IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH

MICHAEL DATA, DARLENE DATA, EXECUTRIX OF THE ESTATE OF MICHAEL DATA, DECEASED, AND DARLENE DATA IN HER OWN RIGHT;

Plaintiffs,

vs.

A.O. SMITH CORPORATION, A.R. WILFLEY & SONS, INC, ABB, INC., AS SUCCESSOR TO BROWN BOVERI (INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ITE IMPERIAL CO F/K/A ITE CIRCUIT BREAKER COMPANY); ACCO MATERIAL HANDLING SOLUTION, INC., AECOM ENERGY & CONSTRUCTION, INC., AHLSTROM PUMPS LLC, AIR & LIQUID SYSTEMS CORPORATION, SUCCESSOR-BY-MERGER TO BUFFALO PUMPS, INC.; AJAX MAGNETHERMIC CORPORATION, ALFA LAVAL, INC., ALLIED GLOVE CORPORATION, ARMSTRONG INTERNATIONAL, INC., ARMSTRONG PUMPS, INC., ATLAS INDUSTRIES, INC., ATWOOD & MORRILL CO., INC., BAKER HUGHES, A GE COMPANY, LLC; BEAZER EAST, INC., IN ITS OWN RIGHT AND AS SUCCESSOR TO KOPPERS CO., INC., AND OTHER RELATED COMPANIES, INCLUDING THIEM CORPORATION, BEAZER USA, INC., AND BEAZER, PLC; BMI REFRACTORY SERVICES, INC., BORGWARNER MORSE TEC LLC, BRAND INSULATIONS, INC., BRYAN STEAM, LLC, BURNHAM LLC, BW/IP, INC., CAMERON INTERNATIONAL CORPORATION, CAMPBELL HAUSFELD, LLC, CARRIER CORPORATION, CARVER PUMP COMPANY, CASHCO, INC.,

2:19-CV-00879-MJH

CATERPILLAR, INC., CATERPILLAR GLOBAL MINING AMERICA, LLC, CBS CORPORATION, AS SUCCESSOR BY MERGER TO CBS CORP.; CERTAINTEED CORPORATION, CLARK EQUIPMENT COMPANY, CLARK RELIANCE CORPORATION, AND ITS DIVISION JERGUSON GAGE AND VALVE; CLEAVER-BROOKS, CLYDE UNION, INC., INDIVIDUALLY AND AS SUCCESSOR-BY-MERGER TO UNION PUMP COMPANY; COLUMBUS MCKINNON CORP., SUCCESSOR-BY-MERGER TO LIFT TECH INTERNATIONAL, INC., AND ITS SHAW-BOX HOIST DIVISION; CORNING INCORPORATED, ON BEHALF OF ITS FORMER CORHART REFRACTORIES BUSINESS DIVISION; CRANE COMPANY, INC., CROSBY VALVE, LLC, CUMMINS, INC., DANA COMPANIES, LLC, DANIELI CORPORATION, DAP, INC, DEZURIK, INC., DICK CORPORATION, DRAVO CORPORATION, EATON CORPORATION, AS SUCCESSOR-IN-INTEREST TO CUTLER-HAMMER, INC.; EICHLEAY CORPORATION, ELECTROLUX HOME PRODUCTS INC., ELLIOTT COMPANY, EMERSON CLIMATE TECHNOLOGIES, INC., IN ITS OWN RIGHT AND AS SUCCESSOR-IN-INTEREST TO ALCO VALVE COMPANY; FLOWSERVE CORPORATION, FLOWSERVE CORPORATION, FLOWSERVE US INC., SOLELY AS SUCCESSOR TO NORDSTROM AUDCO, EDWARD VALVES INC., NORDSTROM VALVES, INC., AND ROCKWELL MANUFACTURING COMPANY; FLOWSERVE US INC., SUCCESSOR TO VALTEK INTERNATIONAL; FLSMIDTH DORR-OLIVER, INC., AS SUCCESSOR-IN-INTEREST TO KEELER/DORR-OLIVER BOILER COMPANY;

FLSMIDTH, INC., FMC CORPORATION, FORD MOTOR COMPANY, FOSTER WHEELER LLC, GARDNER DENVER, INC., GENERAL ELECTRIC COMPANY, GENUINE PARTS COMPANY, GOULD ELECTRONICS, INC., GREENE TWEED & COMPANY, GOULDS PUMPS, LLC, GRINNELL, LLC, GUARD LINE, INC., HONEYWELL, INC., HONEYWELL INTERNATIONAL, INC., AS SUCCESSOR-IN-INTEREST TO THE BENDIX CORPORATION; HONEYWELL INTERNATIONAL, INC., IN ITS OWN RIGHT AND AS SUCCESSOR-IN-INTEREST TO ALLIED CORPORATION (WILPUTTE COKE OVEN DIVISION), AND AS SUCCESSOR-IN-INTEREST TO ALLIED CHEMICAL (WILPUTTE COKE OVEN DIVISION), AND AS SUCCESSOR-IN-INTEREST TO WILPUTTE COKE OVEN CORPORATION; HOWDEN NORTH AMERICA, INC., HUNTER SALES CORPORATION, HYSTER-YALE GROUP, INC., I.U. NORTH AMERICA, INC., AS SUCCESSOR BY MERGER TO THE GARP COMPANY, FORMERLY KNOWN AS THE GAGE COMPANY, FORMERLY KNOWN AS THE GAGE COMPANY, FORMERLY KNOWN AS PITTSBURGH GAGE AND SUPPLY COMPANY; IMO INDUSTRIES, INC., INDUCTOTHERM INDUSTRIES, INC., INDUSTRIAL RUBBER PRODUCTS, INGERSOLL-RAND CORPORATION, ITT INDUSTRIES, INC., JOHNSON CONTROLS, INC., JOY GLOBAL SURFACE MINING, INC., JOY GLOBAL UNDERGROUND MINING, LLC, KELSEY-HAYES COMPANY, LEEDS & NORTHRUP COMPANY, LINDBERG, LINDBERG MPH, M.S. JACOBS & ASSOCIATES, INC., MACK TRUCKS, INC., MAGNETEK, INC., M.V.S. COMPANY, MALLINCKRODT US HOLDINGS, LLC, MCCARLS, INC., MCMASTER CARR SUPPLY, MCNALLY

INDUSTRIES, LLC, IN ITS OWN RIGHT AND ITS NORTHERN PUMPS DIVISION, IN ITS OWN RIGHT; MCNEIL (OHIO) CORPORATION, MESTEK, INC., MET-PRO CORPORATION, AND ITS DEAN PUMP BRAND; MILWAUKEE VALVE COMPANY, MINE SAFETY APPLIANCE COMPANY, MINNOTTE CONTRACTING CORPORATION, MORGAN ENGINEERING SYSTEMS, INC., MOYNO, INC., MUELLER CO., LLC, MUELLER STEAM SPECIALTY, MW CUSTOM PAPERS, LLC, NAGLE PUMPS, INC., NAVISTAR, INC., NORTEK GLOBAL HVAC, LLC, AS SUCCESSOR BY MERGER TO REZNOR, LLC; NORTH AMERICAN MANUFACTURING CO., OSRAM SYLVANIA, INC., IN ITS OWN RIGHT AND AS SUCCESSOR-IN-INTEREST TO GTE PRODUCTS CORPORATION, THE CLARK CONTROLLER COMPANY AND A.O. SMITH CORPORATION; PECORA CORPORATION, PENNSYLVANIA POWER COMPANY, PENTAIR VALVES & CONTROLS, LLC, PNEUMO ABEX, LLC, AS SUCCESSOR-IN-INTEREST TO ABEX CORPORATION; POWER PIPING COMPANY, RCH NEW CO., II LLC, AN ALLEGED SUCCESSOR TO H.H. ROBERTSON COMPANY; READING CRANE AND ENGINEERING COMPANY, RESEARCH-COTTRELL, INC., REUNION INDUSTRIES, INC., RILEY POWER, INC., ROBBINS & MYERS, INC., ROBINSON FANS, INC., ROCKWELL AUTOMATION, INC., SUCCESSOR BY MERGER TO ALLEN BRADLEY CO; RUST ENGINEERING & CONSTRUCTION, INC., SAINT-GOBAIN ABRASIVES, INC., SAUER, INC., SCHNEIDER ELECTRIC USA, INC., SIEMENS INDUSTRY, INC., IN ITS OWN RIGHT, AND AS SUCCESSOR-IN-INTEREST TO I-T-E CIRCUIT BREAKER COMPANY; SIMAKAS COMPANY, INC.,

SPIRAX SARCO, INC., SPX COOLING TECHNOLOGIES, INC., STERLING FLUID SYSTEMS (USA), LLC, SUNBEAM PRODUCTS, INC., AS SUCCESS-IN-INTEREST TO SUNBEAM CORPORATION; SUNDYNE, LLC, SURFACE COMBUSTION, SWINDELL-DRESSLER INTERNATIONAL COMPANY, THE GOODYEAR TIRE & RUBBER COMPANY, THE GORMAN-RUPP COMPANY, THE NASH ENGINEERING COMPANY, THE WILLIAM POWELL COMPANY, TRANE U.S. INC., IN ITS OWN RIGHT AND AS SUCCESSOR TO WESTINGHOUSE AIRBRAKE AND/OR WABCO; TRUMBELL INDUSTRIES, INC., TUTHILL CORPORATION, UB WEST VIRGINIA, INC., UNION CARBIDE CORPORATION, UNITED CONVEYOR CORPORATION, VELAN VALVE CORPORATION, VIKING PUMP, INC., W.W. GRAINGER, INC., WARREN PUMPS, LLC, WASHINGTON GROUP INTERNATIONAL, AND ALL ITS DOMESTIC SUBSIDIARIES INCLUDING THE BADGER COMPANY, INC.; WATSON MCDANIEL COMPANY, WATTS REGULATOR CO., WEIL-MCLAIN COMPANY, WHEELABRATOR AIR POLLUTION CONTROL, INC., WT/HRC CORPORATION, WTI RUST HOLDINGS, INC., YORK INTERNATIONAL CORPORATION, YUBA HEAT TRANSFER LLC, ZURN INDUSTRIES, INDUSTRIAL HOLDINGS CORPORATION, SURFACE COMBUSTION, LINDBERG, DICK CORPORATION, NORTEK GLOBAL HVAC, LLC, FLSMIDTH, INC., MARLEY-WYLAIN COMPANY, INCORRECTLY DESIGNATED AS WEIL-MCLAIN COMPANY; SIMAKAS COMPANY, INC., TRUMBULL INDUSTRIES, INC., UB WEST VIRGINIA, INC., F/K/A/ UNION BOILER

COMPANY; MW CUSTOM PAPERS, LLC, WT/HRC CORPORATION, WHEELABRATOR AIR POLLUTION CONTROL, INC., MVS COMPANY, SULZER PUMPS (US), INC., MESTEK, INC., MESTEK, INC., SULZER PUMPS (US), INC., GOULD ELECTRONICS, INC., MESTEK, INC., SULZER PUMPS SOLUTIONS, INC.,

Defendants, *et al*.

REPORT AND RECOMMENDATION

Cynthia Reed Eddy, Chief United States Magistrate Judge.

I. RECOMMENDATION

This civil action was initiated in the Court of Common Pleas of Allegheny County, Pennsylvania by Plaintiff Darlene Data and was removed to this court by certain Defendants on July 22, 2019. Plaintiff asserts state law tort claims related to asbestos exposure against the Defendants. The court has jurisdiction under 28 U.S.C. §§ 1333 and 1367.

Before the Court for consideration are several motions for summary judgment related to product identification. Specifically, the following motions are ripe for the Court's consideration:

Motion for Summary Judgment Filed By:	**Motion ECF No.:**	**Response to Summary Judgment ECF No.:**	**Reply to Summary Judgment ECF No.:**
M.S. JACOBS & ASSOCIATES, INC.	983 and 1010	1146/1147/1148	1178
FLOWSERVE US INC., SOLELY AS SUCCESSOR TO NORDSTROM AUDCO INC., EDWARD VALVES, INC., NORDSTROM VALVES, INC. AND ROCKWELL MANUFACTURING	985	1171	1181
ARMSTRONG INTERNATIONAL, INC.	1015	1121/1148	1173
THE NASH ENGINEERING COMPANY	1024	1119/1148	n/a
HONEYWELL, INC.	1025	1131/1148	n/a

THE WILLIAM POWELL COMPANY	1027	1129/1148	n/a
CLYDE UNION, INC.	1030	1130/1148	1179
AIR & LIQUID SYSTEMS CORPORATION	1044	1128/1148	1176
DCo LLC *(f/k/a Dana Companies LLC)*	1046	1126/1148	1175
I.U. NORTH AMERICA, INC	1049	1123/1148	1174
ATWOOD & MORRILL CO., INC.	1051	1134/1135/1148	1182
VIKING PUMP, INC.	1052	1125/1148	1177
GENERAL ELECTRIC COMPANY	1063	1124/1148	1170
DEZURIK, INC.	1067	1138/1139/1148	n/a
ALFA LAVAL, INC.	1073	1132/1148	1168
FMC CORPORATION	1074	1140/1141/1148	1169
GARDNER DENVER, INC.	1076	1142/1143/1148	1162
HYSTER-YALE GROUP, INC.	1079	1127/1148	1167
BW/IP, INC.	1084	1136/1137/1148	n/a
CLARK EQUIPMENT COMPANY	1085	1120/1148	1165

For the following reasons, it is respectfully recommended that the following motions be:

Motion for Summary Judgment Filed By:	**Motion ECF No.:**	**Recommendation**
M.S. JACOBS & ASSOCIATES, INC.	983 and 1010	Granted
FLOWSERVE US INC., SOLELY AS SUCCESSOR TO NORDSTROM AUDCO INC., EDWARD VALVES, INC., NORDSTROM VALVES, INC. AND ROCKWELL MANUFACTURING	985	Granted
ARMSTRONG INTERNATIONAL, INC.	1015	Granted
THE NASH ENGINEERING COMPANY	1024	Denied without prejudice due to bankruptcy stay
HONEYWELL, INC.	1025	Denied
THE WILLIAM POWELL COMPANY	1027	Granted
CLYDE UNION, INC.	1030	Granted
AIR & LIQUID SYSTEMS CORPORATION	1044	Denied
DCo LLC *(f/k/a Dana Companies LLC)*	1046	Granted in part and denied in part
I.U. NORTH AMERICA, INC	1049	Granted
ATWOOD & MORRILL CO., INC.	1051	Granted
VIKING PUMP, INC.	1052	Granted
GENERAL ELECTRIC COMPANY	1063	Granted in part and denied in part
DEZURIK, INC.	1067	Granted
ALFA LAVAL, INC.	1073	Granted

FMC CORPORATION	1074	Granted in part and denied in part
GARDNER DENVER, INC.	1076	Denied
HYSTER-YALE GROUP, INC.	1079	Granted
BW/IP, INC.	1084	Granted
CLARK EQUIPMENT COMPANY	1085	Granted

II. REPORT

a. Background

Because each motion is fact specific to each moving Defendant, only general background is provided and the facts applicable to each moving Defendant are addressed separately. Decedent Michael Data ("Mr. Data") served in the United States Navy from June 1969 until March 1973, including aboard the USS Newport News (CA-148). After his discharge he worked at the Crane Company foundry in New Castle, Pennsylvania from July 1973 until August 1974. After this, he worked at Mesta Machine in New Castle, Pennsylvania from October 1974 to June 1982. Finally, he worked at the West Pittsburgh Power Station in New Castle, Pennsylvania from November 1983 to October 2009. During a portion of his time of military service and employment, Mr. Data was exposed to asbestos dust and fibers resulting in him developing mesothelioma beginning in 2018 and was eventually diagnosed with the disease in January 2019. Mr. Data died from complications of mesothelioma on February 6, 2020. Plaintiff Darlene Data ("Plaintiff" or "Mrs. Data") brings this suit on behalf of Mr. Data, as executrix of his estate, and on behalf of herself as Mr. Data's spouse. Mrs. Data maintains that the remaining Defendants engaged in the mining, milling, manufacturing, distributing, supplying, selling, using, recommended using, installing and/or removing asbestos materials and other dangerous ingredients and products which caused Mr. Data to contract mesothelioma and resulted in his death. Mrs. Data seeks damages for the injuries Mr. Data sustained because of his exposure to asbestos and for his wrongful death.

The presently pending motions for summary judgment relate to whether discovery has revealed evidence identifying each Defendants' contributions to Plaintiffs' claims, referred to as "product identification" motions. Because each motion requires a fact-specific analysis, each

motion will be addressed separately.[1]

b. Standard of Review

The standard for assessing a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure is well settled. A court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Furthermore, "summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 250.

On a motion for summary judgment, the facts and the inferences to be drawn therefrom should be viewed in the light most favorable to the non-moving party. *See Reeves v. Sanderson*

[1] At the outset, it must be noted that Plaintiff's response briefs simply list evidence contained in the record and make no attempt to apply this evidence to the applicable legal standard or argue why it is relevant. A party opposing summary judgment must not only cite to evidence supporting their claims but must make a legal analysis as to why the evidence creates a material issue of fact on the elements of her claims. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986) (summary judgment is appropriate where the nonmoving party fails "to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof."). The undersigned has largely inferred those arguments from Plaintiff's briefs. Because of Plaintiff's failure to connect her evidence to her legal claims, to the extent the undersigned has failed to consider evidence in making this recommendation, it is recommended that those arguments are not considered because of Plaintiff's failure to make a sufficient showing on an essential element of her claim. Additionally, Plaintiff spends a portion of each brief arguing that the court should consider the manufacturer or supplier's foreseeability in manufacturing or supplying asbestos-containing products. However, this is not the appropriate juncture to raise such an issue, as foreseeability pertains to a manufacturer/supplier's duty to warn and it was agreed by the parties that the current round of summary judgment motions pertain only to product identification/causation. Plaintiff fails to address why a foreseeability analysis is required to make such a determination. Therefore, the undersigned has not considered this argument in making any recommendation herein.

Plumbing Prod., Inc., 530 U.S. 133, 150, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587–88, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *Huston v. Procter & Gamble Paper Prod. Corp.*, 568 F.3d 100, 104 (3d Cir. 2009) (citations omitted). It is not the court's role to weigh the disputed evidence and decide which is more probative, or to make credibility determinations. *See Anderson*, 477 U.S. at 255; *Marino v. Indus. Crating Co.*, 358 F.3d 241, 247 (3d Cir. 2004); *Boyle v. Cty. of Allegheny Pennsylvania*, 139 F.3d 386, 393 (3d Cir. 1998). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 247–48. An issue is "genuine" if a reasonable jury could possibly hold in the nonmovant's favor on that issue. *Id.* "Where the record taken as a whole could not lead a reasonable trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.' " *Matsushita Elec. Indus. Co.*, 475 U.S. at 587 (citing *Huston*, 568 F.3d at 104).

A plaintiff may not, however, rely only on his complaint to defeat a summary judgment motion. *See, e.g.*, *Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial."). Allegations made with no evidentiary support may be disregarded. *Jones v. United Parcel Serv.*, 214 F.3d 402, 407 (3d Cir. 2000).

c. Discussion

Product Identification/Causation under Pennsylvania law

Generally, a plaintiff in a products liability action under Pennsylvania law is required to show that he was exposed to a defective product manufactured or sold by a defendant and that exposure was a substantial factor in causing the plaintiff's injury. *Gregg v. V-J Auto Parts, Co.*,

596 Pa. 274, 943 A.2d 216, 224–26 (2007).

Pennsylvania courts have recognized the difficulties facing plaintiffs bringing asbestos-related litigation "where they have unquestionably suffered harm on account of a disease having a long latency period and must prove specific causation under prevailing Pennsylvania law which may be insurmountable." *Rost v. Ford Motor Co.*, 637 Pa. 625, 151 A.3d 1032, 1043 (2016) (internal quotation marks and citations omitted). Nevertheless, the plaintiff in an asbestos case "must present sufficient evidence establishing product identification to survive a summary judgment motion." *Kardos v. Armstrong Pumps, Inc.*, 2019 Pa. Super. 324, 222 A.3d 393, 399 (2019) (citing *Eckenrod v. GAF Corp.*, 375 Pa. Super. 187, 544 A.2d 50, 52 (1988)). A plaintiff does so when he provides evidence that his injuries "were caused by a product of a particular manufacturer or supplier." *Vanaman v. DAP, Inc.*, 2009 Pa. Super. 27, 966 A.2d 603, 607 (2009) (en banc). "In other words, the plaintiff must present some evidence that he inhaled asbestos fibers shed by the specific manufacturer's product." *Kardos*, 222 A.3d at 399 (citing *Gutteridge v. A.P. Green Servs., Inc.*, 2002 Pa. Super. 198, 804 A.2d 643, 652 (2002)). The plaintiff must do more than show the mere presence of asbestos in the workplace, he must prove he worked in the vicinity of a specific manufacturer's product. *Kardos*, 222 A.3d at 399.

