IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

JANET COPENHAVER, Executrix of the Estate of EMORY COPENHAVER, deceased: and JANET E. COPENHAVER, in her own right,	:	CIVIL ACTION
Plaintiffs	:	
vs.	:	NO. 06-00983
FORD MOTOR COMPANY, et al,	:	
Defendants	:	

O P I N I O N A N D O R D E R

Plaintiffs have filed an action for damages against numerous Defendants alleging injuries sustained by Emory Copenhaver (hereinafter "Mr. Copenhaver") as a result of alleged exposure to asbestos-containing products during the course of his lifetime. All Defendants not released from this lawsuit by Plaintiffs have filed respective Motions for Summary Judgment with the Court. Specifically, Motions have been filed by the following Defendants: Allied Glove Corporation; Honeywell International, Inc., the successor in interest to Allied Signal, Inc., the successor in interest to the Bendix Corporation (hereinafter "Allied Signal"); Crane Company, Inc.; Fayjan Tool Sales, Co.; Ford Motor Company; Goulds Pumps, Inc.; Industrial Holdings Corp. f/k/a The Carborundum Company (hereinafter "Carborundum"); St. Gobain-Abrasives, Inc., successor-in-interest to Norton Company (hereinafter "Norton")**;** CBS Corporation, f/k/a Viacom Inc., successor by merger to CBS Corporation, f/k/a Westinghouse Electric Corporation (hereinafter "Westinghouse") and Lindberg**.** Prior to oral argument, this Court was advised that the Plaintiffs were withdrawing their opposition to Motions for Summary Judgment filed by Defendants Fayjan Tool Sales,

Company and Ford Motor Company. This Opinion addresses the motions raised by the remaining Defendants.

Pennsylvania Rule of Civil Procedure 1035.2(1) provides that a party may move for summary judgment "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action…" Pa.R.C.P. 1035.2(2) further provides that a party may move for summary judgment when "an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Once a motion for summary judgment is made, the non-moving party may not simply rest upon the mere allegations or denials in his or her pleadings, but is required to set forth specific facts showing that there is a genuine issue for trial. Pa.R.C.P. 1035.3. "Thus, once the motion for summary judgment has been properly supported, the burden is upon the non-movant to disclose evidence that is the basis for his or her argument resisting summary judgment." Samarain v. GAF Corporation, 571 A.2d 398, 402 (Pa.Super. 1989) (*citing* Roland v. Kravco, Inc., 513 A.2d 1029, 1034 (Pa.Super. 1986)).

In asbestos-related litigation, the plaintiff has the burden of establishing not only that a particular defendant's asbestos-containing products were used at the plaintiff's job sites, but that the plaintiff worked in close proximity to the product at the time of its use. The plaintiff must establish exposure on a regular, frequent and proximate basis. Eckenrod v. GAF Corp., 544 A.2d 50 (1988), *appeal denied*, 520 Pa. 605, 533 A.2d 968 (1988). Additionally, in Eckenrod, *supra*, the Court held:

> In order for liability to attach in a products liability action, **plaintiff must establish that the injuries were caused by a product of the particular**

> **manufacturer or supplier**. *Berkebile v. Brantly Helicopter Corp.*, 462 Pa. 83, 337 A.2d 893 (1975). Additionally, in order for a plaintiff to defeat a motion for summary judgment, a plaintiff must present evidence to show that he inhaled asbestos fibers shed by the specific manufacturer's product…Therefore, a plaintiff must establish more than the presence of asbestos in the workplace; he must prove that he worked in the vicinity of the product's use…Summary judgment is proper when the plaintiff has failed to establish that the defendants' products were the cause of the plaintiff's injury." Id. at 52. (Emphasis added).

Recently, the Pennsylvania Supreme Court reviewed the standard established by Eckenrod in Gregg v. V.J. Auto Parts Company, 943 A.2d 216 (Pa. 2007). In Gregg, *supra*, the estate of Mr. Gregg filed suit pursuant to Mr. Gregg's death due to his exposure to asbestos-containing products and resultant pleural mesothelioma. The plaintiffs averred that Mr. Gregg was exposed to asbestos throughout his forty-year history of employment as a cable splicer and line man, his employment over a four-year period as a gas station attendant, a three year period in which he served in the U.S. Navy and additionally, pursuant to brake and clutch installations performed by Mr. Gregg throughout his lifetime. The Supreme Court held that it is appropriate for courts at the summary judgment stage to assess plaintiff's evidence of exposure to a defendant's asbestos-containing products to determine whether the evidence meets the regular, frequent and proximate requirements developed in Eckenrod and other Superior Court decisions. The Supreme Court held that a trial court essentially has a gatekeeper role at the summary judgment level to assess plaintiff's quantum of evidence and has the ability to grant summary judgment where there is only evidence of de minimus product exposure and therefore no substantial factor evidence. In reaching its decision, the Supreme Court held:

> In summary, we believe it is appropriate for courts, at the summary judgment stage, to make a reasoned assessment concerning whether, in light of the

> evidence concerning frequency, regularity, and proximity of a plaintiff's/decedent's asserted exposure, a jury would be entitled to make the necessary inference of a sufficient causal connection between the defendant's product and the asserted injury. Id. at 227.

Additionally, the Court found that opinions by plaintiffs' experts that each and every exposure to asbestos is a substantial contributing factor to an asbestos-related disease are not based on accepted scientific methodology. Id. at 226-7.

Here, in responding to Defendants' various motions for summary judgment, the Plaintiffs rely upon affidavits by Dr. Joseph Guth, Dr. John Dement, Dr. Jerrold Abraham and Dr. David Laman for the propositions that asbestos-containing products shed fibers that drift, and that "every asbestos exposure, however brief or trivial as it may appear is significant inasmuch as it contributed to the cumulative disease producing 'dose' of asbestos." Laman Summ. J. Aff. ¶ 3, Exhibit 4.

