") and by Defendant's failure to warn Mr. Sullivan about the dangers of their allegedly asbestos-containing products.

Defendant moved for summary judgment on several grounds, including that, because its products were delivered to the United States Navy "bare metal," it cannot be held liable under the Supreme Court's test outlined in Air and Liquid Systems Corp. v. DeVries, 139 S. Ct. 986 (2019).

I. Standards

Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A fact is "material" if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. at 242 (1986); see Scott v. Harris, 550 U.S. 372, 380 (2007). The mere existence of some disputed facts will not overcome a motion for summary judgment. Am. Eagle Outfitters v. Lyle & Scott Ltd., 584 F.3d 575, 581 (3d Cir. 2009) (quoting Anderson, 477 U.S. at 247-48). In undertaking this analysis, the Court must view all facts in the light most favorable to the non-moving party. Scott, 550 U.S. at 380.

While the moving party bears the initial burden of showing the absence of a genuine dispute of material fact, meeting this obligation shifts the burden to the non-moving party who must "set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 250. Inferences based on speculation or conjecture do not create material fact disputes. Keating v. Pittston City, 643 Fed. Appx. 219, 222 (3d Cir. 2016) (quoting Halsey v. Pfeiffer, 750 F.3d 273, 287 (3d Cir. 2014)).

II. Analysis

In 2019, the Supreme Court announced a new test for manufacturers' liability in duty to warn cases under maritime law. The Court held that a manufacturer has a duty to warn where "(i) its product requires incorporation of a part, (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (iii) the manufacturer has no reason to believe that the product's users will realize that danger." DeVries, 139 S. Ct. at 995. To provide further clarity on the first prong of its test, the Court provided that a product requires incorporation of a part where: "(i) a manufacturer directs that the part be incorporated," "(ii) a manufacturer itself makes the product with a part that the manufacturer knows will require replacement with a similar part," or "(iii) a product would be useless without the part." Id. at 995-96 (citations omitted).

Defendant GE argues that under this test it had no duty to warn Mr. Sullivan. As explained below, Plaintiff cannot show

that GE's products required the incorporation of asbestos, and thus cannot meet the test outlined in DeVries.

A. Plaintiff Failed to Show that GE Directed the Incorporation of Asbestos

In support of its Motion for Summary Judgment, Defendant GE offered evidence to demonstrate that its provision of turbines to the Navy was governed by extremely detailed Military Specifications. These specifications both directed suppliers of equipment to deliver the machinery without insulation—so that it could be properly installed—and provided that the shipbuilder who installed the equipment must provide insulation in conformance with its own specifications. Accordingly, it was the Navy that directed the incorporation of any asbestos, because Military Specifications governed the permissible insulation materials to be supplied by the shipbuilder.

To demonstrate that GE directed the incorporation of asbestos in the turbines it supplied to the Navy, Plaintiff relies on a deposition of GE representative David Skinner, as well as other GE internal documents. Plaintiff pointed to portions of Mr. Skinner's testimony as evidence of GE's involvement with the insulation of its products, specifically that GE: facilitated the installation of insulation on its products, provided technical drawings with temperature ranges for various turbine parts, and sent a letter in 1990 to customers detailing possible locations of asbestos on GE turbines.

However, both Mr. Skinner's testimony and the internal documents on which Plaintiff relies refer to non-Navy uses. Mr. Skinner's testimony—the primary basis for Plaintiff's argument—is devoted to turbines for land-based power generation facilities or merchant marine ships, neither of which are governed by Navy specifications. This court has previously held that such evidence has little relevance when determining whether GE directed the incorporation of asbestos on Navy ships. See DeVries v. General Electric, 547 F. Supp. 3d 491, 494-495 (E.D. Pa. 2021).

Accordingly, Plaintiff has failed to show that GE directed the incorporation of asbestos into the turbines at issue.

B. Plaintiff Has Failed to Show that GE Made the Product with Asbestos Insulation Attached

As discussed above, Defendant GE offered evidence that Navy specifications required that its turbines be delivered without

insulation so that they could be properly installed by the Navy's shipbuilder. GE notes that this requirement was not only present in the Military Specifications themselves but were also present in GE's contract with the Navy for one of the ships at issue, the USS Saratoga. The contract provided that insulation "shall be furnished by the shipyard and shall conform" to the relevant Navy specification. Def. Mem. Supp. Summ. J. Ex. 4 ¶ 5, ECF 333-5 at 7–8.

Plaintiff does not appear to contest this, noting variously that GE "assist[ed] the shipyard in insulating the turbine," and noting that "GE knew that the insulation applied to its turbines would necessarily contain asbestos." Pl. Mem. Opp. Summ. J. 7–8, ECF 350 at 7–8. (emphasis added). There being no dispute that it was the shipyard, and not GE, that supplied the insulation applied to the turbines, Plaintiff cannot show that GE "[made] the product with a part that the manufacturer knows will require replacement with a similar part." DeVries, 139 S. Ct. at 995.

C. GE's Turbines Would Not Have Been Useless Without Asbestos

Whether there were alternatives to asbestos that could have been applied to GE's turbines is a point on which the parties agree. Defendant argues that non-asbestos insulation, specifically aluminum foil and rock wool, were permitted by the Navy's Military Specifications "[a]s early as 1939." Def. Mem. Supp. Summ. J. 8, ECF 333 at 12. Navy guidance in effect closer to the launch of the ships aboard which Mr. Sullivan served provided for the use of fiberglass to insulate equipment reaching temperatures as high as 1,200°F. Id. Ex. 4 ¶ 6, ECF 333-5 at 8–9. Plaintiff agrees that alternatives to asbestos were available, arguing that "the navy [sic] noted alternatives to asbestos were acceptable." Pl. Mem. Opp. Summ. J. 9, ECF 350 at 9.

To meet this prong of the DeVries test, Plaintiff must show that GE's turbines could not function without asbestos insulation. See DeVries v. General Electric, 547 F. Supp. 3d at 495. As the parties agree that alternatives to asbestos were available that would have allowed the turbines to function, Plaintiff cannot meet this prong of the DeVries test. See id.

III. Conclusion

Defendant offered specific evidence that would preclude a finding that asbestos was "required" under the Supreme Court's test in DeVries. In response, Plaintiff offered no evidence

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

relevant GE's Navy turbines that incorporation of asbestos was required and accordingly was unable to rebut Defendant's showing as to the first prong of the bare metal test. Accordingly, GE is entitled to summary judgment.