To evaluate product identification/causation evidence, Pennsylvania courts apply the "frequency, regularity, and proximity" test established in *Eckenrod*. *Gregg*, 596 Pa. at 292. This requires courts to "make a reasoned assessment of whether, in light of the evidence on the frequency, regularity, and proximity of a plaintiff's alleged exposure, a jury could draw a sufficient causal connection between the defendant's product and the asserted injury." *Kardos*, 222 A.3d at 399 (citations omitted). A court must determine "whether [a] plaintiff has pointed to sufficient material fact as to the causation of [his] disease by the product of each particular defendant."

Vanaman, 966 A.2d 607. The "frequency, regularity, and proximity" test "is not a rigid test that sets an absolute threshold required to support liability. . . . Rather, courts should apply [the test] in an evaluative fashion, in a way tailored to the facts and circumstances of the case." *Kardos*, 222 A.3d at 400 (citing *Linster v. Allied Signal, Inc.*, 2011 Pa. Super. 86, 21 A.3d 220, 224 (2011)). "Ideally, a plaintiff or witness will be able to directly testify that plaintiff breathed in asbestos fibers and that those fibers came from defendant's product. Without such direct evidence, plaintiff must rely upon circumstantial evidence of exposure." *Wilson v. A.P. Green Indus., Inc.*, 2002 Pa. Super. 294, 807 A.2d 922, 923 (2002). If a Plaintiff relies on circumstantial evidence, he must show that he "worked in the vicinity of the product's use" and not merely show the "presence of asbestos in the workplace." *Andaloro v. Armstrong World Indus., Inc.*, 2002 Pa. Super. 112, 799 A.2d 71, 86 (2002) (citing *Eckenrod*, 544 A.2d at 52). "Specifically, a plaintiff's evidence of exposure and product identity must show that she 'worked, on a regular basis, in physical proximity with the product, and that [her] contact with it was of such a nature as to raise a reasonable inference that [s]he inhaled asbestos fibers that emanated from it.'" *Wilson*, 807 A.2d at 923 (quoting *Coward v. Owens-Corning Fiberglas Corp.*, 1999 Pa. Super. 82, 729 A.2d 614, 622 (1999) (citing the frequency, regularity, and proximity standard from *Eckenrod*, 544 A.2d at 53)).

The court should apply a "less stringent" test where the plaintiff produces direct evidence of exposure to a particular defendant's product and applicable here, in cases involving mesothelioma, the frequency and regularity requirements should be "less cumbersome." *Kardos*, 222 A.3d at 400 (citing *Linster*, 21 A.3d at 224). Nevertheless, a plaintiff cannot survive summary judgment if a jury would need to speculate to find in plaintiff's favor. *Kardos*, 222 A.3d at 400 (citing *Krauss v. Trane U.S. Inc.*, 2014 Pa. Super. 241, 104 A.3d 556, 568 (2014). Ultimately, "in

asbestos products liability cases, evidence of 'frequent, regular, and proximate' exposures to the defendant's product creates a question of fact for the jury to decide." *Rost*, 151 A.3d at 1050.

Application of Maritime Law and Product Identification/Causation under Maritime law

Federal courts are authorized under the U.S. Constitution and by Congress to hear cases pertaining to admiralty and maritime jurisdiction. U.S. Const. art. III, § 2; 28 U.S.C. § 1333(1). A party seeking to invoke maritime jurisdiction in an asbestos-related claim under section 1333 must satisfy a locality and connection test. *Conner v. Alfa Laval, Inc.*, 799 F. Supp. 2d 455, 458–59 (E.D. Pa. 2011). The locality test "is satisfied as long as some portion of the asbestos exposure occurred on a vessel on navigable waters." *Id.* at 466. Work performed aboard a ship that is docked or in "dry dock" at the shipyard is still considered to occur on navigable waters. *Conner*, 799 F. Supp. 2d at 466. The connection test is satisfied if (1) the exposure "had a potentially disruptive impact on maritime commerce" and (2) "the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity." *Id.* at 463 (citation omitted). Where an individual is exposed to asbestos while he is performing maintenance on equipment integral to the functioning of the vessel, this exposure could "potentially slow or frustrate the work being done on the vessel." *Id.* at 465 (quoting *John Crane, Inc. v. Jones*, 274 Va. 581, 650 S.E.2d 851, 854 (2007)).

Plaintiff claims that Mr. Data was exposed to asbestos while serving in the U.S. Navy and stationed on the USS Newport News, both when the ship was on navigable waters and in dry-dock, and performed maintenance on equipment integral to the functioning of the vessel. Mr. Data's exposure had a potentially disruptive impact on maritime commerce and creates a substantial relationship to traditional maritime activity and therefore Mr. Data's alleged exposures occurring during his time serving aboard the USS Newport News is governed by maritime law.

Much like under Pennsylvania law, to establish causation for an asbestos claim under maritime law, a plaintiff must demonstrate the following for each defendant: "(1) he was exposed to the defendant's product, and (2) the product was a substantial factor in causing the injury he suffered." *Lindstrom v. A-C Prod. Liab. Tr.*, 424 F.3d 488, 492 (6th Cir. 2005) (citing *Stark v. Armstrong World Indus., Inc.*, 21 F. App'x 371, 375 (6th Cir. 2001)). Causation can be established by direct testimony or circumstantial evidence that supports the inference that the individual was exposed to the defendant's product. *Abbay v. Armstrong Int'l, Inc.*, No. 10-01585, 2012 WL 975837, at *1 n.1 (E.D. Pa. Feb. 29, 2012). The plaintiff must show that there was "a high enough level of exposure" to the product to infer that the defendant's product was a "substantial factor" to the injury and not merely "conjectural." *Id.* Evidence of "minimal exposure" or "a mere showing that the defendant's product was present somewhere at plaintiff's place of work is insufficient" to establish causation. *Lindstrom*, 424 F.3d at 492.

i. M.S. Jacobs & Associates Motion for Summary Judgment (ECF Nos. 983 and 1010)

Plaintiff alleges that M.S. Jacobs is liable for Mr. Data's injuries because it was the exclusive distributor of Dezurik, Inc. valve products until the early 1970s. The Dezurik valves contained gaskets and packing material that contained asbestos. Mr. Data is alleged to have been exposed to Dezurik valves while working at the West Pittsburgh Power Station beginning in 1983. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

M.S. Jacobs argues that the record is devoid of any evidence that products associated with it are the cause of injuries claimed by Plaintiff. Specifically, M.S. Jacobs argues that it was only the exclusive distributor of Dezurik valves in Western Pennsylvania from 1957 until the early 1970s and that Mr. Data testified that he first worked with a Dezurik valve in 1993 at the plant.

M.S. Jacobs argues that a twenty-year gap between the time when M.S. Jacobs stopped distributing Dezurik products and when Mr. Data first worked with a Dezurik valve in 1993 does not show exposure.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Robert Vietmeier, a corporate representative of M.S. Jacobs, testified in another asbestos case that M.S. Jacobs was the exclusive distributer of Dezurik valves from 1957 until at least the 1970s, that all Dezurik valves in the 1960s and 1970s used asbestos containing gaskets and packing and M.S. Jacobs supplied replacement parts for all the valves they sold. (ECF No. 1146-1 at 19-20).

- Dezurik admitted in another asbestos case that it sold asbestos-containing valves into the 1980s and 1990s. (ECF No. 1146-2).

- Albert Libke, a corporate representative of Dezurik, testified in another asbestos case that many Dezurik valves used asbestos packing up until the early 1980s. (ECF No. 1146-3 pp. 21, 34, 46-48, 53, 93-95, 111).

- Mr. Data testified that during the early to late-1980s, he was in close proximity to others who performed maintenance on Dezurik valves by removing old asbestos-containing packing and replacing it with new packing and used compressed air to clean out the valves which would cause dust which Mr. Data breathed in dust created from their maintenance work. Mr. Data testified that he personally worked on Dezurik valves during his employment in the pump room beginning in 1993 where he would pull them out for testing and put them back in when they would come in. He also testified he remembered seeing Dezurik valves in the steam room and was right beside other maintenance workers performing work on Dezurik valves at the power plant during his first five years of employment from 1983-1988 which would include removing the old asbestos-containing packing and replacing it with new packing causing dust that he would breathe in. 999-9 at 22. He testified that he would go into the shop and he would encounter a Dezurik valve torn apart on a table. (ECF No. 999 Ex. I pp. 81-86). He also testified he worked with James Minner in his capacity as a storeroom attendant to obtained materials from him and with Jack Shaw, a maintenance worker, who Mr. Data worked alongside. (ECF No. 999 Ex. C pp. 86-87).

- James Minner, who worked in the storeroom of the West Pittsburgh Power Plant in multiple capacities from 1968-1998 and eventually became the storekeeper testified

that M.S. Jacobs furnished valves to the plant and that he observed the word "asbestos" on invoices for packing and gaskets that were ordered into the plant. (ECF No. 999 Ex. L. pp. 7-12, 47, 101-102). He testified that every year the plant had an outage and all of the workers, regardless of whether they were in a maintenance job or not, were called to assist with the preventative maintenance that occurred on the turbines, boilers and in the fan and pump rooms. (*Id.* pp. 14-17).

- Jack Shaw testified in another asbestos case that there were hundreds of valves at the plant and as a mechanic he personally worked on all the valves during his employment. (ECF No. 999 Ex. O pp. 48-51, 58-59, 63). He testified that he used asbestos rope and gaskets on the pumps and valves every two to three days and would remove the old packing with hand tools and grinders which created dust. (*Id.* at 52-56). He testified that he replaced the packing with new packing that he got from the storeroom in a package marked "asbestos" and he and other workers cut and formed the new packing which created dust. (*Id.*; ECF No. 999 Ex. P p. 84). He also testified that he observed the word "asbestos" on the packaging that the new gaskets that he got from the storeroom. (ECF No. 999 Ex. O, p. 58; Ex. P pp.83-84; Ex. Q p. 169). He testified that he had to cut and form gaskets that created dust. (ECF No. 999 Ex. O p. 58). He testified that he consulted repair manuals for the pumps and valves and they specified the use of asbestos gaskets and packing. (ECF No. 999 Ex. Q pp. 179-80; 183).

- Frank Parker, a Certified Industrial Hygienist ("CIH"), authored an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials, even if the worker has not handled the product containing asbestos and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Exhibit U pp. 19-22; 25)

3. Defendant's Reply

M.S. Jacobs responds that the testimony of James Minner regarding the extent that M.S. Jacobs supplied valves to the facility is vague as he merely identifies M.S. Jacobs as a supplier and then discusses gaskets and packing without further reference to M.S. Jacobs. M.S. Jacobs also argues that while Mr. Data testified in his affidavit that he worked with Dezurik valves in the early to late 1980s, that during his deposition he specifically testified that he did not work with Dezurik valves until 1993. It reiterates that because it is undisputed that M.S. Jacobs stopped distributing Dezurik valves in the early 1970s, Mr. Data's deposition testimony that he first encountered a Dezurik valve in 1993 is too speculative to show exposure.

4. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. While Mr. Data testified during his deposition that he first remembered encountering Dezurik valves in 1993, he also testified through his affidavit that he remembered encountering Dezurik valves in the early to late-1980s by being present while others performed maintenance on the Dezurik valves.[2] Viewing this testimony in the light most favorable to Plaintiff and assuming that Mr. Data first encountered Dezurik valves in 1983 when he first started at the plant, it is undisputed that M.S. Jacobs stopped supplying Dezurik valves in 1970. While Plaintiff cites to James Minner's testimony to establish that M.S. Jacobs supplied valves to the plant, and M.S. Jacobs does not argue the accuracy of Plaintiff's citation to James Minner's testimony, a review of Mr. Minner's testimony reveals that he does not mention M.S. Jacobs and instead refers to another supplier, Pittsburgh Gage, that he claimed distributed asbestos-containing gaskets and packing to the plant. (ECF No. 999-12 at p. 102). Pittsburgh Gage's successor in interest, IUNA is also named as a Defendant in this action. Even assuming that M.S. Jacobs at some point delivered Dezurik valves to the plant, Plaintiff offers no evidence linking those M.S. Jacobs supplied valves to Mr. Data, especially where it is undisputed that M.S. Jacobs stopped supplying Dezurik valves thirteen years before Mr. Data began working at the plant. For example, finding for Plaintiff would require a jury to speculate as to the shelf-life of a Dezurik valve such that it would be possible for Mr. Data to encounter a valve that was supplied by M.S. Jacobs thirteen years before he began his employment at the plant. Requiring a jury to make such inferential leaps is insufficient to survive summary judgment and

[2] M.S. Jacobs does not argue that Mr. Data's affidavit should be disregarded under the sham affidavit doctrine.

Plaintiff has not proffered sufficient evidence showing Mr. Data's exposure to an M.S. Jacobs supplied valve. *See Anderson*, 477 U.S. at 248.

5. Recommendation

Accordingly, it is respectfully recommended that M.S. Jacob's motion for summary judgment (ECF Nos. 983/1010) be granted.

ii. Flowserve US Inc.'s Motion for Summary Judgment (ECF No. 985)

Plaintiff alleges that Flowserve US Inc. ("Flowserve") is liable for Mr. Data's injuries because it manufactured Edward and Rockwell brand valves that contained asbestos packing and replacement packing which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Station. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

Flowserve argues that Plaintiff has not identified any Flowserve valve Mr. Data was exposed to and is entitled to summary judgment.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Flowserve admitted in a previous asbestos case that it manufactured valves with asbestos-containing gaskets and packing up to at least 1986, (ECF No. 1171-2), and asbestos-containing replacement parts were supplied to customers for Rockwell and Edwards valves. (ECF No. 1171-3 at 25, 66-67, 72-73, 110, 126).

- Pennsylvania Power who owned and operated the West Pittsburgh Power Station during Mr. Data's employment provided documents that established Edward and Rockwell brand valves were present at the plant. (ECF No. 1171-1; ECF No. 999 Ex. R pp. 1120-1917). Specifically, evidence shows that the power plant contained a Rockwell slide valve in the pyrite removal system, a Rockwell slide valve on the ash disposal piping and a Rockwell butterfly valve on the turbine piping (ECF No. 999 Ex. R pp. 1194, 1200, 1208), and contained several valves supplied by Edward Valves

including globe valves, 2 straight-away blow off valves, an angle valve and an attemperator valve located on high pressure steam piping including boiler piping. (ECF No. 999 Ex. R. pp. 1143, 1186, 1202-04, 1232-33).

- Mr. Data testified that he performed maintenance on valves that contained asbestos and required asbestos replacement which created dust which he inhaled. (ECF No. 999 Ex. A pp. 1-9). He also testified that the plant was made of open grating so that it was possible that dust from one level could fall through grates to the lower levels. (ECF No. 999 Ex. C p. 83). He testified that he worked with James Minner, the storeroom attendant who gave materials to him. (*Id.* at p. 85). He testified he worked with Jack Shaw, a maintenance worker who repaired equipment using gaskets, and was a few feet from Mr. Shaw when he was performing maintenance. (*Id.* at pp. 86-87).

- Mr. Shaw testified in a previous asbestos case that there were hundreds of valves at the plant and he personally worked on all of the valves during his employment. (ECF No. 999 Ex. O. pp. 48-51, 58-59, 63). Mr. Shaw testified that he used asbestos rope and gaskets on pumps and valves almost everyday and removed the old packing with hand tools and grinders, creating dust and that the new packing he received from the storeroom was marked "asbestos" which he would cut to form new packing creating dust. (*Id.* at pp. 52-56).

- Mr. Minner testified in a previous asbestos case that he observed the word asbestos on invoices for packing and gaskets that were ordered into the plant. (ECF No. 999 at Ex. L. pp. 101-102).

- Frank Parker authored a report in which he testified that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Exhibit U pp. 19-22; 25).

3. Defendant's Reply

Flowserve responds that Plaintiff has failed to produce evidence identifying Flowserve's product as an asbestos-containing product that Mr. Data worked with on a frequent and regular basis and has failed to offer any evidence that places Mr. Data in the vicinity of Flowserve products, let alone with the requisite degree of regularity as required. Flowserve argues that Plaintiff at most identifies that its products were present at the plant.

4. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. While Plaintiff has proffered sufficient evidence to show that Flowserve products contained asbestos and were present at the power plant, she has not proffered sufficient evidence of Mr. Data's exposure. Mr. Data does not expressly identify proximity to Flowserve products. Where an individual cannot directly testify that he breathed asbestos fibers coming from a particular defendant's product and relies on circumstantial evidence to support causation, he must show that he worked in the vicinity of the product's use and was not simply in the presence of asbestos in the workplace. *See Andaloro*, 799 A.2d at 86 (citing *Eckenrod*, 544 A.2d at 52). Considering all the evidence cited by Plaintiff, it simply demonstrates that Flowserve products were present in the power plant. While Mr. Data generally testified that he performed maintenance on valves and that he was in the vicinity of other employees performed maintenance on valves that contained asbestos, there is no evidence that Mr. Data encountered or was exposed specifically to Flowserve products. Considering Mr. Shaw's testimony that he worked on all the valves at the plant at some point during his employment and Mr. Data's testimony that he worked alongside Mr. Shaw at times is too speculative to infer that the times Mr. Shaw worked on Flowserve valves at some point in his career that Mr. Data was beside him when he was performing that work. Because Plaintiff's evidence would require a jury to speculate whether Mr. Data was exposed to any Flowserve products during his employment at the power plant, it is insufficient to survive summary judgment.

5. Recommendation

Accordingly, it is respectfully recommended that Flowserve's motion for summary judgment (ECF No. 985) be granted.

iii. Armstrong International, Inc. Motion for Summary Judgment (ECF No. 1015)

Plaintiff alleges that Armstrong International, Inc. ("Armstrong") is liable for Mr. Data's injuries because it manufactured Armstrong-brand steam traps that contained gaskets and flanges which contained asbestos and required asbestos replacement which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Plant. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

Armstrong International, Inc. ("Armstrong") argues it is entitled to summary judgment because Plaintiff has failed to identify exposure to any Armstrong product and that Mr. Data specifically stated that he did not recall Armstrong International as a manufacturer of steam traps that he worked on and Plaintiff's expert does not identify Armstrong as a source of Mr. Data's asbestos exposure.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Armstrong's corporate representative Thomas Grubka testified that all Armstrong steam traps were sold with asbestos-containing internal gaskets and sold replacement asbestos-containing gaskets from use with its steam traps from 1950 until 1988. (ECF No. 1121-2 pp. 41-46; 31-32, 38-40). Mr. Grubka further testified that the steam traps required frequent replacement using asbestos materials because the old gasket would stick to the metal (ECF No. 1121-6 pp. 31-32, 38-40, 40-41).

- In all of its catalogs and handbooks, Armstrong specified the use of asbestos gaskets with its products and sold replacement asbestos-containing gaskets for use with its steam traps. (ECF No. 1121-3).

- Pennsylvania Power, the owner and operator of the West Pittsburgh Power Station, provided documents indicating that there were at least thirty-two Armstrong steam traps at the plant during the period that Mr. Data worked there. Specifically, there were four Armstrong traps on the high-pressure steam piping, one Armstrong trap on the oil

turbine steam piping, one Armstrong trap on the drains in the boiler room, two Armstrong traps on the boiler plant piping, two Armstrong traps on the turbine reheat lines, two Armstrong traps on the boiler plant valves, three Armstrong traps for the boiler plant valves, ten Armstrong traps for the boiler plant valves, and twelve Armstrong traps for the boiler plant valves. (ECF No. 999-19 pp. 25, 49-50, 67, 122, 148-151).