As set forth above, the Supreme Court in Gregg evaluated the adequacy of expert testimony in creating issues of fact for the jury. The court's analysis was as follows:

> Finally, Appellant criticizes Appellee's reliance on the conclusion in Dr. Spector's supplemental report that non-occupational exposure was a substantial cause of Mr. Gregg's disease, quoting the lead opinion from Summers v. Certainteed Corp., 2005 Pa.Super. 302, 886 A.2d 240 (Pa.Super. 2005)(equally divided court), authored by Judge Klein, as follows:
>
> > Just because a hired expert makes a legal conclusion does not mean that a trial judge has to adopt it if it is not supported by the record and is devoid of common sense. For example, [the plaintiff's liability expert] used the phrase, 'Each and every exposure to asbestos has been a *substantial* contributing factor to the abnormalities noted." However, suppose an expert said that if one took a bucket of water and dumped it into the ocean, that was a 'substantial contributing factor' to the size of the ocean. [The expert's] statement saying every breath is a 'substantial contributing factor' is not accurate. If someone walks past a mechanic changing brakes, he or she is exposed to asbestos. If that person worked for a factory making lagging, it can hardly be said that one whiff of the

> asbestos from the brakes is a 'substantial factor' in causing disease. Id. at 244 (emphasis in original).
>
> * * * * * * * * * *
>
> We recognize that it is common for plaintiffs to submit expert affidavits attesting that any exposure to asbestos, no matter how minimal, is a substantial contributing factor in asbestos disease. However, we share Judge Klein's perspective, as expressed in the *Summers* decision, that **such generalized opinions do not suffice to create a jury question in a case where exposure to the defendant's product is de minimus, particularly in the absence of evidence excluding other possible sources of exposure (or in the face of evidence of substantial exposure from other sources)**….We appreciate the difficulties facing plaintiffs in this and similar settings, where they have unquestionably suffered harm on account of a disease having a long latency period and must bear a burden of proving specific causation under prevailing Pennsylvania law which may be insurmountable….however, we do not believe that it is a viable solution to indulge in a fiction that each and 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. Gregg, *supra*, at 223, 226-7. (Emphasis added).

Pursuant to Gregg, *supra*, this Court finds that the opinions relied upon by Plaintiffs' experts are generalized opinions, and accordingly, do not suffice to defeat Defendants' claims for summary judgment.

Furthermore, although each of Defendant's individual motions will be viewed independently in light of the specific evidence presented by the parties, this Court notes that rather than excluding "other possible sources of exposure," **many** possible sources of asbestos exposure have been alleged by the Plaintiffs. This further limits the affidavits effect in creating a potential jury issue. Additionally, Mr. Copenhaver's own testimony establishes asbestos exposure in additional ways unrelated to all of the named Defendants involved in this action. This testimony is as follows:

> Q: You mentioned your boyhood home in Beccaria, Pennsylvania, how was that home heated, sir?

A: Coal.

Q: Looking back now with everything you know and looking back to when you were there, do you believe you were exposed to any asbestos in the house?

A: No, I don't think so.

Q: Do you recall any remodeling projects or additions of any kind of construction being done at the house anytime you were there?

A: No, I don't think so.

Q: Do you recall any remodeling projects or additions or any kind of construction being done at the house anytime you were there?

A: Well, they did put a new furnace in.

Q: Okay. Do you believe that that exposed you to asbestos in any way?

A: No, they had asbestos around the pipes at the seams.

Q: At your home?

A: Hot air.

Q: This is at your house in Beccaria?

A: Yeah.

Q: Okay. This is on the hot water pipes, you're saying?

A: It wasn't the hot water pipes, it was the air, hot air.

Q: Forced hot air, okay.

(Emory Copenhaver Dep. 40:1-24, June 29, 2006).

The Plaintiff testified that he was also exposed to asbestos-containing products while in the United States Navy. This testimony was as follows:

Q: Okay. Let me ask you this, sir, this is a case that you brought on asbestos exposure overall for your life, and just to knock out the Navy time, was there any exposure that you think you had to any products that contained asbestos during your Navy service?

A: Well, there were pipes in the engine room overhead and I had to paint these pipes which were all covered with asbestos.

(Emory Copenhaver Dep. 22:12-19, June 29, 2006).

Mr. Copenhaver additionally testified that he was exposed to asbestos when the plumbers at AVCO Lycoming, where he was employed, removed and replaced the insulation on pipes when they repaired leaks. This testimony was as follows:

Q: What about when you became a set-up man, this would be about 1954 until you retired, about 1986?

A: Yeah.

Q: Now, for that period of time, that's a lot of time, do you believe you were exposed to any asbestos at Avco during that period when you were a set-up man?

A: Not that I know of. I mean, I was in the same area.

Q: Sure.

A: And I don't know of any asbestos other than that on the pipes way up in the air.

* * * * * * * * * * *

Q: Did you know that the materials that were covering the pipes at that time contained asbestos?

A: No, I didn't.

Q: Do you know that now for certain?

A: Yeah.

Q: How do you know that now?

A: Well, from observing – from being down there. They tore out all that asbestos.

(Emory Copenhaver Dep. 36:12-22;133:18-25; June 29, 2006).

Mr. Copenhaver observed plumbers performing pipe repair work involving insulation approximately 50 times. (Emory Copenhaver Dep. 135:5-8, June 29, 2006).

