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Vague expert's report on asbestos not enough to carry claim

A recent asbestos liability case from Delaware called into question the plaintiff's medical evidence and the matter of causation.

In *In re Asbestos Litigation*, CV N14C-03-079 ASB, 2017 WL 3051483 (Del. Super. Ct., July 19, 2017), the administrator of the estate of Walter Godfrey Jr. filed an action against Cleaver-Brooks, a boiler manufacturer, claiming that the decedent was exposed to asbestos from working on Cleaver-Brooks boilers.

The court held that the plaintiff's expert medical report did not link Godfrey's disease to a particular Cleaver-Brooks product. Thus, the plaintiff failed to establish causation and summary judgment was granted in favor of Cleaver-Brooks.

Godfrey was employed by Connecticut Boiler Repair from 1977 to 2013. Over these years, Godfrey encountered Cleaver-Brooks boilers at various work sites. Godfrey alleged that he was exposed to asbestos through changing the gaskets on Cleaver-Brooks boilers at a West Hartford Housing Authority building.

The replacement gaskets came from Cleaver-Brooks. Godfrey testified that during his employment, he also worked on two Cleaver-Brooks boilers at General Electric. He alleged that he was exposed to asbestos from removing refractory, which he stated was manufactured by another company, and baffle tile.

Godfrey also believed that he was exposed to asbestos from the insulation on the pipes connecting with the boilers. He did not know the manufacturer of the insulation and did not know the maintenance history of the boilers.

Godfrey also testified to working on Cleaver-Brooks boilers at Mohegan Sun Casino, removing two Cleaver-Brooks boilers from the University of Connecticut's Trecker Library and working on

TOXIC TORT TALK



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two boilers at a General Dynamics facility.

At General Dynamics, he performed refractory work, which he believed exposed him to asbestos. Similarly, he worked on two Cleaver-Brooks boilers at Mystic Oral School.

The plaintiff introduced evidence demonstrating that Cleaver-

Brooks sold boilers with asbestos-containing products and that Cleaver-Brooks sold asbestos-containing replacement parts — including gaskets. The plaintiff's evidence also established that Godfrey worked with Cleaver-Brooks' asbestos-containing products.

Cleaver-Brooks argued that it was entitled to summary judgment for a few reasons. First, the plaintiff failed to meet the requisite standard under Con-

necticut law. Under Connecticut law, the plaintiff must (1) identify an asbestos-containing product for which the defendant is responsible, (2) prove that he has suffered damages and (3) prove that the defendant's asbestos-containing product was a substantial factor in causing his damages.

Cleaver-Brooks contended that at two of the locations Godfrey testified he worked at he could not "affirmatively state that he was exposed to asbestos."

Additionally, Cleaver-Brooks argued that at General Electric, Trecker Library and General Dynamics, Godfrey attributed his exposure to asbestos to products supplied by other manufacturers. Cleaver-Brooks stated that the West Hartford Housing Authority Building was the only location where Godfrey attributed asbestos exposure to Cleaver-Brooks.

Cleaver-Brooks' second argument was that the plaintiff failed to introduce expert evidence specifically linking Godfrey's exposure to Cleaver-Brooks boilers. Cleaver-Brooks noted that the plaintiff's expert report was generic and did not mention a

that a defendant's asbestos product was a proximate cause of the plaintiff's injury." Absent such testimony, the issue of proximate cause cannot be submitted to the jury.

While the plaintiff submitted an expert report, the court agreed with Cleaver-Brooks that the report "is a generic causation report that does not link plaintiff's disease to a particular product."

The court noted that to meet the prima facie burden, the plaintiff's medical expert is required to state, in terms of reasonable medical probability, that there was a causal relationship between the defendant's product and the plaintiff's physical injury.

That is, but for the plaintiff's exposure to the defendant's asbestos product, the plaintiff's injury would not have occurred. The court held that plaintiff's expert report failed to meet this requirement.

The report, the court said, "creates nothing more than a speculative nexus between Mr. Godfrey's injuries and defendant's product." Asbestos was mentioned three times in the report. The report noted, "Mr. Godfrey was a 69-year-old boiler machinist who was exposed to asbestos from 1963 until 1983" and went on to state, "Exposure to asbestos is recognized as a substantial contributing cause of primary lung cancer."

The third time asbestos was mentioned is in the doctor's conclusion that in his "opinion, and to a reasonable degree of medical certainty, Mr. Godfrey's exposure to asbestos was a substantial contributing cause of his primary lung cancer."

Thus, the court found: "Nothing in the report links [Cleaver-Brooks'] product to the plaintiff's injuries, nor does the doctor determine how he came to this conclusion."

Accordingly, the court granted Cleaver-Brooks' motion for summary judgment.

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Cleaver-Brooks' product.

Finally, Cleaver-Brooks contended that under Connecticut law, a manufacturer is not liable for a product it did not manufacture or sell.

The court noted that the Delaware Supreme Court has held that "to make a prima facie showing with respect to the cause of an asbestos-related disease, a plaintiff must introduce direct competent expert medical testimony