- Mr. Data submitted an affidavit stating he regularly performed maintenance or was present during the maintenance of steam traps which involved handling asbestos-containing gaskets and packing which created dust he breathed. (ECF No. 999 Ex. A p. 1). During his deposition, he testified that from 1983-1988 he participated in maintenance work on steam traps which would require replacing the gasket or packing and he would assist with unbolting flanges, cleaning gaskets off flanges, and cleaning up the packing with compressed air and a broom which would cause dust which he breathed. (ECF No. 999 Ex. C pp. 56-59; 64-65).

- Frank Parker authored a report in which he testified that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Exhibit U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, is not enough evidence to overcome summary judgment on product identification. While Armstrong argues that its motion should be granted because Mr. Data did not specifically identify Armstrong-brand steam traps, there is no requirement that an asbestos plaintiff provide only direct evidence of exposure to a defendant's product and an asbestos plaintiff may rely on circumstantial evidence to meet the causation requirement. *See Andaloro*, 799 A.2d at 86 (citing *Eckenrod*, 544 A.2d at 52). Similarly, that Plaintiff's expert does not identify Armstrong as a possible factor for exposure does not mean other competent evidence could show exposure. Further, while Mr. Parker did not specifically name Armstrong-brand steam traps, he considered Mr. Data's testimony related to removing and replacing gaskets when he testified about steam traps. (ECF No. 999-21 p. 7). Nevertheless, Plaintiff has not proffered sufficient evidence that Mr. Data was exposed to any Armstrong

product. While Mr. Data testifies that he worked on steam traps by performing maintenance on gaskets and packing that contained asbestos and Plaintiff provides evidence that the plant contained thirty-two Armstrong steam traps, there is no evidence, for example, of whether Armstrong steam traps were the only or a high percentage brand of steam trap located in the plant, or that the Armstrong-brand steam traps were in proximity to where Mr. Data regularly worked. Likewise, considering that Armstrong steam traps required periodic replacement using asbestos materials ostensibly for the proposition that it was more likely that Mr. Data or others he was around would have performed maintenance on Armstrong steam traps and caused respirable asbestos fibers, this evidence is not material unless Plaintiff could proffer sufficient evidence of Mr. Data's exposure to Armstrong steam traps, which she has not. While Plaintiff's evidence demonstrates the presence of asbestos-containing Armstrong steam traps in the plant, it falls short of demonstrating the requisite exposure.

4. Recommendation

Accordingly, it is respectfully recommended that Armstrong's motion for summary judgment (ECF No. 1015) be granted.

iv. The Nash Engineering Company's ("Nash Engineering") Motion for Summary Judgment (ECF No. 1024)

On October 19, 2021, Nash Engineering filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the District of Connecticut at 21-50644. (ECF No. 1185). Therefore, under section 362 of the Bankruptcy Code, this case is stayed as to Nash Engineering and no further prosecution or judgment can be rendered in this case as to Nash Engineering. 11 U.S.C. § 362. Accordingly, no recommendation is made as to the merits of this motion and it is recommended that the motion be denied without prejudice due to the mandatory bankruptcy stay.

v. Honeywell Inc.'s ("Honeywell") Motion for Summary Judgment (ECF No. 1025)

Plaintiff alleges that Honeywell is liable for Mr. Data's injuries because it manufactured/distributed/sold valves that contained asbestos-containing packing and gaskets which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Plant. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

Honeywell argues that Plaintiff has not identified any Honeywell product that Mr. Data was exposed to because he testified he had no evidence that any product manufactured by Honeywell contained asbestos.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity, and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Honeywell's corporate representative Michael Chunko testified that Honeywell made control valves that contained asbestos until 1983 and that gaskets containing asbestos were used in control valves. (ECF No. 1131-3 pp. 36-38, 90-91, 100-107, 126-127, 160-162).

- Honeywell admitted in previous asbestos cases that it manufactured and sold asbestos-containing control valves, thermocouples, thermocouple extension wire, and electrical controls between 1949 and the early 1980s, that some Honeywell control valves used asbestos-containing internal gaskets and/or packing and used internal gaskets and packing supplied by others, and that its industrial control valves contained as many as two internal asbestos-containing gaskets. (ECF No. 1131-2 p. 13).

- Mr. Data testified that from 1983-1988, he performed maintenance and assisted the maintenance department with the repair of valves containing asbestos. In this regard, he would scrape off the old gaskets with a scraper and pneumatic brush and replace the gaskets that would create dust he would breathe. He also testified he assisted others in re-packing valves where another took the asbestos packing out of the pump with a packing puller and replaced it with new packing and used wire brushes and compresses air to remove the old gasket material and to clean out the valves which created dust that

he breathed. Specific to Honeywell valves, Mr. Data testified as follows:

> Q. You told us a little bit about the maintenance work that you assisted with regard to the valves. Do you associate any brand names with any of the valves at the power plant?
> A. There was Crane, Honeywell, DeLaval.
>
> . . .
>
> Q. Let me ask it a different way. Do you associate any particular valves with the name Honeywell?
> . . .
> A: I'm thinking some of your electrically-operated valves were Honeywell.
> Q. When you say "electrically-operated," can you describe that in a little bit more detail?
> A. You would -- actually on a control panel, you would -- you would hit the switch, and then the valve itself would go opened or closed. There was an electric motor there that would actually operate the valve in one position or the other.
> Q. Was that motor a part of the valve?
> A. Yes.
>
> . . .
>
> Q. Okay. How many Honeywell valves were there at the plant?
> . . .
> A: Oh, jeez. That may be the same guess.
> Q. Hundreds?
> A. Yeah.
> Q. Did you work around individuals performing maintenance work on each of these brands of valves during your time at the power plant?
> . . .
> A: Yes.
> Q. Would that have been during the first five years at the plant?
> A. Yes.
> Q. How frequently would you be around individuals doing repair work on these valves?
> . . .
> A: It's hard to say. It all depended on what condition the valve was in. I mean, you could have some valves that would last 20 years, and some might only last two years. And if they were leaking, you'd have to repair the leaks one way or another.

(ECF No. 999-3 pp. 73-77) (testimony regarding other products and objections omitted). Mr. Data

further testified about Honeywell valves as follows:

> Q. Okay. Now, all the valves that you worked with yourself or saw others working on that you were nearby were a flanged connection; is that right?
> A. Some -- some were welded in and some had flanges. They were all different.
> Q. Okay. But we're talking about a connection that goes from the valve to the pipe leading off the valve, some connection there are either flanged or welded on; is that right?
> A. Right.
> Q. Okay. So all the gaskets that you yourself worked on or were nearby others working on went on a flanged connection, those gaskets, right?
> A. Right.
> Q. And the packing that you yourself worked with or that you might have seen or been nearby others working on was a rope packing, right?
> A. No. It was almost like a square -- yeah, you would classify it as a rope-type packing. Yes.
> Q. Okay. You don't have any evidence that anything manufactured by Honeywell contained asbestos, do you?
> A. No, I don't.

(ECF No. 999-9 at pp 120-121).

- Gregory Thomas testified in another asbestos case that he worked at the maintenance department at the West Pittsburgh plant and performed work on Honeywell manual and automatic control valves, that there were a lot of valves at the plant and testified that the Honeywell valves always used asbestos gaskets if they were for steam lines or hot water and that he had to replace those gaskets. (ECF No. 1131-1 pp. 37, 45-46, 60, 67-68).

- Frank Parker, CIH, authored an expert report in which he opined that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is enough evidence to overcome summary judgment on product identification. As a preliminary matter, upon review

of Gregory Thomas's testimony, while Plaintiff's paraphrasing of Mr. Thomas's testimony is accurate, Plaintiff fails to include that Mr. Thomas worked in the maintenance department from 1954-1965 and thereafter moved into a management role and did not work in the actual plant after 1965. (ECF No. 1131-1 pp. 23, 24, 25). While this testimony cannot create a genuine issue of material fact as to whether Honeywell products at the power plant contained asbestos-containing products, Plaintiff provides other competent evidence creating a genuine issue of material fact. Specifically, Plaintiff provides evidence that Honeywell control and electrical control valves were made with asbestos-containing gaskets and packing until 1983. Mr. Data testified that between 1983 and 1988 he regularly was present during the maintenance of Honeywell valves where he would scrape off old gaskets with a scraper and brush and replace the gaskets with asbestos material which would create dust that he would breathe. He testified that he assisted others in re-packing Honeywell valves that required removal of asbestos packing and replacing it with new asbestos packing using wire brushes and compressed air to clean out the old gasket material, creating dust that he would breathe. He testified that the plant had hundreds of Honeywell valves. Plaintiff offers expert testimony that this typical installation and maintenance of valves through gaskets and packing products generates respirable asbestos fibers which can lead to mesothelioma, even if the exposure is relatively light. While Honeywell argues that Mr. Data testified he had no evidence that Honeywell products were made with asbestos and it should be entitled to summary judgment by virtue of that testimony alone, an individual exposed to asbestos does not need to directly testify he knew the product he was exposed to contained asbestos where there is other competent evidence showing the product contained asbestos. Plaintiff has proffered other evidence, *i.e.*, Honeywell's own admission that its product contained asbestos, which could lead a reasonable jury to believe that the Honeywell valves Mr. Data encountered had asbestos-

containing products that created dust that Mr. Data breathed.

4. Recommendation

Accordingly, it is respectfully recommended that Honeywell's motion for summary judgment (ECF No. 1025) be denied.

vi. The William Powell Company's ("William Powell") Motion for Summary Judgment (ECF No. 1027)

Plaintiff alleges that William Powell is liable for Mr. Data's injuries because it manufactured Powell-brand valves which were supplied with asbestos-containing packing and required the use of asbestos-containing replacement packing which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Station. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

William Powell argues that there is no evidence that Powell valves ever existed at any of Mr. Data's worksites, and even if so, Plaintiff has not identified any Powell product that Mr. Data was allegedly exposed to.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- William J. McClure, a William Powell representative, testified in prior asbestos cases that Powell valves incorporated asbestos gaskets and packing until 1991. (ECF No. 1129-4 pp. 35-36, 54, 132, 138).

- In discovery responses filed in a prior asbestos case, Powell admitted that it sold valves with asbestos gaskets and packing from 1930 until the mid to late 1980s. (ECF No. 1129-3).

- Pennsylvania Power, the owner and operator of the West Pittsburgh Power Plant during

Mr. Data's employment, responded to written discovery requests and provided documents establishing there were many Powell brand valves at the West Pittsburgh Power Station. (ECF No. 1129-1). Specifically, the documents reveal the existence of 240 Powell brand valves at the plant including 2 Powell globe valves on the deep well piping, 10 Powell valves on the boiler plant piping, 8 on the condensate and bleeder piping, 2 on the circulating water piping, 1 on the economizer hopper, 6 on the air suction piping, 2 on the overflow condensate piping, 4 on the ash sump water piping, 1 on the fan room water heater piping, 3 on the heater vent piping, 2 on the economizer blowdown piping, 47 on the house service water piping, 3 on the house discharge piping, 24 on the burner oil and air piping, 5 on the turbine oil reservoir piping, 8 on the air ejector and oil turbine steam piping, 4 on the drip pump piping, 1 on the flash tank piping, 16 on the gland water piping, 6 on the open feed water heater, 11 on the steam and condensate sampling piping, 1 on the drain in the boiler room, 8 on the circulating water pump priming piping, 8 on the fan floor coal handling equipment piping, 5 on the evaporator high level condensate pump piping, 5 on the condensate pump piping, 1 on the drip pump piping, 2 on the gland water piping, 2 on the heater vent piping, 8 on the boiler plant piping, 31 on the boiler plant piping, 4 on the oil purification system and 3 on the turbine piping. (ECF No. 999 Ex. S pp. 1133, 1149-1151, 1153-1155, 1157-1169, 1203, 1228, 1233, 1264, 1269, 1376, 1408-1409).

- Mr. Data testified through an affidavit that between 1983 and 1988 he performed maintenance or worked around others who performed maintenance on valves at the plant which involved the use of asbestos-containing gaskets and packing which would create dust that he breathed. He further testified that he scraped off old gaskets with a scraper and a pneumatic brush and replaced the gaskets and packing which created dust that he breathed. He testified that he assisted in the repacking of valves in which another worker would take the packing out of the pump with a packing puller and replace it with new packing. There were also flange gaskets associated with the valves. Wire brushes and compressed air were used to remove the old gasket material and to clean out the valves. This would create dust that Mr. Data breathed. (ECF No. 999 Ex. C pp. 62-64). He also testified that the floors in the plant were made of open grating and it was possible to see from one level to the next and the dust on one level could fall through the grates to the lower levels. (*Id.* at p. 83).

- Frank Parker, CIH, authored an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. Considering Plaintiff's

evidence that there were 240 Powell-brand valves located at the plant, reviewing the records cited by Plaintiff, most of these valves were installed in 1939, forty-four years before Mr. Data began his employment at the plant. Plaintiff offers no other evidence that the Powell valves remained at the plant and relies on speculation that the originally installed Powell-brand valves remained in use at the plant during Mr. Data's employment. Even assuming this evidence was sufficient to show presence of Powell-brand valves at the plant, Plaintiff offers no evidence, direct or circumstantial, that Mr. Data encountered Powell-brand valves in a way that caused him to breathe dust created from maintaining these particular valves. Mr. Data's testimony regarding his work on valves generally without more is insufficient to create a material issue of fact as to his exposure to Powell-brand valves.

4. Recommendation

Accordingly, it is respectfully recommended that William Powell's motion for summary judgment (ECF No. 1027) be granted.

vii. Clyde Union, Inc.'s ("Clyde Union") Motion for Summary Judgment (ECF No. 1030)

Plaintiff alleges that Clyde Union is liable for Mr. Data's injuries because it manufactured and supplied Union-brand pumps that were supplied with asbestos-containing packing and required the use of asbestos-containing replacement packing which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Plant. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

Clyde Union argues that Plaintiff has not identified any asbestos-containing product that Mr. Data was exposed to.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Pennsylvania Power who owned and operated the West Pittsburgh Power Plant during Mr. Data's employment provided documents in another asbestos case that established Union steam pumps were part of the installation at the West Pittsburgh Power Station. ECF No. 1130-2. Specifically, the documents show that there was a Union Steam Pump Co. Auxiliary Boiler Feed Pump at the plant. This was a 25 gallon per minute pump with a case iron fluid cylinder, bronze wing guided babbles, bronze screw valve plug and bolted stuffing box glands, and was driven by a 20hp General Electric motor. There were also two Union Steam Pump Co. Ash Sluicing Pumps which were horizontally split, with a bronze enclosed impeller, removable wear rings, with a 1200 gallon per minute capacity driven by 100hp 2300 Elliot electric motors. There were also two Union Steam Pump Co. Boiler Filling Pumps with a capacity of 150 gallons per minute of hot water driven by, one each, 25hp General Electric motor and 20hp Westinghouse motor. (ECF 1130-2 pp. 1131, 1140, 1142, 1199, 1499, 1219).

- In a prior asbestos case, Clyde Union admitted that it is responsible for the Union pump brand and it sold those pumps with asbestos-containing gaskets and packing until at least 1986. (ECF No. 1130-3).

- The West Pittsburgh Power Station specifications called for the use of asbestos-containing thermal insulation on the steam piping, valves, and boiler feedwater heaters. (ECF No. 999-19 p. 151).

- Thomas J. Hemphill, the owner of Argo Packing Company, testified that Argo sold asbestos containing sheet gasket material under the name "Powerite" and that all Powerite gasket material made from 1959 through the 1980s contained asbestos. (ECF No. 1130-1 pp. 9-10, 49, 50-51).

- Mr. Data testified through an affidavit that between 1983 and 1988 he performed maintenance or worked around others who performed maintenance on boiler feed pumps, condensate pumps, water pumps, cooling pumps and oil pumps associated with the piping systems at the plant which involved the use of asbestos-containing gaskets and packing which would create dust that he breathed. He testified that he would assist with unbolting flanges, lifting parts of pumps, cleaning gaskets off flanges and cleaning up afterwards. He further testified that he scraped off old gaskets with a scraper and a pneumatic brush and replaced the gaskets and packing which created dust that he breathed. Wire brushes and compressed air were used to remove the old gasket material and to clean out the valves. This would create dust that Mr. Data breathed. (ECF No. 999 Ex. C pp. 62-64). Mr. Data also testified that sometimes he would make a gasket and sometimes he would get them from the manufacturer because it was easier to obtain

pre-made gaskets from the manufacturer of the pumps and equipment. (ECF No. 999 Ex. C p. 61). Mr. Data recalled working with Powerite gaskets at the plant and that those gaskets were used mainly for steam lines. Mr. Data also testified that he sometimes worked just a few feet away from Jack Shaw, a maintenance man who worked repairing equipment including pumps. (*Id.* at pp. 83-87).

- Jack Shaw testified in a previous asbestos case that there were quite a few pumps at the plant and he personally worked on all the pumps in the plant at one time or another. (ECF No. 999 Ex. O pp. 49-51, 58-59). He testified he used asbestos rope and gaskets almost every day in which he would remove the old packing with hand tools and grinders which created dust, would replace the packing with new packing he got from the storeroom labeled "asbestos" and cut and formed new packing which created dust. (*Id.* at pp. 52-56; ECF No. 999 Ex. P p. 84). Mr. Shaw also testified that he observed the word "asbestos" written on packaging of new gaskets he received from the storeroom. (ECF No. 999 Ex. 0 p. 58; Ex. P pp.83-84; Ex. Q p. 169).

3. Defendant's Reply

Clyde Union replies that Mr. Data and Mr. Shaw did not specifically identify Union pumps in their testimony, Plaintiff's evidence citing to the presence of Union pumps at the plant is speculative because it shows that these pumps were installed 44, 36 and 31 years before Plaintiff began his employment there, and that Plaintiff's expert did not specifically consider Clyde Union products as possible exposure and cause of Mr. Data's mesothelioma.

4. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. Considering Plaintiff's evidence that Union pumps were installed at the West Pittsburgh Power Station, as pointed out by Clyde Union, these pumps were installed decades before Mr. Data began his employment at the plant. Plaintiff offers no other evidence that the Union-brand pumps remained at the plant and relies on speculation that the originally installed Union-brand pumps remained in use during Mr. Data's employment. Even assuming this evidence was sufficient to show the presence of Union-brand pumps during Mr. Data's employment, Plaintiff offers no evidence, direct or circumstantial,

that Mr. Data encountered Union-brand pumps in a way that caused him to breathe dust created from maintaining these particular pumps. Mr. Data's testimony regarding his work on pumps generally without more is insufficient to create a material issue of fact as to his exposure to Union-brand pumps.

5. Recommendation

Accordingly, it is respectfully recommended that Clyde Union's motion for summary judgment (ECF No. 1030) be granted.

viii. Air & Liquid Systems Corporation's ("Air & Liquid") Motion for Summary Judgment (ECF No. 1044)

Plaintiff alleges that Air & Liquid is liable for Mr. Data's injuries because it manufactured Buffalo-brand pumps that contained asbestos-containing products including gaskets and packing material which Mr. Data is alleged to have been exposed to while aboard the USS Newport News. While both parties cite to Pennsylvania law, maritime law applies as to Mr. Data's exposure to Buffalo brand pumps, as he was only allegedly exposed to this product while aboard the USS Newport News.