Being mindful of the Supreme Court's mandate to "make a reasoned assessment" of plaintiffs' quantum of evidence as to each Defendant, this Court has reviewed the record and considered carefully the testimony cited in Plaintiffs' opposing brief to determine if there is "a sufficient causal connection between the defendant's product and the asserted injury." Gregg, *supra*, at 30.

Allied Glove Corporation

Defendant, Allied Glove Corporation, manufactures gloves. Plaintiff asserts that Mr. Copenhaver contracted mesothelioma as a result of alleged exposure to asbestos-containing gloves during his 36 years of employment at AVCO Lycoming. In opposing Defendant, Allied Glove Corporation's Motion for Summary Judgment, Plaintiffs rely upon the deposition testimony of AVCO employees, Charles Blank, Bert Haag and Dean Lehman. Mr. Blank's testimony was as follows:

> Q: Do you believe you were exposed to asbestos-containing products as a result of unloading things from the furnace?
>
> A: Well, the only thing is you used asbestos gloves.
>
> (Charles Blank Dep. 12:20-4, May 23, 2007).

Mr. Blank's testimony regarding the glove manufacturer was as follows:

> Q: Do you know who manufactured those gloves?
>
> A: No, I don't know.
>
> Q: Do you know who -- where they bought those gloves?
>
> A: No, I don't.

(Charles Blank Dep. 12:25-13:4, May 23, 2007).

Dean Lehman similarly testified:

Q: Mr. Lehman, I want to ask you a little bit about the gloves. Do you have any personal knowledge that the gloves that you recall seeing at AVCO contained asbestos?

A: I don't know if they contained asbestos. I surmise they contained asbestos due to the fact that they used them on such hot heat.

Q: So, it's simply an assumption on your part based on their application?

A: An assumption on my party because the heat was, like, 12- to 1400 degrees, and I know an ordinary glove won't take that.

Q: Understood. Did you ever see any packaging for these gloves?

A: No.

Q: Did you ever see any information that identified the gloves as asbestos-containing?

A: No.

(Dean Lehman Dep. 78:14-79:8, Feb. 27, 2008).

The testimony of Bert Haag included the following:

Q: Any other products come to mind for your time at Avco that might have contained asbestos that we haven't already talked about?

A: Yes.

Q: Okay.

A: Heat treat gloves.

* * * * * * *

Q: Did you ever see Mr. Copenhaver use any heat treat gloves?

A: No.

Q: Did you ever see anybody handle any heat treat gloves in Mr. Copenhaver's presence?

A: Not knowingly, no.

* * * * * * * * * *

Q: Do you know who made or sold those heat treat gloves?

A: At that time, no.

Q: Okay. How about as you look back, do you know who made or sold those gloves that you handle?

A: I can't even tell you who I ordered the gloves from, but it was one of the supply houses that we ordered them from, but I do not know the manufacturer.

(Bert Haag Dep. 43:7-44:22, July 17, 2007).

When further questioned regarding the gloves, Mr. Haag testified:

Q: Throughout the course of your career, as I understand it, you, on occasion, were required to wear gloves. Do you know the name brand or manufacturer of any of the gloves that you wore?

A: No, I do not.

Q: Throughout the course of your career, did you ever become familiar with a company by the name of Allied?

A: Yes, I've heard of Allied.

Q: How did you hear of that company?

A: Well, when people would ask for Allied Gloves, I guess, now that you mention it.

(Bert Haag Dep. 70:22-71:3, July 17, 2007).

In reviewing the testimony of AVCO employees, this Court finds that although Plaintiffs have presented evidence that gloves were used in the AVCO Lycoming facility, perhaps gloves containing asbestos, the Plaintiff has failed to identify Allied Glove as the manufacturer or supplier of asbestos-containing gloves used or worn by Mr. Copenhaver. In evaluating the testimony of these three fact witnesses, this court

notes that although Dean Lehman testified that the gloves used were asbestos-containing based upon their heat-resistant quality, the court in Samarain v. GAF Corporation, 571 A.2d 398 (Pa.Super. 1989) held as follows:

> Our next inquiry is whether tradesman may testify as to whether a product contained asbestos based on the fact that the product can withstand high temperatures and/or that tradesman may have told them that the product contained asbestos.
> * * * * * * * * * * *
> Certainly, one inference that may be drawn from these facts is that the heat resistant products contained the heat resistant substance asbestos. However, without more facts, it is not reasonable for the trial court to infer that these products *must* have contained asbestos because they were heat resistant. The same facts could lead to the inference that the heat resistant products contained other heat resistant materials…Id. at 403-4.

Although Mr. Blank testified that gloves used at AVCO Lycoming contained asbestos, he was unable to identify the manufacturer or supplier of the asbestos-containing gloves. Although Mr. Haag also believed that gloves contained asbestos, he was similarly unable to identify the manufacturer of the gloves when directly questioned, and although he testified he had heard the name Allied in connection with Allied Gloves, he did not testify Allied Glove manufactured asbestos-containing gloves, or that Mr. Copenhaver had ever been in contact with asbestos-containing gloves manufactured by Allied Glove. To the contrary, Mr. Haag clearly testified that he never saw Mr. Copenhaver using the heat treat gloves that he associated with asbestos nor saw anyone handle asbestos-containing gloves in Mr. Copenhaver's presence.

Accordingly, this Court finds that the Plaintiffs have failed to produce sufficient evidence that Mr. Copenhaver ever worked with or around any asbestos-containing product manufactured by Allied Glove Corporation at any time during his career at AVCO Lycoming, let alone with any type of frequency, regularity and proximity as

required by Eckenrod and its progeny. As such, Allied Glove Corporation is entitled to summary judgment as a matter of law.

Allied Signal

Plaintiffs' claims against Defendant, Allied Signal, relate to brake changes made on Mr. Copenhaver's personal vehicles between the 1940s and 1974. Mr. Copenhaver's testimony as to Allied Signal included the fact that he installed Bendix brakes on one vehicle, a 1949 Ford, and possibly on a second vehicle, a 1964 or 1974 Dodge. This specific testimony was as follows:

> Q: And do you know who made or sold the brakes that you installed, the new brakes, on this '49 Ford?
>
> A: I think it was Bendix.
>
> (Emory Copenhaver Dep. 52:1-3, June 29, 2006).

Mr. Copenhaver additionally testified:

> Q: Well, other than these vehicles you told me about, do any others come to mind that you changed brakes on?
>
> * * * * * * * * * * *
>
> A: I had a Dodge. I bought it new and I changed the brakes on that.
>
> Q: You said it was either a '64 or '74?
>
> A: Yeah.
>
> * * * * * * * * * * *
>
> Q: Do you remember the brand of the replacement brakes you used on this vehicle?
>
> A: Bendix.
>
> Q: Okay. Is that more of a guess or do you recall that?
>
> A: Pardon?

Q: Is that a guess that it was Bendix or could it have been something else?

A: No, it was brakes.

Q: Replacement brakes, yeah, I just said do you know for sure that Bendix was the brand of the replacement brakes or could it have been some other brand of replacement brakes?

A: Well, it could have been, but as far as I can remember, that was what his shelf line was. I mean, he had others there, but he generally looked it up in the Bendix book.

(Emory Copenhaver Dep. 64:4-18; 66:1-17, June 29, 2006).

Mr. Copenhaver's testimony regarding other brake changes made was as follows:

Q: And was it on that 1949 Ford brake job that you recall seeing those Bendix – or buying those Bendix boxes?

A: Yeah.

Q: Do you recall buying those Bendix boxes for any of the other cars that we talked about?

A: No. They probably was all the same, but I don't --

(Emory Copenahaver Dep. 98:3-10, June 29, 2006).

Although Plaintiffs also assert that Mr. Copenhaver was exposed to asbestos when filing new brakes, Mr. Copenhaver's testimony on this issue was as follows:

Q: Do you remember if you had to file the brakes on that brake job on the 1949 Ford?

A: Oh, I don't know.

* * * * * * * * * * *

Q: And just so that I'm clear, that's the only time that you can remember going into Jake's and buying Bendix brakes specifically, is that correct?

> A: Well, I remember that box once. I don't know whether they was all like that, I don't know.
>
> (Emory Copenhaver Dep. 99:2-21).

Defendant, Allied Signal, has admitted in Answers to Interrogatories filed in another asbestos case that its Bendix brake linings and brake block contained asbestos until 1988. (See Pl.'s Response to Various Def.'s Mot. for Summ. J., Ex.'s C-1 and C-2). Plaintiffs assert that Mr. Copenhaver contracted mesothelioma as a result of alleged exposure to asbestos released from these two occasions. In evaluating the "frequency, regularity, proximity factors in asbestos litigation," the Supreme Court in Gregg, *supra*, noted:

> [T]hey are to be applied in an evaluative fashion as an aid in distinguishing cases in which the plaintiff can adduce evidence that there is a sufficiently significant likelihood that the defendant's product caused his harm, from those in which likelihood is absent on account of only casual or minimal exposure to the defendant's product." Id. at 225.

In reaching its decision in Gregg, *supra*, the Supreme Court additionally noted:

> Like many other courts…we believe that the criteria should have broader application in the courts' assessment of the sufficiency of a plaintiff's proofs. *See, e.g.*, Lindstrom v. A-C Product Liability Trust, 424 F.3d 488, 492 (6th Cir. 2005)(reflecting that the Sixth Circuit has 'permitted evidence of substantial exposure for a substantial period of time to provide a basis for the inference that the product was a substantial factor in causing the injury,' but that '**[m]inimal exposure to a defendant's product is insufficient**.' (citation omitted). Id. at 225. (Emphasis added).

Because Plaintiffs' evidence establishes exposure on one, possibly two occasions to Defendant's product, this Court finds that such exposure was merely "casual" or "minimal," especially in light of Mr. Copenhaver's own testimony regarding other exposures to asbestos-containing products. Accordingly, in light of such infrequent, minimal usage, Plaintiffs are clearly unable to establish "frequency,

regularity and proximity" as required by Eckenrod and Gregg. Accordingly, Defendant, Allied Signal, is entitled to summary judgment as a matter of law.

Crane Co., Inc. and Goulds Pumps, Inc.

Plaintiffs' claims as to Crane Co., Inc. and Goulds Pumps, Inc. relate to valves and pumps. Plaintiffs claim that Mr. Copenhaver developed mesothelioma as a result of his exposure to asbestos-containing valves and pumps, including rope packing and gasket material, used at AVCO Lycoming. In opposing summary judgment, Plaintiffs rely upon the deposition testimony of Bert Haag and Ron Fullerton. The testimony of Mr. Haag as to valves and pumps used at AVCO Lycoming was as follows:

> Q: Okay. All right. Other than that, do you believe you handled any other products that contained asbestos?
>
> A: I could have.
>
> Q: Anything you can tell me about here?
>
> A: Pump valve replacement kits, valve packing material. Could have.
>
> * * * * * * * * * *
>
> Q: A couple times today you've talked about pumps. First off, do you know the brand name manufacturer or supplier of any of the pumps?
>
> A: There was Gould, Crane. To the best of my recollection, those two was basically….
>
> (Bert Haag Dep. 32:17-23;55:9-13, July 17, 2007).
>
> Q: And you mentioned another product, valves, at one point. Do you know the brand name, manufacturer, or supplier of any of the valves?
>
> A: Crane, Gould. They were the two major.
>
> Q: And what part of the valves do you believe may have contained asbestos?
>
> A: The packing materials and the – and the gaskets.