1. Defendant's Arguments

Air & Liquid argues that Plaintiff has failed to produce sufficient evidence establishing that Mr. Data worked with or around any asbestos-containing product manufactured, distributed, sold or supplied by it and has failed to produce sufficient evidence to establish that Mr. Data was exposed to any such product to support causation. Air & Liquid argues that while Mr. Data identified Buffalo pumps at his deposition, he did not allege exposure to asbestos attributable to Buffalo pumps. Air & Liquid also argues that while it supplied some products for intended use aboard the USS Newport News, there is no evidence that the products were installed on the ship or that they contained asbestos.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing Mr. Data's exposure was a substantial factor in his injuries to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Mr. Data served upon the USS Newport News as a fireman in the engine room between 1969 and 1973. (ECF No. 999 Ex. D pp. 23-26). His duties involved tending the engines, repairing equipment which included pumps and valves and standing watch. (*Id.* at p. 26). He did this work in the Number 3 engine room primarily but spent time in the other three engine rooms. (*Id.)* There were boilers, engines, pumps, valves, turbines, electrical panels, bilge pumps, fans, blowers, steam traps and generators in the engine rooms. (*Id.* at p. 27). Mr. Data personally performed maintenance work on each piece of equipment at one time or another during his time aboard the ship. (*Id.* at p. 28). He would replace rope packing in the pumps in which he opened the packing glands, pulled out the old rope packing and repacked the pumps. Sometimes he had to remove the pumps from the piping systems by disconnecting the bolts connecting the flanges and that work required the use of gaskets. (*Id.* at pp. 28-29). He personally cut these gaskets using a ball-peen hammer to tap around the edges of the flanges. Sometimes he would use a knife or pair of scissors to cut the gaskets. This work created dust which he breathed. (*Id.* at p. 29). The USS Newport News was in drydock in about 1971 for a repair project that lasted about nine months. (ECF No. 999 Ex. D p. 36). Mr. Data stayed aboard the ship and assisted with the work being performed in the engine rooms, including refurbishing turbines, boilers, larger pumps and valves. (*Id.* at 37-38). Mr. Data testified that he recalled Buffalo pumps aboard the USS Newport News and he personally worked on those pumps. (*Id.* at pp. 39, 41-42). He further testified through an affidavit that he repaired and maintained pumps and valves in the engine room which involved him handling asbestos-containing gaskets and packing. (ECF No. 999 Ex A pp.1-9). The gaskets were in the form of a sheet of fibrous material and the packing was a rope-like material. The gaskets usually would be cut to fit the application and sometimes arrived pre-cut. The packing also would be cut. Mr. Data cut and handled the new gaskets and packing which created dust that he breathed. (*Id.)* He testified that when he repaired pumps and valves, he removed old gaskets from pump and valve flanges and pump housing and removed packing from pump shafts, stuffing boxes and valve packing glands. He typically removed the gaskets with a scraper and a wire brush or a pneumatic wire wheel and this created dust that he breathed. He typically removed packing with a packing puller or other tool that created dust that he breathed. (*Id.)* He testified that his time in the Navy, he was regularly exposed to asbestos dust from the use, handling, installation, cutting and removal by himself and others of gaskets and packing from pumps including Buffalo pumps, valves, steam traps and all the other equipment which was a regular and frequent occurrence during his time aboard the USS Newport News. (*Id.)*

- Captain Arnold Moore, PE, a Naval Engineer who served as the Damage Control Officer on the USS Newport News, including during the same time that Mr. Data served, provided an expert report and testified that on the USS Newport News, compressed asbestos sheet gaskets were used to seal many valve bonnets, pump casing and the interface flanges between piping systems and pumps and valves and the heat from steam caused many compressed asbestos sheet gaskets to adhere to sealing surfaces and required sailors repairing machinery and valves to scrape the old gaskets off and to clean these sealing surfaces with hand and powered wire brushes that created dust that was breathed. (ECF No. 999 Ex. T p. 1). He further testified that the USS Newport News carried sheets of compressed gasket material which were used to replace flange gaskets or when preformed machinery gaskets were not available. (*Id.)* He opined that it was highly likely that Mr. Data removed and replaced many gaskets in piping and valve flanges, in valve bonnets and in pump and machinery casings and cleaned up after his work during his service. (*Id.)* He further testified that Buffalo pump company manufactured pumps for the USS Newport News and records show that there were thirty-eight Buffalo pumps aboard the USS Newport News and they were located in every one of the engine rooms. (*Id.)* He also testified that Buffalo prepared an instruction book for its pumps on Navy destroyers like the USS Newport News that required the use asbestos-containing plastic metallic packing to seal the pump shafts, a compressed asbestos sheet gasket to seal the pump casings for all the Buffalo pumps, pump casings for the main feed and main feed booster pumps were insulated and lagged with Eagle 66 cement which contained asbestos fibers and asbestos cloth. (*Id.* at p. 13). According to Captain Moore, Buffalo sold asbestos-containing gaskets and other replacement parts directly to the US Navy on many occasions. (*Id.* at p. 19).

- Terrence William Kenny, a Buffalo corporate representative, testified in another asbestos case that Buffalo pumps incorporated asbestos-containing gaskets and packing from the 1940s to the 1980s and considered asbestos-containing gaskets and packing to be a component part of its pumps and Buffalo did not switch over to non-asbestos packing until sometime between 1981 and 1984 and to non-asbestos gaskets sometime between 1984 and 1985. (ECF No. 1128-2 pp. 4-5, 48-49, 82-83, 99, 108).

- Martin Kraft, a Buffalo corporate representative, testified in another asbestos litigation that Buffalo specified asbestos-containing gaskets and packing in its pumps and advertised its pumps were furnished with top grade asbestos packing and never provided warnings about health hazards about its products. (ECF No. 1128-3 pp. 123, 125-27, 173).

- Frank Parker, CIH, authored an expert report in which he testified that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U. pp. 19-22, 25). He further opined that elevated levels of airborne asbestos fibers are released from handling asbestos-containing

thermal insulation and insulating muds or cements in the ordinary performance of maintenance duties. (*Id.)*

3. Defendant's Reply

Air & Liquid responds that under Pennsylvania law it cannot be responsible for any asbestos products used on Buffalo pumps that it did not manufacture or sell, that Plaintiff's proffered evidence is too speculative to show Mr. Data was in proximity to Buffalo pumps while aboard the USS Newport News.

4. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is enough evidence to overcome summary judgment on product identification. First addressing Air & Liquid's "bare metal defense" argument that under Pennsylvania law it cannot be responsible for any asbestos product used on Buffalo pumps that it did not manufacture or sell, this defense is not available to defendants under maritime law. *Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986, 993, 203 L. Ed. 2d 373 (2019) (expressly rejecting the bare-metal defense and holding that under maritime tort law, a product manufacturer must warn "when (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."). According to its own instruction manuals and testimony from corporate representatives, Buffalo required the use of asbestos-containing products including gaskets, packing cement and cloth for use in its pumps and under maritime law, this is enough for liability to attach.

Considering that records show that 38 Buffalo pumps were manufactured for use on the USS Newport News, Mr. Data recalled Buffalo pumps present on the USS Newport News and Buffalo representatives admitted that its pumps used asbestos gaskets and packing from the 1940s

to the 1980s, Plaintiff has established sufficient evidence that it is reasonable to infer that during the time Mr. Data was aboard the USS Newport News, asbestos-containing Buffalo pumps were present upon the USS Newport News. However, the mere presence of an asbestos-containing product does not establish that the product was a substantial factor in causing the injury Mr. Data suffered. Considering Mr. Data's testimony, while he provided an affidavit and testified he recalled Buffalo pumps on the USS Newport News and recalled performing work on many different types of equipment, when questioned at his deposition about Buffalo pumps, he testified as follows:

> Q. Sir, do you recall Buffalo pumps being in the No. 3 engine room?
> A. No, I don't.
> Q. Do you recall Buffalo pumps being in any of the engine rooms aboard the USS Newport News?
> A. No, I don't.
> Q. Do you recall ever working around any Buffalo pumps aboard the USS Newport News?
> A. No, I don't.
> Q. And it sounds like you don't recall directly working on any Buffalo pumps aboard the USS Newport News.
> A. Right.
> Q. Did you ever perform any work on or around a Buffalo pump at any time during your career?
> A. I may have. I didn't know what type of pump it was.
> Q. As you sit here today, sir, do you have a specific recollection of working with or around a Buffalo pump at any place that you would have worked at?
> A. No.
> Q. Sir, did you perform work on pumps when you were in the Navy?
> A. Yes, I did.
> Q. Okay. Would that include working on -- with gaskets and packing?
> A. Yes, I did.

(ECF No. 999-6 pp. 68-70). Air & Liquid argues that because Mr. Data did not specifically recall working on Buffalo pumps it is entitled to summary judgment. Mr. Data not remembering the manufacturer of pumps he worked on while aboard the USS Newport News is not dispositive of his claims. It is reasonable that an individual would not remember the manufacturer of a piece of

equipment he worked on half a century ago, and more importantly, an asbestos plaintiff is not required to present only direct evidence of her claims and can survive summary judgment if she provides circumstantial evidence supporting an inference of exposure. *Abbay*, 2012 WL 975837, at *1 n.1; *Walker v. Blackmer Pump Co.*, 367 F. Supp. 3d 360, 377 (E.D. Pa. 2019). Considering Mr. Data's testimony that he worked on every pump by repairing and replacing gaskets and packing in Number 3 engine room at one time or another aboard the ship, Captain Moore's testimony that Buffalo pumps were present in each of the engine rooms aboard the ship and Mr. Parker's opinion that Mr. Data's occupational exposure in performance the maintenance described on asbestos gaskets and packing from Buffalo pumps elevates the risk of developing mesothelioma and viewing it in the light most favorable to Plaintiff, is sufficient to create an inference that his exposure to Buffalo pumps was a substantial factor in his injuries. The question of how substantial this exposure was in causing or contributing to Mr. Data's injuries is "normally best left to the fact-finder." *Abbay*, 2012 WL 975837, at *1 n.1 (citing *Redland Soccer Club, Inc. v. Dep't of Army of U.S.*, 55 F.3d 827, 851 (3d Cir. 1995)).

5. Recommendation

Accordingly, it is respectfully recommended that Air & Liquid's motion for summary judgment (ECF No. 1044) be denied.

ix. DCo LLC f/k/a Dana Companies LLC's ("Dana") Motion for Summary Judgment (ECF No. 1046)

Plaintiff alleges that Dana is liable for Mr. Data's injuries because it manufactured Victor-brand gaskets that contained asbestos material that Mr. Data is alleged to have been exposed to while aboard the USS Newport News, working at the West Pittsburgh Power Station and while working on automobiles at his brother's service station. While both parties cite to Pennsylvania law, this would only apply to Mr. Data's alleged exposure while working at the power plant and

the service station and maritime law applies to his alleged exposure while aboard the USS Newport News.

1. Defendant's Arguments

Dana argues that Plaintiff has not identified any product manufactured or supplied by it that Mr. Data was exposed to on any regular, frequent or proximate basis. Dana also argues that even if it is found that Victor sheet gasket material was present, Plaintiff offers no evidence that Mr. Data removed or was present for the removal of Victor sheet gasket material.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment for Mr. Data's exposure at the plant and service station and has identified sufficient evidence to show Mr. Data's exposure was a substantial factor in his injuries while aboard the USS Newport News. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- USS Newport News Exposure
    - Mr. Data served aboard the USS Newport News from 1969 to 1973 where he worked in the engine room and his duties involved tending the engines, repairing equipment, and standing watch. (ECF No. 999 Ex. D pp. 23-26). He testified that there were boilers, steam traps and generators in the engine rooms and he worked on pumps and valves aboard the ship. As for the work he completed on pumps, he had to remove the pump from the piping system by disconnecting the bolts connecting the flanges and that involved handling gaskets. (*Id*. at pp. 28-29). He cut the gaskets by using a ball-peen hammer to tap around the edges of the flanges or would use a knife or pair of scissors that created dust that he breathed. (*Id.* at p. 29). He followed this same procedure when he performed maintenance on valves that required gaskets. (*Id.)* He also performed maintenance on the ship's boilers which contained access panels with gaskets. (*Id.* at 30). He handled the insulation and gaskets when he performed work on the boilers. (*Id.* at p. 31). He also performed work on the engines by removing gaskets from the engine housing, scraping off the gaskets with a pneumatic wire brush or a scraper that created dust that he breathed. (*Id.* at p. 32). He also worked on the steam traps on the ship in which he tore apart the steam traps and replaced the trap or replaced the gaskets in them which

required him to handle the gaskets. (*Id.* at p. 34). He also worked around others who performed maintenance on the ship's generators in the engine rooms in which the workers would access the inside of the generator through hatch doors that had gaskets on them. (*Id.* at p. 36). Mr. Data specifically recalled using Victor-brand gaskets on the steam applications aboard the ship and recalled that the rolls of Victor gasket material were about three feet wide, and they had the name "Victor" printed on them. (ECF No. 999 Ex. F. pp. 70-74). He testified that he would take as much of the gasket material off the roll he needed by cutting the material with a knife. (*Id.* at pp. 74).

- West Pittsburgh Power Plant Exposure

    - Mr. Data testified through an affidavit that between 1983 and 1988 he performed maintenance or worked around others who performed maintenance on valves and pumps at the plant which involved the use of asbestos-containing gaskets and packing which would create dust that he breathed. He further testified that he scraped off old gaskets with a scraper and a pneumatic brush and replaced the gaskets and packing which created dust that he breathed. In his deposition, he testified that he periodically assisted in the repacking of valves in which another worker would take the packing out of the pump with a packing puller and replace it with new packing. He assisted by unbolting flanges, lifting parts of the pumps, cleaning gaskets off flanges and cleaning up afterwards. (ECF No. 999 Ex. C pp. 58-59). There were also flange gaskets associated with the valves. Wire brushes and compressed air were used to remove the old gasket material and to clean out the valves. He sometimes made the gasket. (*Id.* at p. 61). This would create dust that Mr. Data breathed. (*Id*. at pp. 62-64). Mr. Data recalled Victor gasket material at the plant and that it was used for steam valves. (*Id*. at p. 67).

- Service Station

    - Mr. Data testified that between the ages of 15 and 17, he worked on automobiles with his brother who was a mechanic in his brother's garage. (ECF No. 999 Ex. C pp. 98-99). Mr. Data performed tune-ups, brake work, clutch work, and exhaust work and he recalled using Victor gaskets while working on the exhaust systems. (ECF No. 999 Ex. G pp. 101-02). He remembered the name "Victor" on the gasket box and he handled the Victor gaskets by installing them on exhaust and engine systems. (*Id.* at pp. 106, 113). He testified that he handled the gaskets in the same way he handled the gaskets at the power plant by scraping off the old gasket material with a wire brush and pneumatic brush. (*Id.* at p. 113). He testified that it would take him 30-35 minutes to scrape off the old gasket and approximately 15 minutes to install the new gasket. (*Id.* at pp. 30-31).

- Dana admitted that it sold Victor asbestos-containing gaskets from 1967 to 1988. (ECF No. 1126-1).

- Gary Austin, a Dana corporate representative testified in another asbestos case that the majority of Victor gaskets contained asbestos prior to 1977 and the gaskets that did not contain asbestos were primarily manufactured of solid metal with no composition material attached. (ECF No. 1126-4, 5).

- Captain Arnold Moore, P.E., a Naval Engineer, submitted a report that indicated Victor and Garlock manufactured compressed asbestos sheet gasket material qualified for Navy use at the time of Mr. Data's service aboard the USS Newport News. (ECF No. 999 Ex. T pp. 5-6). He testified that once a manufacturer chose a specific type of asbestos-containing packing or gasket that packing or gasket was utilized for the life of the machinery and the Navy did not attempt to find any non-asbestos substitutes before the late 1970s and early 1980s. (*Id.* at p. 6).

- Frank Parker, CIH Frank Parker, CIH, provided a case specific report Frank Parker authored a report in which he testified that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is enough evidence to overcome summary judgment on product identification as to Mr. Data's exposures aboard the USS Newport News but has not provided sufficient evidence as to Mr. Data's exposures at the West Pittsburgh Power Station and the automotive service station.

As for Mr. Data's exposure at the West Pittsburgh Power Station, considering Dana corporate representatives' testimony that its gasket material contained asbestos until 1988 and Mr. Data's testimony that he recalled Victor-brand gasket material at the plant and viewing it in the light most favorable to Plaintiff, this evidence is sufficient to infer that asbestos-containing Victor-brand gasket material was used in the plant during Mr. Data's employment. As for Mr. Data's exposure to Victor-brand gasket material, Plaintiff proffers Mr. Data's testimony that he periodically worked on valves at the plant which required using gasket material to make new

gaskets for valves and remembered Victor as one of those brands of gasket material, Victor-brand gasket material was used for steam valves and he made flange gaskets for boiler feed pumps and was present for others using Victor-brand gasket material to make gaskets. (ECF No. 999-7 pp. 43-47). While this testimony is sufficient to infer that Mr. Data used Victor-brand gaskets at some point during his employment at the plant, he offers no evidence besides his testimony that he did so "periodically." This evidence is only enough to show that Mr. Data's exposure to Victor-brand gasket material was de minimis which is insufficient to support an inference that his exposure was frequent and regular.

As for Mr. Data's exposure at the service station, considering that Dana corporate representatives testified that its gasket material was made with asbestos, and Mr. Data's testimony that he used Victor-brand gaskets by installing them on exhaust and engine systems and viewing it in the light most favorable to Plaintiff, it is reasonable to infer that Mr. Data used asbestos-containing Victor-brand gasket material working at the service station. As for Mr. Data's exposure to Victor-brand gasket material, Plaintiff proffers Mr. Data's testimony that he would scrape off the old gaskets for 30-35 minutes and take 15 minutes to install the new gasket. While this testimony is sufficient to infer that Mr. Data used the Victor-brand gaskets during his time at the service station, de mimimis exposure is insufficient to create an issue of material fact and Plaintiff proffers no evidence demonstrating how regularly or frequently he used Victor gaskets.

As for Mr. Data's exposure aboard the USS Newport News, Plaintiff has proffered sufficient evidence showing that Mr. Data was exposed to Victor gasket material and that it was a substantial factor in causing his mesothelioma. Considering Mr. Data, Mr. Austin, and Captain Moore's testimony, it is reasonable to infer that Victor sheet gasket material was aboard the USS Newport News during Mr. Data's service and contained asbestos. Additionally, it is reasonable to

infer that Mr. Data was exposed to Victor sheet gasket material in such a way that it was a substantial factor in causing his mesothelioma. Along with the testimony paraphrased above, Mr. Data also testified that when he was aboard the USS Newport News, he would change a gasket a couple of times a week and nine times out of ten he would have to cut his own gaskets out of the sheet material and only occasionally he would use a pre-formed gasket. (ECF No. 999-4 pp. 77-78). He testified that it would take him a couple of minutes to cut off a piece of the sheet material. (ECF No. 999-6 p. 74). While Mr. Data testified that he used Victor, Powerite and Garlock gaskets while aboard the USS Newport News, he remembered using these brands "equally." (ECF No. 999-6 p. 72). He also testified that he used the sheet gasket material in this fashion for three years from February 1970 until January 1973. (*Id*. at p. 73). Considering Mr. Data's testimony, it is reasonable to infer that his exposure to Victor sheet gasket material was a substantial factor in his injuries and provides evidence that is more than conjectural. *Abbay*, 2012 WL 975837, at *1 n.1. While Dana argues that there is no evidence that the gaskets Mr. Data removed were Victor-brand and his exposure was not substantial, this argument does not consider that Mr. Data testified that would change a couple of gaskets a week and in doing so, he would cut the Victor sheet gasket material to create the new gasket that created dust that he breathed. He testified that the cutting process took a few minutes and he continued to do this over a period of three years. The question of how substantial this exposure was in causing or contributing to Mr. Data's injuries is "normally best left to the fact-finder." *Id.* (citing *Redland Soccer Club, Inc.*, 55 F.3d at 851).