(Bert Haag Dep. 60:3-10, July 17, 2007).

When questioned about why he believed the gaskets and packing contained asbestos, Mr. Haag testified as follows:

> Q: Now, why do you believe that the gaskets may have contained asbestos?
>
> A: Only way that I would have any knowledge of knowing was that the gasket material changed on or about the inception of the OSHA program. I cannot say yes, it was, or no, it wasn't.
>
> Q: You never saw it written on anything?
>
> A: No.
>
> * * * * * * * * * * *
>
> Q: Why do you believe that the packing may have contained asbestos?
>
> A: Only because it changed by quality and the way it was – what it looked like when it came in. It was just different. It was different than it used to be, let's say.

(Bert Haag Dep. 56:25-57:20, July 17, 2007).

Mr. Haag's testimony regarding replacement kits obtained for the valves was as follows:

> Q: Okay. So if you wanted to get a repair kit for a Gould's pump, you would order and receive a Gould's repair kit?
>
> A: Or a substitute that would be available.
>
> Q: If a substitute was available?
>
> A: Yes. Yes. Yes. If the source, you know, would be available, yet, it would come in.
>
> Q: Okay. So some off brand made a repair kit that would fit the Gould's pump?
>
> A: Could be, yes.

Q: If some off brand made a repair kit that would fit a Gould's pump, the purchasing department could order that?

A: Yes.

* * * * * * * * * * *

Q: Okay. Now, if you were to order a repair kit for a Crane pump, how would you requisition that repair kit?

A: The same way. I would order a Crane model number and serial number of the pump on requisition, and then it would go to purchasing, and they would find the source of the manufacturer and the particular model number –

Q: Okay.

A: -- or serial number.

Q: And you would receive –

A: That product.

Q: That product. And what brand would that product be?

A: Could be any brand.

(Bert Haag Dep. 61:24-63:16, July 17, 2007).

Mr. Haag additionally testified:

Q: Okay. Let me ask you just overall, did you ever see Mr. Copenhaver handle any material that you thought to be asbestos containing?

A: No, I never saw him.

Q: Okay. Did you ever see anybody else handle any asbestos products or products you thought might have contained asbestos in Mr. Copenhaver's presence?

A: No.

(Bert Haag Dep. 35:14-22, July 17, 2007).

The Plaintiffs additionally rely upon the testimony of Ron Fullerton, another AVCO Lycoming employee. Mr. Fullerton's testimony was as follows:

Q: Do you associate any gasking material with any of the valves that were used at Avco?

A: Gasking material?

Q: Yes.

A: It would probably be the older ones might have gasket, asbestos gaskets in them. They had a process up there that they would destroy valves and stuff that were suspected of having asbestos gasking in them. We would not even tear them down. They would throw them all in containment bags and they would go.

Q: Do you know the name brand or manufacturer of any of those valves that were destroyed?

A: Well, like I said, Vicker's would be because they were older. I don't know. There was a couple manufacturers of them, but I don't remember anymore of them.

Q: Throughout the course of your career, did you become familiar with a company by the name of Crane?

A: Crane, sure.

Q: What do you associate that name with?

A: Overhead cranes, bridge cranes.

Q: That's the company then?

A: Yes, Crane. I don't know if Crane exists anymore. They might have sold out to somebody, but I couldn't tell you.

Q: Would any of those products been used in the 61 crank shaft department?

A: No.

Q: Were any of those old valves that were immediately thrown into containment bags, were any of them removed from the 61 crank shaft department to your recollection?

A: I don't know.

(Ronald Fullerton Dep. 85:6-86:19, July 16, 2007).

Plaintiff additionally relies upon the Interrogatory Answers of Defendants, Crane and Gould and deposition testimony from other asbestos cases in which Defendants admit that "during certain time periods," "some" of their valves "may have contained asbestos" and "some" of their pumps included an "asbestos-containing casing gasket and stuffing box packing." (See Crane Resp. to Pl.'s Interrog. ¶ 5, attached to Pl.'s Response to Various Def.'s Mot. for Summ. J. as Ex. D-1; See also Gould Pumps Resp. to Interrog. Preliminary Statement, attached to Pl.'s Resp. to Various Def.'s Mot. for Summ. J. as Ex. F).

In this instance, Plaintiffs have simply failed to set forth any evidence that Mr. Copenhaver worked in physical proximity to any asbestos-containing products that Crane and Gould manufactured, designed or supplied. Although Mr. Haag recalls that Crane and Gould pumps were present at the AVCO facility, his belief that the pumps or pump packing material contained asbestos was based upon pure conjecture. Replacement kits purchased by AVCO Lycoming could have been from any manufacturer of similar products. In ruling on Defendants' Motions for Summary Judgment this Court is not permitted to enter into a "guessing game." Samarin, *supra*, at 408.

Pennsylvania courts have clearly held, that "[w]hen a motion for summary judgment is based on insufficient evidence to support the factual basis for the cause of action or defense, the non-moving party must come forward with *sufficient* evidence essential to preserve the cause of action." Ifosage, Inc. v. Mellon Ventures, L.P., 896 A.2d 616, 625 (Pa.Super. 2006), *citing* McCarthy v. Dan Lepore & Sons Co., Inc., 724 A.2d 938, 940 (Pa.Super. 1998). "The evidence adduced by the non-moving party must

be of such a quality that a jury could return a favorable verdict to the non-moving party on the issue or issues challenged by a summary judgment request." Id. Although it is not necessary for a non-moving party to come forward with direct evidence, circumstantial evidence relied upon "must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion as to outweigh in the mind of the fact-finder any other evidence and the reasonable inferences therefrom which are inconsistent therewith." Ifosage, *supra*, at 626, *quoting* Cade v. McDanel, 679 A.2d 1266, 1271 (Pa.Super. 1996). In reviewing the propriety of a summary judgment motion, courts "must be mindful that a jury may not be permitted to reach its verdict on the basis of speculation or conjecture." Id.

Moreover, even if this Court were to assume that Mr. Haag was correct in his assumptions, there is no testimony which links Mr. Copenhaver to any asbestos-containing product manufactured by Crane or Gould. Mere presence of asbestos-containing products in a facility does not demonstrate contact by a plaintiff with those products. Eckenrod, *supra*, at 53. To the contrary, Mr. Haag clearly testified that he never saw Mr. Copenhaver handle any products that he believed contained asbestos and never saw anyone else do so in Mr. Copenhaver's presence.

Although Plaintiffs also rely upon the testimony of Ronald Fullerton in their opposition to Defendants' Motions for Summary Judgment, this Court notes that although Mr. Fullerton testified that some older valves may have contained asbestos, he was unable to identify Crane or Gould as manufacturers of those valves. Although Mr. Fullerton described a process by which asbestos-containing gaskets were thrown in containment bags for disposal, Mr. Fullerton testified that he did not believe that any of

those valves or products disposed of were used in Department 61, the crank shaft department in which Mr. Copenhaver was employed. Allowing a jury to decide these claims would be an invitation to speculate.

Carborundum and Norton

In opposing Defendants' Carborundum and Norton's Motions for Summary Judgment, Plaintiffs rely upon the testimony of Daniel McNeil, Charles Blank, Bert Haag, and Anthony DiSalvo. A review of this evidence establishes that grinding wheels were purchased from Defendants Industrial Holdings and Norton. The deposition testimony on this issue is as follows:

> Q: Sir, do you know the name brand or manufacturer of any of the grinding wheels that you used at AVCO?
>
> A: Norton, Bay State, Carborundum
>
> (Daniel McNeil Dep. 26:1-3, May 23, 2007).
>
> Charles Blank testified:
>
> Q: But were there any asbestos-containing materials associated with the grinder?
>
> A: Grinding wheels.
>
> Q: Do you know who manufactured those grinding wheels?
>
> A: There was Carborundum, Bay State and Norton I think, and that's all I can remember of them right now.
>
> (Charles Blank Dep. 13:20-14:1, May 23, 2007).

Although employee testimony clearly placed Norton and Carborundum products within the AVCO facility, the testimony does not support Plaintiffs' claims that the products contained asbestos, nor a claim that Mr. Copenhaver was exposed to any asbestos-containing product. In his second deposition, Mr. Blank testified:

Q: You mentioned with regard to wheels in general that it was your belief that the wheels contained asbestos, in your prior deposition you mentioned that. Do you know whether wheels used in Department 61 contained asbestos?

Mr. Fryncko: Objection

The Witness: Objection. I don't –

By Mr. Randall:

Q: You can answer. Even though he objects, he's making a record, you can answer my question.

A: Well, that's – I don't know if there was any in there now. I don't remember that. That's back there a long ways.

Q: Okay. You just don't know one way or the other?

A: No, I don't remember that anymore.

Q: Thank you, sir.

A: Probably was, but –

(Charles Blank Dep. 19:17-20:7, April 8, 2008).

When asked about whether the grinding wheels contained asbestos, Mr. McNeil testified:

Q: When you would use the grinders, would any of those parts of the grinder itself be asbestos containing?

A: I have no idea.

(Daniel McNeil Dep. 11:19-22, May 23, 2007).

Although Bert Haag similarly testified that asbestos-containing Norton and Carborundum wheels were used in the Avco facility, Mr. Haag's belief that the grinding wheels contained asbestos was based upon the following:

Q: Okay. Sir, have we talked about all the products that you think might have contained asbestos at Avco when we walked through all the different jobs you had and different positions and so forth? Is there anything else that comes

to mind, any other products that might have contained asbestos that you worked with or worked around?

A: ……..I have been told that grinding wheels contained asbestos. I did not know that as a fact.

Q: Who told you that?

A: Who told me that?

Q: Yes.

A: An outside source

Q: Can you tell me who that outside source was?

A: No, I can't. All I can say is I was talking, and then it was ---I was told that they contained an asbestos product. I do not know – I can't elaborate any further than that.

Q: Who was it that you were talking to?

A: I can't even sit here and tell you truthfully I know who it was.

* * * * * * * * *

A: I was going – how this came about – and that's how I say I can't tell you who it was – but I was at a donut shop where I went every morning and got a cup of coffee. This man would come into the donut shop, and to this day does not speak to me because he has a, I guess you call it a vendetta that I changed his grinding wheel.

(Bert Haag Dep. 39:15-41:15, July 17, 2007).

In analyzing such hearsay evidence, the court in Samarin, *supra*, held as follows:

> All three sets of appellants attempt to defeat the motions for summary judgment with affidavits or depositions of tradesman or co-workers regarding the presence of asbestos containing products in the appellants' or their decedents' workplaces. The first set of answers we analyze contain statements that the person listed knew that the products at issue contained asbestos because they had been told so by others. Such statements are clearly inadmissible hearsay as they are out-of-court declarations offered to show the truth of the matter contained in the declaration. Reimer v. Tien, 356 Pa.Super. 192, 202, 514 A.2d 566, 571 (1986). Thus, the alleged statements of other tradesmen that certain products contained asbestos cannot be considered in ruling on the motion for summary judgment. Therefore, in order to defeat appellees' motion for

summary judgment appellants must provide other sources of evidence to establish that the products in issue contained asbestos. Id. at 403.