4. Recommendation

Accordingly, it is respectfully recommended that Dana's motion for summary judgment (ECF No. 1046) be granted in part and denied in part. It is specifically recommended that Dana's motion be granted as to Mr. Data's exposures at the West Pittsburgh Power Station and the service

station and be denied as to Mr. Data's exposure onboard the USS Newport News.

x. I.U. North America, Inc.'s ("IUNA") Motion for Summary Judgment (ECF No. 1049)

Plaintiff alleges that IUNA, the successor-in-interest by merger to the Garp Company formerly known as The Gage Company which was formerly known as Pittsburgh Gage and Supply Company is liable for Mr. Data's injuries because its distributed and sold gaskets and packing that contained asbestos which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Station. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

IUNA argues that Plaintiff has not identified any asbestos-containing product Mr. Data was exposed to or that any alleged exposure was regular, frequent or proximate. It argues that Mr. Data did not testify that Pittsburgh Gage was a supplier of asbestos-containing products that he was familiar with during his career and Plaintiff has otherwise proffered no evidence that Mr. Data would have encountered any Pittsburgh Gage supplied products.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Mr. Data testified through an affidavit that between 1983 and 1988 he performed maintenance or worked around others who performed maintenance on valves at the plant which involved the use of asbestos-containing gaskets and packing which would create dust that he breathed. He further testified that he scraped off old gaskets with a scraper and a pneumatic brush and replaced the gaskets and packing which created dust that he breathed. He testified that he assisted in the repacking of valves in which another worker would take the packing out of the pump with a packing puller and replace it with new packing. There were also flange gaskets associated with the valves. Wire brushes and compressed air were used to remove the old gasket material and to clean out the valves. This would create dust that Mr. Data breathed. (ECF No. 999 Ex. C pp. 62-64). He also testified that the floors in the plant were made of open grating

and it was possible to see from one level to the next and the dust on one level could fall through the grates to the lower levels. (*Id.* at 83). He testified that he worked in close proximity and on a frequent basis to James Minner, Jack Shaw and David Cain, all of whom were workers in the maintenance crew who used materials that contained asbestos in the performance of their job duties and was exposed to the dust created by their work. Mr. Data further testified that he periodically participated in the maintenance on steam traps and that employees were sent to assist with maintenance whenever there were units shut down at the plant and he would assist with repair work on the steam traps, pumps and valves by using Garlock gaskets he and others obtained from the main plant storeroom. (*Id.* at pp. 66-67). Mr. Data testified that he obtained packing and gaskets from Mr. Minner, the storeroom attendant, that he worked alongside Mr. Shaw, who worked repairing equipment, including pumps, and Mr. Cain was an electrical supervisor and Mr. Data worked with the electricians when he was assigned to help the maintenance crews and he encountered Mr. Cain during the first five years at the plant. (ECF No. 999 Ex. C. p. 90).

- Mr. Cain testified in a previous asbestos case that he worked in maintenance from 1970 for a few years until he went into the electrical department in the mid-1970s until 1998. He testified that he obtained gasket material that he utilized in the performance of his job duties from the main plant storeroom. (ECF No. 999 Ex. N p. 18).

- Mr. Shaw testified in a previous asbestos case that there were many pumps at the plant and that he personally worked on all the pumps in the plant at some point in time. He testified he used asbestos rope and gaskets almost every day when he removed old packing with hand tools and grinders creating dust and would replace the packing with new packing he got from the storeroom in a package marked "asbestos." He then cut and formed the new packing which created dust. (ECF No. 999 Ex. O pp. 52-56; Ex. P p. 84). Mr. Shaw testified that he saw the word "asbestos" written on the packaging of new gaskets he got from the storeroom. (ECF No. 999 Ex. O p. 58; Ex. P pp. 83-84; Ex. Q p. 169).

- Mr. Minner testified in a previous asbestos case that he worked in the storeroom from 1957-1998 in various capacities and was the storekeeper from 1984 until 1998. (ECF No. 999 Ex. L. pp.12-13). He testified that every year at the plant there was an outage and all workers regardless of whether they were a maintenance worker or not were called to assist with the preventative maintenance that occurred on the turbines, boilers and in the fan and pump rooms. (*Id.* at pp. 14-17). He testified that Pittsburgh Gage furnished gaskets and packing to the plant. (*Id.* at pp. 42, 44-45). He testified that Pittsburgh Gage furnished John Crane and Garlock brand packing from the time he went into the storeroom well into the 1980s. (*Id.* at 45). He personally completed the requisitions for the gaskets and packing and was familiar with the process and with the usage of the material in the plant, including knowing that the packing material was used to pack valve stems in the plant. (*Id.* at 47). He recalled different uses for asbestos packing, including packing valves and packing around boiler doors. (*Id.* at 48). He testified that Pittsburgh Gage packing contained the word "asbestos" on the invoices. (*Id.* at 101-102).

- The Gage Company answered interrogatories in another case that it manufactured, sold and/or supplied asbestos containing products including seals, gaskets and packing from 1950 to 1989. (ECF No. 1123-1, 2). The Gage Company also sold a variety of asbestos-containing gaskets, rope packing, pipecovering and other asbestos-containing material. (ECF No. 1123-3). Joseph Dawgiello, a Gage Company representative, testified in a prior asbestos case that Gage distributed asbestos-containing pipecovering, block, cement, cloth, tape, packing and gaskets. (ECF No. 1123-4 pp. 16-19).

- Roy Whittaker, Director of Engineering and Quality Control for Garlock, testified in a previous asbestos case that Garlock sold gaskets designed for use in high temperature/steam applications that contained asbestos beginning in the 1950s and that Garlock provided no alternative whatsoever to asbestos composite gaskets for high temperature applicable until the late 1970s. Even then, only limited substitutes were available, and they were Teflon, of an entirely different composition than the asbestos material. (ECF No. 1123-5 p. 35).

- Garlock's catalog for braided and twisted packing includes recommendations to guide consumers on the packing products to best suit their needs. In this catalog, Garlock advertising packing material and it recommended only white and blue asbestos packing materials for high temperature and pressure applications. (ECF No. 1123-6).

- George McKillop, a corporate representative for John Crane testified in a past asbestos litigation that John Crane continued to make and distribute asbestos-containing sealing products until 1985. (ECF No. 1123-7 p. 35).

- Frank Parker, CIH, authored an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials, even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. Considering Mr. Data's testimony that he recalled using Garlock gasket material at the plant, that Mr. Minner's testimony that Pittsburgh Gage distributed Garlock products with packaging labeled "asbestos" and the corporate testimony that Garlock gasket material was made with asbestos and distributed by IUNA's predecessors during the time Mr. Data was employed at the plant and viewing it in the

light most favorable to Plaintiff, it is sufficient to infer that asbestos-containing Garlock gasket material was present at the plant during Mr. Data's employment. As for Mr. Data's exposure, Plaintiff cites to Mr. Data's testimony that he assisted with repair work on the steam traps, pumps and valves by using Garlock gaskets he and others obtained from the main plant storeroom, including working alongside Mr. Shaw, and Mr. Shaw's testimony that he worked with asbestos products frequently at the plant. While this testimony is sufficient to infer that Mr. Data used Garlock-brand gaskets at some point during his employment at the plant, he offers no evidence besides his testimony that he did so "periodically." This evidence is only enough to show that Mr. Data's exposure to Garlock-brand gasket material was de minimis which is insufficient to support an inference that his exposure was frequent and regular.

4. Recommendation

Accordingly, it is respectfully recommended that IUNA's motion for summary judgment (ECF No. 1049) be granted.

xi. Atwood & Morrill Co., Inc.'s ("Atwood") Motion for Summary Judgment (ECF No. 1051)

Plaintiff alleges that Atwood is liable for Mr. Data's injuries because it manufactured valves that contained asbestos packing and required asbestos replacement packing which Mr. Data is alleged to have been exposed to while serving aboard the USS Newport News and working at the West Pittsburgh Power Station. While both parties cite to Pennsylvania law, this would only apply to Mr. Data's exposure while working at the power plant and maritime law applies to his alleged exposure while aboard the USS Newport News.

1. Defendant's Arguments

Atwood argues that Plaintiff has not identified any evidence showing that Mr. Data was exposed to any Atwood product and presence of Atwood products alone does not overcome

summary judgment.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment for Mr. Data's exposure at the plant and has identified sufficient evidence to show Mr. Data's exposure was a substantial factor in his injuries while aboard the USS Newport News. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- USS Newport News Exposure
    - Mr. Data served aboard the USS Newport News from 1969 to 1973 where he worked in the engine room and his duties involved tending the engines, repairing equipment, and standing watch. (ECF No. 999 Ex. D pp. 23-26). He spent most time in the Number 3 engine room but spent time in the other three engine rooms. (*Id.* at p. 26). He testified that there were valves in the engine room and he personally worked on the various categories of equipment at one time or another in the Navy. (*Id.* at 27-28). He frequently and regularly repaired and maintained pumps and valves in the engine room of the ship which involved him handling asbestos-containing material and rope packing. He usually needed to cut gaskets to fit the application but sometimes the gaskets arrived pre-cut. The packing also needed to be cut. By cutting and handling the gaskets and packing, it created dust that he breathed in the confined engine compartments of the ship. (ECF No. 999 Ex. A).
    - The National Archives relating to the USS Newport News state that there were Atwood valves associated with the fresh water priming system aboard the USS Newport News. (ECF No. 999 Ex. S p. 823).
    - Captain Arnold Moore, PE a Naval Engineer testified that firemen like Mr. Data assisted in the maintenance and repair of equipment like valves requiring the removal and replacement of packing and gaskets in the machinery and removal and replacement of insulation, and opined that Mr. Data likely repaired, assisted, or observed the repair or cleaned up after the repair of valves in the engine room. He also testified that once a manufacturer chose a specific type of asbestos-containing packing that it was utilized for the life of the machinery. (ECF No. 999 Ex. T p. 6). Captain Moore noted that Atwood published a technical bulletin in 2010 that its valves used compressed asbestos sheet gaskets to seal valves and in his experience the heat from steam caused compressed asbestos sheet gaskets to adhere to sealing surfaces and required sailors repairing valves to scrape off the old gaskets and clean them with a hand and

powered wire brush which produced dust. (*Id*.)

- Power Plant Exposure

  - Mr. Data testified that he worked at the West Pittsburgh Power Plant from 1983 to 2009 and from 1983 to 1988 he was a pulverizer operator. He testified that during the first five years, he periodically scraped off the old gaskets with a scraper and pneumatic brush and replace them which created dust that he breathed. He testified that he repacked valves by pulling out the packing and replacing it using wire brushes and compressed air to clean out the valves that created dust that he breathed. He testified he worked with Jack Shaw and James Minner. (ECF No. 999 Ex. C pp. 60-84).

  - Mr. Shaw testified in a previous asbestos case that there were many valves at the plant and that he personally worked on all the valves in the plant at some point in time. He testified he used asbestos rope and gaskets almost every day when he removed old packing with hand tools and grinders creating dust and would replace the packing with new packing he got from the storeroom in a package marked "asbestos." He then cut and formed the new packing which created dust. (ECF No. 999 Ex. O pp. 52-56; Ex. P p. 84). Mr. Shaw testified that he saw the word "asbestos" written on the packaging of new gaskets he got from the storeroom. (ECF No. 999 Ex. O p. 58; Ex. P pp. 83-84; Ex. Q p. 169).

  - Mr. Minner testified in a previous asbestos case that he worked in the storeroom from 1957-1998 in various capacities and was the storekeeper from 1984 until 1998. (ECF No. 999 Ex. L. pp.12-13). He testified that every year at the plant there was an outage and all workers regardless of whether they were a maintenance worker or not were called to assist with the preventative maintenance that occurred on the turbines, boilers and in the fan and pump rooms. (*Id.* at pp. 14-17). He testified that asbestos packing was used to pack valves and he observed the word "asbestos" on invoices for packing and gaskets that were ordered into the plant. (*Id.* at pp. 101-102).

  - The owner and operator of the plant, Pennsylvania Power, responded to discovery requests in another asbestos case that established there were seven Atwood valves at the plant. (ECF No. 999 Ex. R pp. 1120-1917).

  - Samuel Shields, an Atwood corporate representative testified in another asbestos case that Atwood specified the use of asbestos-containing gaskets and packing in the manufacture of its valves and that once valves were installed in the plant, they would need serviced, including replacing gaskets and packing periodically and Atwood sold replacement asbestos-containing gaskets. (ECF No. 1134-2 pp. 58-65).

- Frank Parker, CIH, authored an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and

> being a bystander or in a work area where others are disturbing asbestos containing materials, even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Defendant's Reply

Atwood responds that Plaintiff's proffered evidence is too speculative to show causation. As to Plaintiff's reference that Atwood valves were located on the USS Newport News, Atwood points out that this was only one entry out of hundreds of valves aboard the ship, Plaintiff offers no evidence as to where the Atwood product was located on the ship or that Mr. Data encountered it. As to Plaintiff's reference that the West Pittsburgh Power Station contained seven Atwood products, Atwood points out that these valves were installed in 1939 and 1948, 35 years before Mr. Data began working at the plant and Plaintiff offers no other evidence that the Atwood products remained in operation in 1983.

4. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification for Atwood valves in relation to the USS Newport News or the West Pittsburgh Power Station.

As for the USS Newport News, considering that records show that Atwood valves were manufactured for the USS Newport News and Atwood's own records reflect that its valves used compressed asbestos sheet gaskets to seal its valves, Plaintiff has offered enough evidence that it would be reasonable to infer that asbestos-containing Atwood products were aboard the USS Newport News. However, presence of an asbestos-containing product alone is not enough to survive summary judgment and Plaintiff must show that Mr. Data was exposed to Atwood valves to the extent it was a substantial factor in causing his injuries. Mr. Data did not testify that he ever worked on any Atwood products during his time aboard the USS Newport News, and his testimony

that he worked on valves generally onboard the USS Newport News is too speculative to show proximity to Atwood valves. While this alone does not foreclose Plaintiff's claims, she has provided no other evidence that Mr. Data was exposed to Atwood valves by for example, showing that the location of the valves and Mr. Data's proximity to it through his work in Engine Room 3 or the extent that Atwood valves were maintained in such a way that the work caused dust that Mr. Data was exposed to. The evidence proffered by Plaintiff merely shows the presence of Atwood valves on USS Newport News and is speculative that Mr. Data ever encountered these products.

Considering Plaintiff's evidence that Atwood valves were installed at the West Pittsburgh Power Station, as pointed out by Atwood, these pumps were installed decades before Mr. Data began his employment at the plant. Plaintiff offers no other evidence that the Atwood-brand valves remained in use at the plant and relies on speculation that the originally installed Atwood-brand pumps remained in use during Mr. Data's employment. Even assuming this evidence is sufficient to show the presence of Atwood-brand valves during Mr. Data's employment, Plaintiff offers no evidence that Mr. Data encountered Atwood-brand valves in a way that caused him to breathe dust from maintaining these particular valves. Mr. Data's testimony regarding his work on valves generally, and Mr. Shaw's testimony that he worked on all valves at the plant at some point during his career is speculation that Mr. Data worked on Atwood-brand valves or was beside Mr. Shaw when he happened to work on an Atwood-brand valve at some point during his career. Plaintiff's proffered evidence is too speculative to allow a jury to infer Mr. Data's exposure to Atwood valves.

5. Recommendation

Accordingly, it is respectfully recommended that Atwood's motion for summary judgment (ECF No. 1051) be granted.

xii. Viking Pump, Inc.'s ("Viking") Motion for Summary Judgment (ECF No. 1052)

Plaintiff alleges that Viking is liable for Mr. Data's injuries because it manufactured Viking-brand pumps that were supplied with asbestos-containing packing and required the use of asbestos-containing replacement packing which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Station. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

Viking argues that Plaintiff has not identified any asbestos-containing product that Mr. Data was exposed to or that such exposure was on a regular, frequent or proximate basis.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Viking admitted in prior asbestos cases that it sold and supplied Viking brand pumps with asbestos-containing gaskets and packing from 1911 until 1986, it provided pump repair kits to its customers, before 1986 the flange-connected pumps it sold had port covers that were manufactured from asbestos-containing material and Viking did not substitute asbestos-free gaskets and packing in its pumps until 1986. (ECF No. 1125-2).

- Thomas J. Hemphill, an Argo Packing Company representative, testified in a previous case that Argo branded and sold asbestos-containing sheet gasket material named "Powerite" and all Powerite gasket material made from 1959 through the 1980s contained asbestos. (ECF No. 1125-3 pp. 9-10, 49, 50-51).

- Pennsylvania Power, the owner and operator of the plant during Mr. Data's employment, provided documents in another asbestos case establishing that Viking burner oil pumps were installed at the plant in the 1930s to the 1950s and eliminated in 1990. (ECF No. 1125-1).

- David Cain, a maintenance worker at the plant in the 1970s and electrical worker from the mid-1970s to 1998, testified all the gaskets used in the plant were asbestos-containing, had to be scraped and ground off when removed, creating dust. (ECF No. 999 Ex. N pp. 24-26). Mr. Cain further testified that there were between four and six

Viking pumps in the pump room at the plant close to the pulverizers. (*Id.* at pp. 80, 85). He testified that the Viking pumps were removed and replaced with the exact same type of Viking pump and he and other workers who changed out these pumps used gaskets on the flanges and used Powerite brand gaskets from the storeroom to replace the pumps. (*Id.* at pp. 85-87).

- Jack Shaw, a maintenance worker at the plant during Mr. Data's employment, testified in another asbestos case that he worked on all of the pumps at the plant, that he used asbestos rope and gaskets on the pumps and valves almost every day, he removed the old packing with hand tools and grinders creating dust and would replace the packing with new packing he got from the storeroom in a package marked "asbestos" and would cut and form new packing which also created dust. (ECF No. 999 Ex. O pp. 48-58).

- Mr. Data testified that while working at the plant from 1983-1988 he periodically assisted the maintenance department with tasks involving these pumps including unbolting flanges, lifting parts of the pumps, cleaning gaskets off of flanges and cleaning up with compressed air, scraped off the old gaskets with a scraper and pneumatic brush and replaced them which created dust that he breathed. (ECF No. 999 Ex. C pp. 56-62). Mr. Data recalled Garlock, Powerite and Victor gaskets at the plant that were used mainly for steam lines. (*Id.* at 67). He also testified that he worked in the pulverizer room for the first five years at the plant and was located 30 feet from the pump room and could see workers performing maintenance on the pumps. (ECF No. 999 Ex. I pp. 186-87). Mr. Data testified that he worked alongside Mr. Shaw and encountered Mr. Cain. (ECF No. 999 Ex. C pp. 89-90).

- Frank Parker, CIH, authored an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials, even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. While Plaintiff has proffered evidence that Viking pumps were present at the plant and may have contained asbestos, Plaintiff offers no evidence that Mr. Data encountered Viking pumps on a frequent, regular and proximate basis.

Plaintiff offered no direct testimony that Mr. Data recalled working on Viking pumps.

While this alone is not fatal to Plaintiff's claims, she must offer circumstantial evidence showing that Mr. Data worked in the vicinity of Viking pumps use and cannot rely merely on the presence of Viking pumps alone to establish causation. Mr. Shaw's testimony that he worked on every pump at the plant and Mr. Data's testimony that he worked alongside Mr. Shaw does not raise the reasonable inference that the times Mr. Shaw worked on Viking pumps that Mr. Data worked alongside him. This would require speculation regarding not only the number of times that Mr. Shaw performed maintenance requiring the use of asbestos specifically on Viking pumps but would require further speculation that Mr. Data was present during each of those acts. Mr. Cain's testimony likewise does not describe any specific scenario that would place Mr. Data in the vicinity of the Viking pumps during maintenance and/or using Powerite gaskets. The maintenance he describes performing on Viking pumps occurred prior to Mr. Data's employment at the plant therefore making it impossible for Mr. Data to be present while Mr. Cain himself performed the maintenance described on the Viking pumps. To the extent that Mr. Cain's testimony attempts to illustrate the type of maintenance usually performed on Viking pumps, his testimony is too speculative to draw such an inference. For example, Mr. Cain testified that during his employment he worked on a Viking pump on a single occasion for approximately one hour. (ECF No. 999 Ex. N pp. 80-81). Even considering this testimony with Mr. Data's testimony that he worked 30 feet away from the pump room and could see workers performing maintenance on pumps, this does not establish proximity to Viking pumps as there is no evidence of, for example, how regularly Mr. Data worked in the pulverizer room, or how regular or what type of maintenance was performed on Viking pumps that Mr. Data saw. Because Plaintiff relies on speculation as to Mr. Data's exposure to Viking pumps, summary judgment is appropriate.

4. Recommendation

Accordingly, it is respectfully recommended that Viking's motion for summary judgment (ECF No. 1052) be granted.

xiii. General Electric Company's ("GE") Motion for Summary Judgment (ECF No. 1063)

Plaintiff alleges that GE is liable for Mr. Data's injuries because it manufactured and sold control panels, generators and turbines that contained asbestos products that Mr. Data is alleged to have been exposed to while aboard the USS Newport News, along with control panels that Mr. Data is alleged to have been exposed to during his employment at the West Pittsburgh Power Station. While Plaintiff cites to Pennsylvania law, this would only apply to Mr. Data's alleged exposure while working at the power plant and GE is correct in its assertion that maritime law applies to his alleged exposure while aboard the USS Newport News.