Moreover, Mr. Haag additionally testified:

> Q: Okay. Let me ask you just overall, did you ever see Mr. Copenhaver handle any material that you thought to be asbestos-containing?
>
> A: No, I never saw him.
>
> Q: Okay. Did you ever see anybody else handle any asbestos products or products that you thought might have contained asbestos in Mr. Copenhaver's presence?
>
> A: No.
>
> (Bert Haag Dep. 35:14-22, July 17, 2007).

Dean Lehman's testimony regarding the grinding wheels was as follows:

> Q: And as I understand your testimony, you don't believe that the wheels contained asbestos, do you?
>
> A: No, I don't think they did.
>
> (Dean Lehman Dep. 72:8-11, Feb. 27, 2008).

Anthony DiSalvo similarly testified:

> Q: Am I correct that you do not believe that any of these grinding wheels that we've been talking about, regardless of the size, three-foot to three inches, am I correct that you don't believe that any of those wheels contained asbestos?
>
> A: Oh, I don't know. I have no idea on that one. No, sir.
>
> (Anthony DiSalvo Dep. 78:14-20, Feb. 28, 2008).

Plaintiff also relies upon Defendants' Answers to Interrogatories in which Defendant Carborundum admits that certain types of grinding wheels sold between 1962 and 1983 by Defendant Carborundum contained asbestos, and certain types of superabrasive grinding wheels sold by Norton between 1940 and 1980 contained an asbestos core. Pursuant to Answers to Interrogatories, both Norton and Carborundum

manufactured a grinding wheel known as a “diamond wheel” which contained asbestos. Testimony regarding the presence of these “diamond” wheels at AVCO Lycoming was as follows:

> Q: Do you know – not the numbers, but do you recall any markings or logos written on any of the grinding wheels themselves?
>
> A: No.
>
> Q: Did you ever hear of a grinding wheel called a diamond grinding wheel?
>
> A: Yes.
>
> Q: What was that type of grinding wheel used for?
>
> A: For grinding car – or carbide tools.
>
> (Daniel McNeil Dep. 26:16-24, May 23, 2007).

Bert Haag’s testimony regarding the “diamond wheels” present at AVCO Lycoming was as follows:

> Q: Sir, those diamond wheels that you just referenced, I think you talked about those with regard to grinding tungsten carbide in your last deposition, correct?
>
> A: That’s correct.
>
> Q: All right. And those wheels were manufactured by Cincinnati and General Diamond?
>
> A: Most of our wheels – I didn’t – if I told – I don’t recall saying Cincinnati, but 95% to my knowledge, maybe 100 percent of them in my tenure was by General Industrial Diamond.
>
> (Bert Haag Dep. 84:18-25; 85:1-2, Apr. 8, 2008).

Evidence regarding Mr. Copenhaver’s use of these “diamond” wheels included the following:

> Q: Do you recall Mr. Copenhaver ever using a diamond grinding wheel to grind carbide tools?

A: No.

(Daniel McNeil Dep. 27:2-4, May 23, 2007).

Reviewing the evidence presented as to Norton and Carborundum it appears that the only thing that the Plaintiffs have clearly established is that Norton and Carborundum products were present at the AVCO Lycoming facility. Of the four fact witnesses identified by the Plaintiffs only one, Bert Haag, testified that the grinding wheels used at AVCO Lycoming were asbestos-containing. As Mr. Haag's testimony that the grinding wheels contained asbestos was based upon hearsay evidence acquired in a donut shop, this evidence cannot and will not be relied upon by this Court.

Although the Defendants admitted that they manufactured wheels throughout the years that contained asbestos, the evidence shows that approximately 7,500 of the 20 million grinding wheels produced each year by Norton included asbestos-containing cores. Defendant Carborundum manufactured thousands of varieties of grinding wheels over the years, only two of which may have contained asbestos. Although one of these two types was the type referred to as the "diamond" wheel, the evidence fails to establish that Mr. Copenhaver worked with this specific type of grinding wheel. Moreover, no evidence has been presented which establishes that the "diamond" wheels present at AVCO Lycoming were manufactured or produced by Norton or Carborundum. In fact, Mr. Haag testified that 95 – 100% of the diamond wheels used at AVCO Lycoming were manufactured by General Industrial Diamond. In proving identification of a particular defendant's product, plaintiff may not rely on guesses, conjecture or speculation. "A party is not entitled to an inference of fact which amounts merely to a guess or conjecture (citation omitted) nor may a jury be permitted to reach

its verdict merely on the basis of speculation or conjecture; there must be evidence upon which logically its conclusion may be based." Farnese v. SEPTA, 487 A.2d 887, 890 (Pa. Super. 1985). Eckenrod makes it clear that when confronted with evidence based upon speculation or conjecture, a Court cannot enter into a "guessing game." Samarin, *supra*, at 408, *referring to* Eckenrod, *supra*. As Plaintiffs have failed to offer any legally sufficient evidence that Mr. Copenhaver was exposed to any asbestos-containing wheels manufactured or produced by Norton or Carborundum, this Court grants Summary Judgment in Norton's and Carborundum's favor.

Westinghouse

Defendant Westinghouse alleges that Mr. Copenhaver was exposed to asbsestos-containing products manufactured and/or sold by Westinghouse during the course of his career at AVCO Lycoming. Defendant has filed a Motion for Summary Judgment asserting that Plaintiffs have failed to identify any asbestos-containing product produced or sold by Westinghouse as a source of Mr. Copenhaver's exposure. In order to survive a Motion for Summary Judgment, a plaintiff must present evidence establishing the facts essential to their cause of action, or must identify one or more issues of fact "arising from evidence in the record controverting the evidence cited in support of the motion…" Pa.R.C.P. 1035.3(a)(1) & (2).