1. Defendant's Arguments

GE argues that Plaintiff has not identified that Mr. Data was exposed to a GE asbestos-containing product. As to the control panels, GE argues that Mr. Data testified that aboard the USS Newport News he blew out GE control panels with air on three or four occasions, that he did not know the source of the dust blown and that ambient air circulated into the control panels prior to his blowing them and could not testify that any of the internal parts of the GE control panels contained asbestos. (ECF No. 999 Ex. G pp. 66-67). As to the generators, GE argues that Mr. Data testified that the generators on the USS Newport News were manufactured by Westinghouse and only after Mr. Data authored an affidavit after his third day of depositions did he testify that the generators aboard the USS Newport News were manufactured by GE. (ECF No. 999 Ex. D p. 39). GE argues that the court should disregard Mr. Data's affidavit identifying the GE generators under the sham affidavit doctrine. As for turbines, GE argues that Mr. Data only testified that he worked on the block insulation used on the turbines possibly a half dozen times which lasted three to four

hours and Mr. Data did not know the manufacturer or brand name of the block insulation and assumed it contained asbestos because the ship was built in 1949. Additionally, GE argues that while Mr. Data testified he was around others working on the turbines while the ship was in dry-dock that exposed him to asbestos, he concluded this because there was dust in the air and he did not know the source of the dust. (*Id.* at p. 62).

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment for Mr. Data's exposure at the plant and has identified sufficient evidence to show Mr. Data's exposure was a substantial factor in his injuries while aboard the USS Newport News. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- USS Newport News Exposure
    - Mr. Data served aboard the USS Newport News as a fireman in the engine room between 1970 and 1973 and his duties involved tending the engines, repairing equipment including pumps and valves and standing watch. (ECF No. 999 Ex. D pp. 23-26). He worked primarily in Number 3 engine room but spent time in the other three engine rooms. (*Id.* at p. 26). He testified that there were turbines, electrical panels, and generators in the engine rooms and that he personally performed maintenance work on these categories of equipment at one time or another during his time aboard the ship. (*Id.* at p. 28). The engines in the ship were turbines and Mr. Data would remove gaskets from the mating surfaces on the engine housings and had to scrape off the gaskets with a pneumatic wire brush or a scraper which created dust that he breathed. (*Id.* at pp. 31-32). He also helped electricians clean dust from electrical panels with compressed air and would breath the dust created because he was only a few feet away from the workers. (*Id.* at p. 33). He worked around others in the engine rooms who performed maintenance on the ship's generators where the workers used compressed air to blow out the dust and would access the inside of the generator through hatch doors that had gaskets on them. (*Id.* at pp. 35-36). He testified that in 1971, the USS Newport News underwent a repair project in dry-dock in which turbines, boilers, and larger pumps and valves were refurbished that lasted about nine months and he assisted with work performed in the engine rooms. (*Id.* at pp. 36-38). He testified that the turbines were manufactured by GE and he saw that brand name printed on them. (*Id.* at p. 38). He testified that

he would repair the turbines by taking off the broken lagging and replacing it. (ECF No. 999 Ex. G pp. 53-55). He also testified that he blew the dust out of generators and was present on five or six occasions when machinists used compressed air to blow dust from the generator. (*Id.* at pp. 59-60). He testified that during the dry-dock repair, the workers would inspect the turbine and if anything looked out of the ordinary, they would dismantle the turbine which would cause dust that he breathed. (*Id.* at pp. 61-62). He testified that he used compressed air to blow dust released from friable materials inside the control panels and that GE's name was on the turbine plate. (*Id.* at p. 68). He recalled this occurred three or four times and that the first-class fireman told him it contained asbestos. (*Id.* at pp. 64-66).

- Captain Arnold Moore, PE, a Naval Engineer, submitted a report that indicated GE manufactured four main propulsion turbine sets installed on the USS Newport News for each engine room. (ECF 999 Ex. T p. 9). He reported that the GE plan specified that lagging clips and tack welded to casing would be supplied by the shipbuilder and opined that GE was aware that the turbines would be insulated aboard the ship. He further reported that the GE plan specified asbestos fiber insulation spacers. *(Id.)* Under Navy Specifications, high pressure propulsion turbines for the USS Newport News were insulated and lagged with asbestos felt, asbestos mill board, asbestos cloth, asbestos twine and plastic cement containing asbestos fibers. *(Id.)* Under Navy Specifications, low pressure propulsion turbines for the USS Newport News were insulated and lagged with asbestos felt, asbestos cloth, asbestos twine and plastic cement containing asbestos fibers. He reported that GE manufactured four generators driven by the GE steam turbines installed on the USS Newport News, one in each of the engine rooms. (*Id.* at p. 10). He opined that because GE manufactured the USS Newport News generators at the same time they manufactured similar or identical generators for other ships, and because GE drawings for these similar or identical generators show that GE provided asbestos packing and asbestos-metallic spiral wound gaskets for generator turbine valve assemblies and asbestos sheet gaskets for high pressure connecting piping, that it is highly likely that the same materials were used to manufacture the generators and generator turbine valves aboard the USS Newport News. (*Id.)* Additionally, Captain Moore pointed to records indicating that GE provided asbestos packing and gaskets for generator turbine valve assemblies and asbestos sheet gaskets for lubricating oil strainers, manifolds and coolers for these generator turbines and that GE prepared insulation plans for all the machinery it manufactured for the USS Newport News, which included the use of asbestos felt insulation/lagging, asbestos cloth and plastic cement containing asbestos fibers. (*Id.)*

- GE admitted that it supplied marine steam turbines to the USS Newport News, and it used asbestos-containing thermal insulation, sound insulation, gaskets and sealing materials on its turbines. (ECF No. 1124-1 pp. 10-18). Further, GE produced a "Technical Information Letter" that described that asbestos-

containing materials including thermal insulation, gaskets and packing were used in the construction of GE turbines prior to the early 1970s. (ECF No. 1124-2).

- West Pittsburgh Power Station Exposures

    - Mr. Data testified that during his employment at the plant, he observed electricians working on control panels on the pump control systems changing starters, cleaning contacts, and using compressed air to blow out the cabinet and the components that he breathed dust that was created. (ECF No. 999 Ex. C p. 91).

    - Pennsylvania Power, the owner and operator of the plant during Mr. Data's employment, provided documents in another case that show GE supplied various pieces of equipment at the power plant including motors, motor starts, electrical controls, switches, and magnetic contractors. (ECF No. 1124-7).

- Frank Parker, CIH, authored an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25). He further opined that handling asbestos-containing thermal insulation and insulating muds or cements in the ordinary performance of maintenance duties caused elevated levels of airborne asbestos fiber release and disassembling and "blowing out" electrical control panels can expose an individual to airborne asbestos fibers in elevated concentrations and even if the worker has not handled the product containing asbestos and even if the exposure is relatively light, the risk of developing mesothelioma is elevated. (*Id.* at 29-30).

3. Defendant's Reply

GE argues that any references to asbestos products outside of the USS Newport News should be disregarded because Mr. Data testified he did not believe he was exposed to asbestos from any other GE product outside of the ship.

4. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is enough evidence to overcome summary judgment on product identification related to Mr. Data's exposure aboard the USS Newport News, but there is not enough evidence to overcome summary judgment on

product identification related to Mr. Data's exposure at the West Pittsburgh Power Station.

As for Mr. Data's exposure to asbestos-containing GE products at the West Pittsburgh Power Station, he testified that he was present when electricians would use compressed air to blow out control panels and this created dust that he breathed. He did not specifically identify these control panels as GE products, and as GE points out testified that he did not remember encountering GE products outside of the ship. While as mentioned supra, this does not automatically foreclose Plaintiff's claims, it is not reasonable to infer from the evidence cited by Plaintiff that Mr. Data encountered GE control panels at the plant. Using the fact that GE supplied various types of equipment at the plant to assume Mr. Data worked specifically on GE control panels is too speculative to create a material issue of fact. Moreover, Plaintiff offers no evidence that GE control panels at the plant contained any asbestos products. To the extent that Plaintiff maintains that because the GE control panels on the ship contained asbestos products that the panels at the plant did too, such an argument is too speculative, is based on conjecture and not sufficient to survive summary judgment.

Turning to Mr. Data's exposure aboard the USS Newport News to GE products, Plaintiff has proffered sufficient evidence that is it reasonable to infer that GE control panels, generators, and turbines were aboard the USS Newport News and contained asbestos products that Mr. Data was exposed to and was a substantial factor in causing his mesothelioma.

As for GE control panels, the evidence proffered by Plaintiff to prove the control panels contained asbestos is Mr. Data's testimony that he witnessed "friable" material in the panels and that his superior officer told him the panels contained asbestos. While Plaintiff does not present direct evidence that the GE control panels contained asbestos, drawing all inferences in Plaintiff's favor, Mr. Data's testimony that the control panels contained "friable" material – a term known to

describe asbestos, along with his recollection that his superior officer informed him that the control panel contained asbestos supports the inference that the GE control panels contained asbestos. As for Mr. Data's exposure to GE control panels, he testified that he used compressed air to blow out dust in the panels on three or four occasions. Plaintiff also relies on Mr. Parker's expert report in which he references a study that showed disassembling and "blowing out" electrical control panels can expose an individual to airborne asbestos fibers in elevated concentrations and even if the worker has not handled the product containing asbestos and even if the exposure is relatively light, the risk of developing mesothelioma is elevated. (*Id.* at pp. 29-30). Mr. Parker opines that Mr. Data's occupational exposure, including blowing out GE control panels on the USS Newport News contributed to his mesothelioma. Accordingly, viewing this evidence in the light most favorable to Plaintiff, she has proffered sufficient evidence that Mr. Data was exposed to asbestos containing GE control panels that was a substantial factor in causing his mesothelioma. Whether Mr. Data's exposure to asbestos contained in these control panels was "substantial" is a question of fact. *Abbay*, 2012 WL 975837, at *1 n.1; *Hedrick v. A.O. Smith Corp.*, No. CV 16-476, 2018 WL 2322077, at *5 (E.D. Pa. May 22, 2018).

As for the GE generators, Plaintiff relies on Mr. Data's testimony, and Captain Moore's report that the GE generators were aboard the USS Newport News and contained asbestos. Mr. Data submitted an affidavit and testified that he recalled working around GE-brand generators aboard the USS Newport News. (ECF No. 999-7 p. 52). While GE argues that this affidavit is a sham because prior to submitting the affidavit, Mr. Data testified that the generators aboard the ship were manufactured by Westinghouse, under the sham affidavit doctrine, a witness's affidavit will not be excluded merely because it conflicts with the witness's earlier or later deposition testimony. *See* 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice

and Procedure § 2738, at 334–35 (3d ed. 1998). Rather, a court should only consider disregarding a contradictory affidavit if there is no satisfactory or plausible explanation for the contradiction. *Daubert v. NRA Grp., LLC*, 861 F.3d 382, 391–92 (3d Cir. 2017). If, for example, the witness misspoke or was confused and the affidavit corrects or clarifies that testimony, *Martin v. Merrell Dow Pharms., Inc.*, 851 F.2d 703, 705 (3d Cir. 1988), or if there is "independent evidence in the record to bolster an otherwise questionable affidavit[,]" *Baer v. Chase*, 392 F.3d 609, 625 (3d Cir. 2004), the affidavit should not be excluded in considering a summary judgment motion. In considering whether to exclude an affidavit under this doctrine, courts must "adhere to a 'flexible approach,'" and give "due regard to the 'surrounding circumstances[.]'" *Daubert*, 861 F.3d at 391–92 (quoting *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 254 (3d Cir. 2007) and *Baer*, 392 F.3d at 624). Given this flexible approach, it is plausible that Mr. Data misremembered the correct manufacturer of generators aboard the ship and upon refreshing his recollection, sought to correct his mistake by submitting his affidavit and thereafter testifying that the generators he was in proximity to on the USS Newport News were GE-brand. Moreover, the affidavit that GE seeks to exclude was provided before it deposed Mr. Data and any inconsistencies in his testimony could have been subject to cross-examination. Additionally, Captain Moore's testimony that records reflect that the generators on the ship were manufactured by GE is independent evidence that bolsters Mr. Data's affidavit and later testimony. Accordingly, Mr. Data's affidavit will not be excluded. Turning to whether there is sufficient evidence that the GE generators contained asbestos, Plaintiff has proffered sufficient evidence that the GE generators contained asbestos products. Captain Moore reported that GE manufactured identical generators for other ships at the same time it manufactured the generators for the USS Newport News and GE specifications for those generators required the use of asbestos packing, metallic spiral wound gaskets for turbine

valve assemblies and sheet gaskets for lubricating oil strainer, manifolds and cooler for the generator turbines, and were insulated and lagged with asbestos felt, cloth and plastic cement containing asbestos fibers. Captain Moore opined that it was "highly likely" that the USS Newport News GE generators were manufactured identically to those manufactured at the same time and for the same product. Viewing this evidence in the light most favorable to Plaintiff, it is reasonable to infer that the GE generators aboard the USS Newport News contained asbestos products. As for Mr. Data's exposure to GE generators, he testified that he used air compressors to blow dust out of generators and was present on five or six occasions when the machinist used compressed air to blow dust from the generator. Plaintiff also relies on Mr. Parker's expert report in which he opined that Mr. Data's occupational exposure, including blowing out and being a bystander to others blowing out the generators contributed to his mesothelioma. Accordingly, viewing this evidence in the light most favorable to Plaintiff, she has proffered sufficient evidence that Mr. Data was exposed to asbestos containing GE generators that was a substantial factor in causing his mesothelioma. Whether Mr. Data's exposure to asbestos contained in these generators was "substantial" is a question of fact. *Abbay*, 2012 WL 975837, at *1 n.1; *Hedrick*, 2018 WL 2322077, at *5.

As for GE's turbines, Plaintiff's evidence that Mr. Data's testified that the turbines in the engine rooms were manufactured by GE because he saw the brand name printed on them, that GE admitted that it supplied the turbines to the USS Newport News and it used asbestos thermal insulation, sound insulation, gaskets and sealing materials on its turbines, and Captain Moore's report that identical turbines GE manufactured for other ships during that time contained asbestos products like asbestos felt insulation and lagging is sufficient to infer that GE turbines were present on the ship and contained asbestos products. As for Mr. Data's exposure to the asbestos containing

products in the turbines, Plaintiff proffers Mr. Data's testimony that during the repair project, he repaired the turbines by taking off the broken lagging and replacing it which created dust that he would breathe, GE admitted it used asbestos insulation or lagging on the turbines and Captain Moore's testimony that it was "highly likely" that this lagging contained asbestos. Plaintiff also relies on Mr. Parker's expert report in which he opined that Mr. Data's occupational exposure, including him working on and being a bystander to the maintenance performed on the GE turbines contributed to his mesothelioma. Viewing this evidence in the light most favorable to Plaintiff, she has proffered sufficient evidence that Mr. Data was exposed to asbestos containing GE turbines that were a substantial factor in causing his mesothelioma. While GE argues that Mr. Data testified that he only worked on the turbines possibly a half dozen times and performed work that lasted three to four hours in total, these are arguments related to whether Mr. Data's exposure was in fact substantial, which is a question of fact. *Abbay*, 2012 WL 975837, at *1 n.1; *Hedrick*, 2018 WL 2322077, at *5.

5. Recommendation

Accordingly, it is respectfully recommended that GE's motion for summary judgment (ECF No. 1063) be granted in part and denied in part. It is recommended that GE's motion be granted with respect to Mr. Data's exposure at the West Pittsburgh Power Plant and be denied with respect to his exposure aboard the USS Newport News.

xiv. Dezurik, Inc.'s ("Dezurik") Motion for Summary Judgment (ECF No. 1067)

Plaintiff alleges that Dezurik is liable for Mr. Data's injuries because it manufactured and sold valves that used asbestos-containing packing and gaskets which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Station. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

Dezurik argues that Plaintiff has not identified any Dezurik-associated product that Mr. Data was exposed to or that any exposure was on a frequent or regular basis.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Dezurik admitted in another asbestos case that it sold asbestos-containing valves into the 1980s and 1990s. (ECF No. 1138-1). Albert W. Libke, a representative of Dezurik, testified that certain DeZurik valves continued to use asbestos-containing gaskets and packing through the 1980s and early 1990s.

- Mr. Data testified through an affidavit that between 1983 and 1988 he performed maintenance or worked around others who performed maintenance on valves at the plant which involved the use of asbestos-containing gaskets and packing which would create dust that he breathed. He further testified that he scraped off old gaskets with a scraper and a pneumatic brush and replaced the gaskets and packing which created dust that he breathed. He testified that he assisted in the repacking of valves in which another worker would take the packing out of the pump with a packing puller and replace it with new packing. There were also flange gaskets associated with the valves. Wire brushes and compressed air were used to remove the old gasket material and to clean out the valves. This would create dust that Mr. Data breathed. (ECF No. 999 Ex. C pp. 62-64). He also testified that the floors in the plant were made of open grating and it was possible to see from one level to the next and the dust on one level could fall through the grates to the lower levels. (*Id.* at p. 83). He testified that he specifically recalled working with Dezurik valves and that this equipment required asbestos-containing packing and gaskets which he installed as previously described. (ECF No. 999 Ex. A p. 5). Specifically as to Dezurik valves, Mr. Data testified as follows:

> Q. Okay. One of the brands mentioned in there is DeZURIK, and I represent DeZURIK. Do you have a specific recollection of working on any DeZURIK valves at the West Pittsburgh Power Plant?
> A. Yes, I have.
>
> * * *
>
> Q. Okay. Where do you recall -- where in the power plant do you recall DeZURIK valves?
> A. That would have been in the pump room.

Q. Anyplace else?
A. Probably some of the steam valves that were on the first floor.
Q. Anything else?
A. No.
Q. Okay. Are you able to tell me the total number of DeZURIK valves you recall at the power plant?
A. No, I -- I don't have any idea.
Q. Okay. Did you work on these valves hands-on yourself?
A. What we did was we pulled them out for testing and put them back in when they came back.
Q. What kind of connection did the DeZURIK valves have?
A. Had a flange.
Q. Okay.
A. Flange fitting.
Q. Do you recall how large the DeZURIK valves were?
A. They were -- they were quite large. There was -- two people had to pick them up.
Q. Did you have to use some type of hoist also, or were two people themselves able to pick them up?
A. If you had -- there was a crane in the area, you could use that. If not, two people would pick them up and put them on a -- on a sk*Id.*
Q. Okay. What's the smallest DeZURIK valve you recall in the power plant?
A. That -- that, I don't remember.

* * *

Q. Did you ever work on replacing the internal parts of a DeZURIK valve?
A. No.
Q. Did you ever see one that was opened up for that?
A. Yes, I have.

* * *

Q. Okay. Did you help them when they were doing that?
A. Actually, I would go into the shop and they would have one tore apart on a table.

* * *

Q. When you saw someone working on a DeZURIK valve, how close were you to them?
A. Right beside them.
Q. Okay. Did you ever see the packaging that any replacement part used on a DeZURIK valve came in?
A. No, I haven't.

(CM/ECF Docket No. 999 Ex. I pp. 81-86).

Mr. Data further testified that even when he was not assisting with maintenance projects between 1983 and 1988, he worked 30 feet from the pump room where he could see workers performing maintenance on pumps. (*Id.* at pp. 186-187). He testified that he worked with James Minner and Jack Shaw. (ECF No. 999 Ex. C. pp. 83-84). Mr. Minner was a storeroom attendant and Mr. Data obtained materials from him, including packing and gaskets. (*Id.* at p. 85). He testified that Mr. Shaw was a maintenance worker who repaired equipment using gaskets and that he sometimes found himself a few feet from Mr. Shaw when he was performing his duties. (*Id.* at pp. 86-87).

- Jack Shaw, a maintenance worker at the plant during Mr. Data's employment, testified in another asbestos case that he worked on all of the pumps at the plant, that he used asbestos rope and gaskets on the pumps and valves almost every day, he removed the old packing with hand tools and grinders creating dust and would replace the packing with new packing he got from the storeroom in a package marked "asbestos" and would cut and form new packing which also created dust. He testified that he consulted repair manuals for the valves which required the use of asbestos. (ECF No. 999 Ex. O pp. 48-58, 179-180, 183).

- Mr. Minner testified in a previous asbestos case that he worked in the storeroom from 1957-1998 in various capacities and was the storekeeper from 1984 until 1998. (ECF No. 999 Ex. L. pp. 12-13). He testified that every year at the plant there was an outage and all workers regardless of whether they were a maintenance worker or not were called to assist with the preventative maintenance that occurred on the turbines, boilers and in the fan and pump rooms. (*Id.* at 14-17). He recalled different uses for asbestos packing, including packing valves and packing around boiler doors. (*Id.* at 48). He testified that some products contained the word "asbestos" on the invoices. (*Id.* at 101-102).

- Frank Parker, CIH, authored an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials, even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification.

Considering Dezurik's admission that it sold valves that contained asbestos until the 1990s

and Mr. Data's testimony that he worked with Dezurik valves at the plant is sufficient to infer that asbestos-containing Dezurik valves were present at the plant during Mr. Data's employment. As for exposure, Plaintiff relies on Mr. Data's testimony that he pulled out Dezurik valves and put them back in, was present when a Dezurik valve was open on the table and was right beside workers who were performing maintenance on Dezurik valves. While these incidents show that Mr. Data was in proximity to Dezurik valves, Mr. Data's exposure was de minimis as Plaintiff has not offered evidence that, for example, being in the presence of a Dezurik valve open on a table or pulling Dezurik valves out and putting them back in exposed Mr. Data to respirable asbestos fibers, or the number of times Mr. Data was present while others were performing maintenance on a Dezurik valve. Additionally, Plaintiff's allusion to Mr. Data's testimony that he worked near the pump room where he could see workers performing maintenance on pumps is irrelevant for the same reasons explained above. Plaintiff's evidence of Mr. Data's exposure to Dezurik valves is therefore based on speculation and summary judgment is appropriate.

4. Recommendation

Accordingly, it is respectfully recommended that Dezurik's motion for summary judgment (ECF No. 1067) be granted.

xv. Alfa Laval, Inc.'s ("Alfa Laval") Motion for Summary Judgment (ECF No. 1073)

Plaintiff alleges that Alfa Laval is liable for Mr. Data's injuries because it manufactured DeLaval oil purifiers that contained compressed asbestos sheet gaskets which Mr. Data is alleged to have been exposed to while aboard the USS Newport News. While both parties cite to Pennsylvania law, maritime law applies as to Mr. Data's exposure to DeLaval oil purifiers, as he was only exposure to this product while aboard the USS Newport News.

1. Defendant's Arguments

Alfa Laval argues that Plaintiff has not identified any product Mr. Data was exposed to because Mr. Data never testified that he worked around oil purifiers on the USS Newport News.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing Mr. Data's exposure was a substantial factor in his injuries to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Mr. Data testified that during his time in the Navy he was regularly exposed to asbestos dust from the use, handling, installation, cutting and removal, by himself and others, of gaskets and packing from pumps, valves, steam traps and all the other equipment which was a regular and frequent occurrence during his time aboard the USS Newport News. (ECF No. 999 Ex. A pp. 1-2).

- Captain Arnold Moore, PE, a Naval Engineer provided an expert report in which he testified that documents show that there were four DeLaval oil purifiers aboard the USS Newport News, one of each located in each machine room and that DeLaval instruction manuals indicate that the oil purifiers contained pump and housing plate gaskets and compressed asbestos sheet gaskets were the only practical choice for these gaskets based on Bureau of Ships Standard Plan. (ECF No. 999 Ex. T pp. 9-16). He opined that during the time Mr. Data spent aboard the USS Newport News, he likely repaired, assisted, observed or cleaned up after the repair of all pumps and other major machinery and valves in the engine room which created dust that was breathed. (*Id.* at p. 4).

- John Rogers, an Alfa Laval corporate representative and served on the USS Newport News during overlapping time periods of Mr. Data and worked as a fireman apprentice and later fireman, testified in a prior asbestos case that the USS Newport News had four DeLaval oil purifiers and was generally aware that DeLaval used asbestos brake pads, gaskets and packing on its oil separators. (ECF No. 1132-1). He testified that DeLaval installed the asbestos-containing gaskets in the equipment before it left the manufacturer's shop, that replacement gaskets could be ordered directly from DeLaval, that there was one brake pad and nine gaskets on the DeLaval separators, packing was used on the pumps on the separators and were installed at the Alfa Laval manufacturing facility. (*Id.*at pp. 64-74). He also testified that he and other shipmates who were in the area were exposed whenever asbestos dust was created during the removal of insulation from pumps and other equipment in the engine room. (*Id.* at p. 19).

- Frank Parker, CIH, authored an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and

being a bystander or in a work area where others are disturbing asbestos containing materials, even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. Considering the evidence proffered by Plaintiff, it is reasonable to infer that there were DeLaval oil separators or purifiers on the USS Newport News that contained asbestos. However, mere presence without evidence of exposure is insufficient to establish a factual controversy as to causation. Plaintiff offers no evidence that Mr. Data was exposed to an asbestos-containing component of a DeLaval oil separator or purifier. Mr. Data's testimony that he was regularly and frequently exposed to asbestos by handling or being in the proximity of maintenance on "all of the other equipment" on the USS Newport News is too speculative to create a factual controversy as to Plaintiff's exposure specifically to DeLaval oil separators or purifiers. Plaintiff offers no evidence that any maintenance that Mr. Data performed or was present for involved handling those products in such a way that caused respirable asbestos fibers that he breathed. Because Plaintiff's evidence is based on conjecture, there is not a material issue of fact as to Mr. Data's exposure to DeLaval oil separators or purifiers.

4. Recommendation

Accordingly, it is respectfully recommended that Alfa Laval's motion for summary judgment (ECF No. 1073) be granted.

xvi. FMC Corporation's ("FMC") Motion for Summary Judgment (ECF No. 1074)

Plaintiff alleges that FMC is liable for Mr. Data's injuries because it manufactured and

distributed Northern-brand pumps that contained asbestos gaskets and packing that Mr. Data is alleged to have been exposed to while serving on the USS Newport News, and manufactured and distributed Peerless-brand pumps that contained asbestos gaskets and packing which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Station. While Plaintiff cites to Pennsylvania law, this would only apply to Mr. Data's exposure while working at the power plant and FMC is correct that maritime law applies to his alleged exposure while aboard the USS Newport News.

1. Defendant's Arguments

FMC argues that Plaintiff has not identified that Mr. Data was exposed to any Peerless pumps because he could not testify what products he associated with the name Peerless and during his deposition Plaintiff's counsel used leading questions to get Mr. Data to testify he recalled working around Peerless pumps at the plant. In its reply, FMC argues that Plaintiff's evidence merely shows that Northern pumps were present on the USS Newport News and offers no evidence that Mr. Data was ever exposed to Northern pumps.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment for Mr. Data's exposure at the plant and has identified sufficient evidence to show Mr. Data's exposure was a substantial factor in his injuries while aboard the USS Newport News. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- USS Newport News Exposures
    - Mr. Data testified that during his time aboard the USS Newport News, his duties involved repairing equipment including pumps primarily in the Number 3 engine room and sometimes in the other four engine rooms. (ECF No. 999 Ex. D p. 26). He replaced rope packing in the pumps by opening the packing glands,

pulling out the old rope packings and repacking the pumps. (*Id.* at pp. 28-29). Sometimes he had to remove the pumps from the piping systems by disconnecting the bolts connecting the flanges, and that involved using gaskets. (*Id.)* He cut the gaskets using a ball-peen hammer to tap around the edges of the flanges and sometimes he would use a knife or pair of scissors to cut the gaskets that created dust that he breathed. (*Id.* at p. 29). He testified that this was a regular and frequent occurrence during his time aboard the USS Newport News. (ECF No. 999 Ex. D pp. 43-44). In 1971, the USS Newport News was in dry-dock for a repair project that lasted nine months. (ECF No. 999 Ex. D p. 36). Mr. Data stayed aboard the ship during this time and assisted in refurbishing the major pieces of equipment including larger pumps and valves. (*Id.* at pp. 37-38). He handled gaskets, packing and heat insulation in the manner described for pumps during this project. (ECF No. 999 Ex. A pp. 1-9).

- Captain Arnold Moore, PE, a Naval Engineer provided an expert report in which he reviewed engineering documents of the USS Newport News detailing the pieces of equipment that were aboard the ship during the time that Mr. Data served. (ECF No. 999 Ex. T p.1). According to Captain Moore, Northern Pump Company manufactured four motor-driven fuel oil service pumps that were installed on the USS Newport News, one in each engine room. Northern also manufactured four hand driven fuel oil service pumps for the USS Newport News, one for each engine room. The manufacturing plans for Northern fuel oil service pumps specified the use of braided asbestos rod packing to seal the pump shafts. (ECF No. 999 Ex. T p. 13). According to Captain Moore, once a manufacturer chose a specific type of asbestos-containing packing or gasket, it was standard Navy practice to use that product for the life of the machinery. Captain Moore opined that it was likely that Mr. Data removed and replaced many gaskets in pumps in a way that caused dust that he would breathe. (ECF No. 999 Ex. T p. 5).

- Thomas Gifford, a Northern Pump corporate representative, testified in another asbestos case that hand-driven fuel oil pumps and motor-driven diesel oil supply pumps required asbestos packing and the diesel oil pumps were produced exclusively for the Navy. (ECF No. 1140-1 pp. 11, 34, 79-82, 106). He testified that diesel fuel oil handling pumps supplied to the Navy used asbestos packing and it provided replacement parts including gaskets and packing for all the pumps it sold. (ECF No. 1140-2 pp. 56-57, 67-68, 94-95).

- West Pittsburgh Power Station Exposures

  - Mr. Data testified that he worked as a pulverizer at the plant from 1983 to 1988 and would periodically assist in the maintenance of boiler feed pumps, condensate pumps, water pumps, cooling pumps and oil pumps at the plant. (ECF No. 999 Ex. C pp. 56-57). He assisted with unbolting flanges, lifting parts of the pumps, cleaning gaskets off flanges and cleaning up afterward. (*Id.* at pp. 58-59). He cleaned up the pump packing with compressed air and a broom

which created dust that he breathed. (*Id.* at pp. 59, 62). He also testified that there were gaskets on the flanges associated with the pumps and he scraped off old gaskets with a scraper and a pneumatic brush and replaced them. (*Id.* at pp. 60-61). Sometimes he made a gasket and sometimes he would get them from the manufacturer and more complex gaskets were easier to get premade from the equipment manufacturer. (*Id.* at p. 61). He testified that working with the gaskets in this way created dust that he breathed. (*Id.* at p. 62). He testified that he recalled Peerless pumps at the plant until the day he retired but was not able to recall specifics about these pumps because there were many similar pumps at the plant. (ECF No. 999 Ex. I pp. 95-99). He testified that he worked with Jack Shaw and David Cain. (ECF No. 999 Ex. C pp. 83-84). He worked just feet away from Mr. Shaw while he worked, and he encountered Mr. Cain as an electrician during his first five years at the plant. (*Id.* at pp. 86-90).

- Jack Shaw testified in another asbestos case that he worked on all the pumps at the plant and some pumps had insulation on them that he had to remove each time he worked on a pump, which created dust. (ECF No. 999 Ex. O pp. 48-51; 58-59). Mr. Shaw testified that he used asbestos containing gaskets and packing on Peerless pumps at the plant and he removed and installed packing to Peerless pumps. (ECF No. 999 Ex. P pp. 98-99). He testified that he used asbestos rope and gaskets on the pumps and valves every two to three days removing and replacing the packing and gaskets. (ECF No. 999 Ex. O pp. 52-56; Ex. P p. 84).

- David Cain testified in another asbestos case that he changed gaskets and packing on Peerless pumps at the plant and there were two pumps, one in each unit and they were old and required constant maintenance. He ground off the internal gasket and replaced it with new asbestos material and the old dry packing was removed and replaced. (ECF No. 999 Ex. N pp. 22-26; 63-71).

- Ed Allis, a corporate representative of Peerless, testified in another asbestos case that during the 1960s and 1970s, asbestos gaskets were the only gaskets suitable for high temperature applications and Peerless only used asbestos packing and it continued to supply asbestos gaskets and packing with its pumps until the mid-1980s. Peerless anticipated that the asbestos gaskets originally supplied with their pumps would be replaced over the pump's lifespan whenever the pump was repaired, including replacement of flange gaskets. Peerless sold replacement parts to customers, including asbestos replacement packing. (ECF No. 1140-3).

- Frank Parker, CIH, provided an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials, even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is sufficient evidence to overcome summary judgment on product identification related to Northern pumps but there is not sufficient evidence to overcome summary judgment on product identification related to Peerless pumps.

As for the Northern pumps, there is sufficient evidence to allow a reasonable jury to conclude that Northern pumps were present on the USS Newport News while Mr. Data was serving and were a substantial factor in causing his mesothelioma. Mr. Data did not specifically recall working on or around Northern pumps. Because Mr. Data did not identify Northern pumps individually, Plaintiff lacks sufficient direct evidence to demonstrate regular exposure to Northern's pumps. Instead, she relies upon a combination of Mr. Data's testimony, Northern's admissions that it used asbestos in its pumps, Navy records placing asbestos-containing Northern pumps in each engine room where Mr. Data performed duties, Captain Moore's expert report opining that it was highly likely that Mr. Data worked on or near Northern pumps on the USS Newport News in such a way that caused asbestos dust that he breathed and Mr. Parker's expert report opining that handling or being a bystander to asbestos-containing packing and gaskets in the ordinary performance of maintenance duties caused dust that is breathed and elevates the risk of developing mesothelioma. Mr. Data testified that he removed and replaced gaskets and packing on pumps on the USS Newport News "regularly" and "frequently" in such a way that it created dust that he breathed. Further, he testified that he stood watch in the engine rooms and assisted others performing maintenance on the pumps that required removing and replacing asbestos gaskets and packing and was stationed in Number 3 engine room for the entirety of his three-year service. FMC's argument that Mr. Data could not specifically identify Northern as a manufacturer

fails, as it is unsurprising that Mr. Data cannot identify specific manufacturers of products he encountered fifty years ago, and further Plaintiff is not required to show direct evidence of causation under maritime law and can show that a product was a substantial factor in an individual's injury through circumstantial evidence like Plaintiff does here. *Abbay*, 2012 WL 975837, at *1 n.1; *Walker v. Blackmer Pump Co.*, 367 F. Supp. 3d 360, 377 (E.D. Pa. 2019). Whether Mr. Data's exposure was substantial is a question of fact. *Abbay*, 2012 WL 975837, at *1 n.1

As for Peerless pumps, there is not sufficient evidence showing the necessary frequency, regularity and proximity to survive summary judgment. Addressing FMC's argument that the court should disregard Mr. Data's deposition testimony identifying Peerless as a manufacturer because it was elicited through leading questions under Federal Rule of Evidence 611 and Federal Rule of Civil Procedure 56(c)(2), this argument is rejected. The testimony that FMC seeks to strike is as follows:

> Q. Do you remember some of the brands of pumps that were at the plant?
> A. There was Goulds pumps, Ingersoll Rand, Warren. That's pretty much all I can remember on the pumps there.
> Q. Do you remember Peerless pumps?
> MR. McMEEKIN: Objection.
> THE WITNESS: Yes.

(ECF No. 999 Ex. C p. 68).

First, a party is only entitled to summary judgment if the fact that supports the evidence the party seeks to strike cannot be presented in an admissible form. Fed. R. Civ. P. 56(c)(2). Here, Plaintiff has offered the testimony of Mr. Shaw and Mr. Cain to support an inference that Peerless pumps were present at the plant during Mr. Data's employment. Second, under Pennsylvania law, Plaintiff is not required to present only direct evidence to prove her claims and can rely on circumstantial evidence to do so, so even if Mr. Data's testimony were stricken as being elicited

from a leading question, that would not by itself entitle FMC to summary judgment.

While Mr. Data testified that he recalled Peerless pumps at the plant, he testified that he could not specifically recall working on them. This testimony does not create direct evidence of Mr. Data's exposure to Peerless pumps. Instead, Plaintiff relies upon a combination of circumstantial evidence including Mr. Data's testimony about his work on pumps generally at the plant, Mr. Data's coworkers Mr. Shaw and Mr. Cain's testimony that they regularly worked on Peerless pumps by removing and replacing asbestos gaskets and packing at the plant, the Peerless corporate representative's testimony that its pumps used asbestos gaskets and packing until the mid-1980s, and Mr. Parker's expert opinion that handling or being a bystander to asbestos-containing packing and gaskets in the ordinary performance of maintenance duties caused dust that is breathed and elevates the risk of developing mesothelioma. While this evidence supports an inference that Peerless pumps that contained asbestos-products were present at the plant during Mr. Data's employment, it does not support an inference that Mr. Data was exposed to these products on a regular and frequent basis. Even considering Mr. Shaw's and Mr. Cain's testimony that they worked on Peerless pumps in a way that created asbestos dust, and Mr. Data's testimony that he worked alongside Mr. Shaw and encountered Mr. Cain, there is no evidence how frequent he worked alongside Mr. Shaw on a Peerless pump in such a way that it created asbestos dust or how many times he encountered Mr. Cain after working on a Peerless pump in such a way that it created asbestos dust that he breathed. Because a finding that Mr. Data was exposed to Peerless pumps on a regular, frequent and proximate basis would be based on speculation, summary judgment is appropriate.

4. Recommendation

Accordingly, it is respectfully recommended that FMC's motion for summary judgment

(ECF No. 1074) be granted in part and denied in part. It is recommended that FMC's motion be granted related to Mr. Data's exposure to Peerless pumps and denied as to Mr. Data's exposure to Northern pumps.

xvii. Gardner Denver, Inc.'s ("Gardner Denver") Motion for Summary Judgment (ECF No. 1076)

Plaintiff alleges that Gardner Denver is liable for Mr. Data's injuries because it utilized asbestos gaskets and packing on its pumps and compressors which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Station. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

Gardner Denver argues that Plaintiff has not identified any product associated with it that Mr. Data was exposed to or that such exposure was frequent, regular and proximate.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Mr. Data testified that he worked at the plant from 1983 to 1988 as a pulverizer operator and assisted the maintenance department on shutdown work involving much of the equipment at the plant which included unbolting flanges, cleaning gaskets off flanges and cleaning up after the work was finished. (ECF No. 999 Ex. C pp. 58-59). Mr. Data testified that there were gaskets on the flanges associated with pumps and that he scraped off the old gaskets with a scraper and a pneumatic brush and replaced them and the work created dust that he breathed. (*Id.* at 62). Mr. Data testified that there were three air compressors at the plant and as a helper he handled gaskets that were being installed on the compressors. As to the air compressors, Mr. Data testified:

  Q. Did you observe anyone doing any maintenance work on that air compressor?
  A. Yes.
  Q. Where was it located?
  A. It was located in the basement, not far from the mill area.

> Q. The pulverizer mill?
> A. Yes.
> Q. Would it have been in your work area when you were a pulverizer operator for the first five years?
> A. Yes.
> Q. Was there just one air compressor?
> A. No. We had -- actually we had – for soot-blowing air, we had three.
> Q. And you said you were in the vicinity when work was performed on those?
> A. Yes.
> Q. What kinds of work?
> * * *
> A: Whatever, you know, generally had to be done. There were oil leaks on them, air leaks. Sometimes the stages weren't pumping right, and they all had to be adjusted or taken apart and put new reeds in them. It was different things. Sometimes you would have a condenser leak where you would be getting water in the -- in the air system.
> Q. Do you associate any asbestos-containing products with the air compressors?
> * * *
> A: I believe some of the gaskets on there were asbestos because those compressors ran very hot, and before they went in to be -- into the condenser to be cooled for usage, that air was very hot.
> Q. Did you handle any of those gaskets yourself?
> A. On the -- on a helping basis.

(ECF No. 999 Ex. C pp. 70-72). He further testified that he recalled using Powerite gasket material being one of the main types of gasket material used at the plant. (ECF No. 999 Ex. N pp. 18, 49, 86; Ex. G pp. 46-48).

- David Cain, a maintenance worker at the plant in the 1970s and electrical worker from the mid-1970s to 1998, testified in another asbestos case that all the gaskets used in the plant were asbestos-containing, had to be scraped and ground off when removed, creating dust. (ECF No. 999 Ex. N pp. 24-26). Mr. Cain further testified that there were between eight and ten Gardner Denver air compressors at the plant and that there was a large Gardner Denver air compressor located in the basement of the power plant building. (ECF No. 999 Ex. N. p. 92). He testified that there were gaskets located on the tops of the cylinders of the air compressors and those had to be replaced when the compressor was torn down for repairs and the compressors were one of the highest maintenance pieces of equipment in the power plant and had to be repaired quite frequently and very often and he personally changed gaskets on the compressors. (*Id.* at 98-99). Mr. Cain testified that when he worked on compressors, he used Powerite gasket material.

- John D. Kendall, Gardner Denver's corporate representative, testified in another asbestos case that Gardner Denver distributed asbestos-containing gaskets and packing

internally on its pumps and compressors. (ECF No. 1142-1 pp. 23-26; 102-103).

- Thomas J. Hemphill, Argo Packing Company's corporate representative who manufactured Powerite, testified that all Powerite gaskets made from 1959 throughout the 1980s contained asbestos. (ECF No. 1142-2 pp. 49-51).

- Frank Parker, CIH, provided an expert report in which he stated that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials, even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. Mr. Data maintains that he helped replace asbestos containing-gaskets on three air compressors at the plant. He did not specifically recall Gardner Denver air compressors at the plant, and a complete review of Mr. Data's testimony shows that he recalled the air compressors were manufactured by Joy and B&W. While this does not foreclose Plaintiff's claims, she must point to circumstantial evidence to identify Mr. Data was exposed specifically to an asbestos-containing Gardner Denver product. Reviewing Mr. Cain's testimony that the plant had between eight and ten Gardner Denver air compressors at the plant and that there was a large Gardner Denver air compressor located in the basement of the power plant building, he specifically testified that there was only one air compressor located in the plant where Mr. Data worked and the other eight to ten compressors were in other buildings. (ECF No. 999-14 p. 24). There is no evidence that Plaintiff was in proximity to air compressors located in other buildings. It is reasonable to infer that a Gardner Denver air compressor was in the plant that Mr. Data worked, but a product's presence alone does not create an issue of material fact. Mr. Cain testified that he recalled the Gardner Denver control air compressor located inside the plant used gaskets and packing that contained asbestos and it was

quite frequently being worked on and was one of the most "high maintenance" pieces of equipment in the plant. However, Mr. Cain also testified that he only worked in a maintenance role at the plant and performed maintenance on the Gardner Denver air compressor by replacing the gaskets and packing with asbestos-containing products until 1970, thirteen years before Mr. Data began working at the plant. Therefore, Mr. Cain's testimony is too speculative to create an issue of material fact as to Mr. Data's frequent, regular and proximate exposure to the Gardner Denver air compressor. Even assuming that the air compressors that Mr. Data helped perform maintenance on by replacing asbestos-containing gaskets and packing were manufactured by Gardner Denver, there is no evidence how frequently this occurred to show exposure was more than de minimis and Mr. Cain's testimony that the Gardner Denver control air compressor was "high maintenance" is too speculative to create an issue of material fact as to how often Mr. Data could have been tasked with performing maintenance on it or was around asbestos-dust from others performing maintenance on it. Because the evidence offered by Plaintiff is based on speculation and would require several inferential leaps to find in her favor, summary judgment is appropriate.

4. Recommendation

Accordingly, it is respectfully recommended that Gardner Denver's motion for summary judgment (ECF No. 1076) be granted.

xviii. Hyster-Yale Group, Inc.'s ("HYG") Motion for Summary Judgment (ECF No. 1079)

Plaintiff alleges that HYG is liable for Mr. Data's injuries because it manufactured and sold Hyster forklifts that contained asbestos brakes which Mr. Data is alleged to have been exposed to while working at the Mesta Machine plant. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

HYG argues that Plaintiff has not identified any Hyster forklift Mr. Data was exposed to because its own corporate representative, Darrel Libby, testified that the forklifts described by Mr. Data in his deposition do not have the same characteristics as Hyster forklifts. For example, HYG argues that Mr. Data could not provide a model or serial number or year of manufacture of the Hyster forklift, could not identify whether the brakes were old or new or the manufacturer, Mr. Data testified the forklifts were orange or green and some had solid rubber wheels, but Mr. Libby testified that Hyster did not manufacture forklifts with those characteristics. Further, HYG argues that Plaintiff has failed to identify that Hyster forklifts contained any asbestos-containing product or that Mr. Data was exposed to any such product.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Mr. Data testified that he worked at the Mesta Machine plant from October 1974 to June 1982 and there were four buildings at the site – the weld shop, boiler house, machine shop and storage building, and he worked in all four buildings. (ECF No. 999 Ex. B pp. 49-50). He testified he operated the forklifts in the machine shop while working as a laborer to move heavy pieces of metal around and other workers also used forklifts and used the brakes on forklifts. (*Id.* at p. 83). He testified that there were two brands of forklifts at the plant: Clark and Hyster that were powered by gasoline or propane. (*Id.* at 83-84). He testified that outside contractors came into the plant to work on the forklifts, and he observed them checking the brakes on the Hyster and Clark forklifts. (*Id.* at 84-85). Mr. Data also testified that there were three Hyster forklifts at the Mesta plant and that he operated those forklifts and was present when others performed maintenance on Hyster forklift brakes and estimated he was present for others changing brakes between five minutes to an hour. (ECF No. 999 Ex. I pp. 160-161, 166-68). He testified that he was present when workers used an impact tool to remove the wheels from Hyster forklifts and then replace the brakes. (*Id.* at p. 173).

- Mr. Libby, HYG's corporate representative, testified in another asbestos case that all Hyster forklift brakes were asbestos-containing until a switch-over to asbestos free occurred sometime in the 1980s. (ECF No. 1127-2 p. 79). He further testified that

Hyster continued to sell some forklift brakes that contained asbestos until the early 1990s. (*Id.)* He testified that HYG purchased its friction material from Bendix and that the Hyster brake technical manuals advised consumers to use Hyster-approved parts when making repairs. (*Id.* at 142).

- Bendix manufactured asbestos-containing brake linings from the 1940s through the 1990s and all its brakes contained asbestos during this time frame. (ECF No. 1127-3; 4). A Bendix corporate representative testified in another asbestos case that the formulation of Bendix brakes contained asbestos and did not change between the 1960s and 1980s and brake lining for heavy vehicles would have contained between 25-50% asbestos fiber. (ECF No. 1127-5).

- Frank Parker, CIH, provided an expert report in which he opined that bystanders and those in the general area of brake repair work are subjected to elevated levels of exposure to airborne asbestos fiber and relatively light exposures are sufficient to elevate the risk of mesothelioma. (ECF No. 999 Ex. U, p. 1-3, 11-14, 25, 29-30).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. As a preliminary matter, HYG's attempts to refute Mr. Data's testimony regarding him identifying Hyster forklifts at the Mesta plant by using its own corporate representative's affidavit to point out inconsistencies in Mr. Data's testimony are all issues of witness credibility. It is not the court's role to weigh testimony and decide which is more probative or make credibility determinations and therefore these are not issues proper for summary judgment. *See Marino*, 358 F.3d at 247. Considering all the evidence in the light most favorable to Plaintiff, she has proffered evidence that Hyster forklifts were present at the Mesta plant and had brakes that used asbestos-containing products. However, the evidence proffered by Plaintiff amounts to speculation regarding Mr. Data's exposure to Hyster forklift asbestos-containing brakes and he has offered no evidence that raises a reasonable inference that he inhaled asbestos fibers that emanated from any brake repair that were more than de minimis. While Mr. Data testified that he was present while brakes on Hyster forklifts were repaired or changed, he could not recall the total number of times he was present when brake work

was performed on any of the Hyster forklifts, (ECF No. 999-9 pp. 166; 181), provided no evidence as to how close he was to the workers performing the brake repair and testified that he recalled on one occasion being present for five minutes to an hour. This testimony alone is too speculative to show that Mr. Data's proximity to workers changing brakes on Hyster forklifts was more than de minimis. Not "every exposure to asbestos, no matter how minimal in relation to other exposures, implicates a fact issue concerning substantial-factor causation in every 'direct evidence' case." *Rost*, 151 A.3d at 1043 (citation omitted). Additionally, Plaintiff has offered no evidence that Mr. Data was exposed to any respirable asbestos fibers in relation to him or other plant workers using the brakes on the forklifts. Therefore, Plaintiff has not proffered sufficient evidence that a jury could reasonably infer a sufficient causal connection between Hyster forklift brakes and Mr. Data's injuries.

4. Recommendation

Accordingly, it is respectfully recommended that HYG's motion for summary judgment (ECF No. 1079) be granted.

xix. BW/IP, Inc.'s ("BW/IP") Motion for Summary Judgment (ECF No. 1084)

Plaintiff alleges that BW/IP is liable for Mr. Data's injuries because it is the successor in interest manufactured Byron Jackson pumps that contained asbestos gaskets and packing which Mr. Data is alleged to have been exposed to while working at the West Pittsburgh Power Plant. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

BW/IP argues that Plaintiff has not proffered evidence that Mr. Data was ever exposed to asbestos dust created by the maintenance of Byron Jackson pumps or that such exposure was frequent, regular or proximate.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Frank Costanzo a BW/IP corporate representative testified in a prior asbestos case that Bryon Jackson pumps used asbestos-containing gaskets and packing from the 1950s to the 1980s as a general application and that the gaskets and packing would be replaced in Byron Jackson pumps by a BW/IP service representative or by the plant workers themselves and BW/IP sold replacement asbestos packing and gaskets for this purpose. (ECF No. 1136-4 pp. 44-45, 48, 55-56, 59, 61, 85-86). BW/IP was also aware that its pumps would sometimes utilize asbestos insulation which could be installed when the pump was manufactured or installed by workers whenever the pump was installed at the plant. (*Id.* at 44-45, 48).

- BW/IP produced documents in this case that the plant purchased four Bryon Jackson main boiler feed pumps. (ECF No. 1136-1). Pennsylvania Power, the owner and operator of the plant during Mr. Data's employment, provided record that it purchased four Byron Jackson main boiler feed pumps and indicating that there were Byron Jackson boiler feed pumps on Unit #4 and deep well pumps. (ECF No. 1136-2 pp. 1133, 1138, 1311-1314, 1329, 1686).

- Thomas J. Hemphill, a corporate representative of Argo Packing Company, testified in a prior asbestos case that his company sold asbestos-containing sheet gasket material under the brand name "Powerite" and that all Powerite gasket material contained 80% asbestos from 1959 through the 1980s. (ECF No. 1136-3 pp. 9-10, 49, 50-51).

- Mr. Data testified through an affidavit that between 1983 and 1988 he periodically performed maintenance or worked around others who performed maintenance on pumps at the plant which involved the use of asbestos-containing gaskets and packing which would create dust that he breathed. He further testified that he scraped off old gaskets with a scraper and a pneumatic brush and replaced the gaskets and packing which created dust that he breathed. He testified that he assisted in the repacking of gaskets in which another worker would take the packing out of the pump with a packing puller and replace it with new packing. There were also flange gaskets associated with the pumps. Wire brushes and compressed air were used to remove the old gasket material and to clean out the gaskets. This would create dust that Mr. Data breathed. (ECF No. 999 Ex. C pp. 62-64). He also testified that the floors in the plant were made of open grating and it was possible to see from one level to the next and the dust on one level could fall through the grates to the lower levels. (*Id.* at 83). Mr. Data testified that he made asbestos-containing gasket material that was used on the boiler feed pumps at the plant. (ECF No. 999 Ex. G pp. 44-48). Mr. Data testified that he cut Victor-brand, Powerite-brand and Garlock-brand sheet gasket material that was utilized

on boiler feed pumps and that the plant stopped using asbestos material in the mid-1990s. (ECF No. 999 Ex. G pp. 44-48). Mr. Data testified that during his first five years at the plant, at times he worked alongside Jack Shaw, a maintenance worker and that he encountered David Cain, an electrician at the plant.

- Jack Shaw testified in a prior asbestos case that as a mechanic he worked on all the pumps in the plant at one time or another and some of the pumps had insulation on them which would have to be dug out each time a pump was worked on which created dust. (ECF No. 999 Ex. O pp. 48-51, 58-59). He testified that he used asbestos rope and gaskets on the pumps and valves almost every day by removing the old packing with hand tools and grinders which created dust that Mr. Shaw breathed and that the packing and gaskets he received from the storeroom were labeled "asbestos." (*Id.* at pp. 52-56, 58). He testified that he consulted repair manuals for the pumps which specified the use of asbestos gaskets and packing. (ECF No. 999 Ex. Q pp. 179-180, 183). He testified that Byron Jackson was a brand of pumps that he worked on at the plant that required the use of asbestos-containing products and were maintained as needed. (ECF No. 999 Ex. P pp. 103-105, 182).

- David Cain testified in a previous asbestos case that there were Byron Jackson feed pumps in all five units of the plant, totaling ten Byron Jackson pumps. (ECF No. 999 Ex. N pp. 27-30). He testified that he saw workers remove gaskets and packing from the pumps and saw gaskets scraped off the pumps and that the pumps were insulated with asbestos thermal insulation on the outside. (*Id.* at pp. 27-30). He testified that every year during an overhaul that the asbestos insulation was removed from the Byron Jackson pumps and replacement gaskets came from Byron Jackson and had to be scraped and ground off when removed creating dust. (*Id.* at pp. 59-62, 24-26). He testified that this packing was changed to a ceramic material in the 1990s. (*Id.* at p. 62).

- Frank Parker, CIH, provided an expert report in which he testified that handling asbestos-containing packing and gaskets in the ordinary performance of maintenance duties and being a bystander or in a work area where others are disturbing asbestos containing materials, even if the worker has not handled the product containing asbestos, and even if the exposure is relatively light, elevates the risk of developing mesothelioma. (ECF No. 999 Ex. U pp. 19-22; 25).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough evidence to overcome summary judgment on product identification. Considering Mr. Cain's testimony that the plant had approximately ten Bryon-Jackson pumps in all five units of the plant and he recalled workers replacing gaskets and packing using asbestos products on the Byron-Jackson pumps until the 1990s, Mr. Shaw's testimony that Byron-Jackson pumps were at the plant,

those pumps required the use of asbestos gaskets and packing and were maintained as needed, and BW/IP's corporate representative's testimony that its pumps used asbestos materials in the light most favorable to Plaintiff, it is reasonable to infer that asbestos-containing Byron-Jackson pumps were present at the plant during Mr. Data's employment. As for Mr. Data's exposure, Plaintiff proffers Mr. Cain's testimony that he recalled workers replacing gaskets and packing with asbestos products until the 1990s, Mr. Shaw's testimony that the pumps were maintained as needed, and Mr. Data's testimony that he handled asbestos gaskets and packing for boiler feed pumps that created dust that he breathed is too speculative to show Mr. Data's exposure to Byron-Jackson pumps. Likewise, Mr. Data testimony that he "periodically" performed maintenance or helped others perform maintenance on boiler feed pumps, even assuming those pumps were Byron-Jackson pumps, is too speculative to show exposure that is more than de minimis.

4. Recommendation

Accordingly, it is respectfully recommended that BW/IP's motion for summary judgment be granted.

xx. Clark Equipment Company's ("Clark") Motion for Summary Judgment (ECF No. 1085)

Plaintiff alleges that Clark is liable for Mr. Data's injuries because it manufactured and sold Clark forklifts that contained asbestos brakes that Mr. Data is alleged to have been exposed to while working at the Mesta Machine plant. The parties do not dispute that Pennsylvania law applies.

1. Defendant's Arguments

Clark argues that Mr. Data was not exposed to any asbestos containing material from Clark forklifts because he admitted the only maintenance he performed was to check the water and oil which would not expose him to any asbestos-containing material, and he further testified that he

would check the gears monthly but an outside contractor would perform any repair work to the Clark forklifts.

2. Plaintiff's Arguments

Plaintiff contends that she has identified sufficient product identification evidence showing the necessary frequency, regularity and proximity to survive summary judgment. In support of this assertion, she points to the following evidence which is summarized in pertinent part:

- Mr. Data testified that he worked as a laborer at the Mesta Machine plant from 1974 to 1982 and he operated Clark forklifts to perform his duties. (ECF No. 999 Ex. B pp. 82-85). He testified that there were approximately five or six forklifts at the plant and that he and other workers would apply brakes on the forklifts to bring them to a stop. (*Id.* at pp. 82-85). Mr. Data testified that outside contractors would come in and perform maintenance on the forklifts, including checking the motor work, steering apparatus, and pulling the wheel to check the brakes and everything on them. (*Id.* at pp. 84-85). He further testified that he observed the outside contractors doing that work on Clark forklifts. (*Id.* at p. 85). Specifically, he testified that if the forklift were broken down, the outside contractors would perform work on the forklift wherever it was and if it were regularly scheduled maintenance, they would take the forklift to the other end of the plant to perform maintenance on it. (ECF No. 999 Ex. I pp. 123-24). He testified that for regularly scheduled maintenance he would generally not be present for it but if his supervisor asked him to explain to the outside contractors what happened to the forklift, he would explain it to the representatives and then leave them to do their work. (*Id.* at pp. 124-25). He testified that he recalled the forklifts were supposed to be looked at once a month. (*Id.* at p. 125).

- Clark admitted in a past asbestos case that it manufactured forklifts with asbestos-containing component parts including brakes, clutches and engine gaskets. (ECF No. 1120-1).

- A material safety data sheet attributable to Clark demonstrates that Clark used asbestos-containing brake shoe material until at least 1989. (ECF No. 1120-2).

- Frank Parker, CIH, provided a case specific report in which he opined that bystanders and those in the general area of brake repair work are subjected to elevated levels of exposure to airborne asbestos fiber and relatively light exposures are sufficient to elevate the risk of mesothelioma. (ECF No. 999 Ex. U pp. 1-3, 11-14, 25, 29-30).

3. Analysis

Viewing the evidence in the light most favorable to the Plaintiff, there is not enough

evidence to overcome summary judgment on product identification. Plaintiff has not proffered any evidence beyond speculation that Mr. Data was exposed to asbestos contained in Clark forklift brakes. While Mr. Data testified he was at times present while maintenance was being performed on Clark forklifts, Plaintiff has provided no evidence as to the number of times Mr. Data would have been exposed to asbestos when the maintenance was performed, and offers no evidence as to how long he was present or how close he was to the workers who performed the brake repair. Mr. Data's own testimony reveals that he was only momentarily present during repairs to inform workers of the issues a forklift might have and would leave them to perform the repairs. This testimony alone is too speculative to show that Mr. Data's proximity to workers changing brakes on Clark forklifts was more than de minimis. Not "every exposure to asbestos, no matter how minimal in relation to other exposures, implicates a fact issue concerning substantial-factor causation in every 'direct evidence' case." *Rost*, 151 A.3d at 1043 (citation omitted). Additionally, Plaintiff has offered no evidence that Mr. Data was exposed to any respirable asbestos fibers in relation to him or other plant workers applying the brakes on Clark forklifts. Therefore, Plaintiff has not proffered sufficient evidence that a jury could reasonably infer a sufficient causal connection between Clark forklift brakes and Mr. Data's injuries.

4. Recommendation

Accordingly, it is respectfully recommended that Clark's motion for summary judgment (ECF No. 1085) be granted.

d. Conclusion

Based on the foregoing, under 28 U.S.C. § 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72, and the Local Rules for Magistrates, the parties have until **November 23, 2021** to file objections to this report and recommendation. Each party's objections shall not exceed seven

pages related to each motion and Plaintiff may file omnibus objections. Unless Ordered otherwise by the District Judge, responses to objections are due fourteen days after objections are filed. Failure to file timely objections will constitute a waiver of any appellate rights. *Brightwell v. Lehman*, 637 F.3d 187, 193 n. 7 (3d Cir. 2011).

Dated: November 9, 2021.

Respectfully submitted,
s/ Cynthia Reed Eddy
Cynthia Reed Eddy
Chief United States Magistrate Judge

cc: Honorable Marilyn J. Horan
United States District Judge
via electronic filing

Attorneys of record
via electronic filing