In reviewing "Plaintiffs' Response to Various Defendants' Motions for Summary Judgment" as to Viacom (Westinghouse) it appears that the Plaintiffs' are primarily relying upon testimony that Westinghouse products were present in the AVCO facility, and that Westinghouse admitted that some of their products contained asbestos. In evaluating the sufficiency of evidence presented, the Court in Eckenrod

held, "The mere fact that appellees' asbestos products came into the facility does not show that the decedent ever breathed these specific asbestos products or that he worked where these asbestos products were delivered." Eckenrod, *supra*, at 53. In order for liability to attach in a products liability action, a plaintiff must establish that the injuries were caused by a product "of the particular manufacturer or supplier." Samarin, *supra*, at 404, *citing* Berkebile v. Berkebile Helicopter Corp., 337 A.2d 893 (Pa. 1975). In reviewing Defendant Westinghouse's Answers to Interrogatories, it appears that Defendant provided a list of products which included "the types of products that at some point in time may have contained some amount of asbestos." Of the products purchased, the only specific evidence presented by Plaintiffs involved "lead wire" used in motors.

This testimony was as follows:

> Q: Now, when we spoke previously, you also indicated that there came a time when you began to remove wire leads from some of the motors; when was that?
>
> A: I don't know. I can't give you a date.
>
> Q: Not a specific date, but can you give me a decade?
>
> A: No.
>
> Q: Do you recall why you changed those wire leads?
>
> A: Because the lead **probably contained asbestos** covering and when the motor come back to the electrical shop, they automatically would take it off.
>
> (Ronald Fullerton Dep. 24:1-15, July 16, 2007)(Emphasis added).

In order to survive a Motion for Summary Judgment the plaintiff must come forward with evidence of a quality admissible at trial in support of the existence of a genuine issue of fact as to Decedent's exposure. Samarin v. GAF Corp., *supra*, at 402-

403. A jury is not permitted to reach a verdict merely on the basis of "speculation or conjecture." Young v. Commonwealth of Pennsylvania Dept. of Transportation, 744 A.2d 1276, 1277 (Pa. 2000), *citing* Morena v. South Hills Health System, 462 A.2d 680 (Pa. 1983). In reviewing Plaintiffs evidence as to Defendant Westinghouse, this Court finds that Plaintiffs have failed to identify a single witness or other evidence which supports their claim that Westinghouse manufactured an asbestos-containing product used by Mr. Copenhaver or that was the cause of Mr. Copenhaver's injuries.

Lindberg

Plaintiffs include Defendant, Lindberg, as a party to this action based upon testimony regarding two Lindberg furnaces present at the AVCO facility. In support, Plaintiffs rely upon the testimony of co-workers, Ron Fullerton, Wayne Robinson, Dean Lehman and Anthony DiSalvo.

Ron Fullerton testified during his deposition that he thought that the "stress relief furnace" located at AVCO Lycoming was manufactured by "Lynnberg." (Ron Fullerton Dep. 17:8-11, July 16, 2007).

Mr. Robinson's testimony was as follows:

> Q: Do you have any personal knowledge that Mr. Copenhaver worked on or around any such furnaces?
>
> A: The only thing I can tell you, Mr. Copenhaver worked in department 61, and they had a Nite – not a NiteRider, but a Lindberg furnace in there that they run crankshafts through, and he worked in that department. And that furnace was in that department. As far as I know, that would be the only place that he worked around a furnace.
>
> Q: Do you have any personal knowledge of any asbestos associated with that furnace?
>
> A: No, I don't.

Q: Do you know what size it was?

A: The Lindberg furnace, the – there was two furnaces we called Lindberg furnaces. The one, the original Lindberg, when I went to work there, when we re-upped the crankshaft line, it was a big – it was probably maybe 7-foot tall and 8-foot wide or 8-foot wide and 7-foot tall. And it was probably, I would think, just about maybe 20 feet long, 18 to 20 feet long, I would think. It had a door on each end of it and a big fan set up on top of it that cooled it. They run the parts through it from one end to the other on a chain. After that, when they re-upped the crankshaft line later, they disposed of that furnace. And that's what I recollect is called the Lindberg furnace. I think, I do not know for sure, that that was made by an outfit called Lindberg. I'm not positive about that.

Q: Which one are you saying?

A: The original one that I – before they re-upped the crankshaft line.

Q: You've answered my question. When did this re-upping of the crankshaft line occur?

A: I would think sometime in the 80s. I would guess.

(Wayne Robinson Dep. 50:16-52:8, Feb. 27, 2008).

Mr. Robinson additionally testified:

Q: Do you know if Mr. Copenhaver personally used any asbestos-containing products while he was working at Avco?

A: No, I don't.

Q: Do you know if he worked around asbestos-containing products while he was working at Avco?

A: The only thing I could say would be, like, the pipecoverings and – if, in fact, there was asbestos around that furnace and stuff, he was around that all the time. Yeah, he was around that all the time. Yeah, he was in the area, so he was around it.

(Wayne Robinson Dep. 58:6-17, Feb. 27, 2008).

Dean Lehman's testimony was as follows:

Q: Now, did you work around any asbestos products in department 61?

A: No.

Q: Did you work directly with any asbestos products in department 61?

A: No. I wouldn't have worked with any of them unless you was working with the Lindberg furnace, and that there had – we had nothing to do with that, because the Lindberg furnace sat up in the middle of the plant.

(Dean Lehman Dep. 20:6-15, Feb. 27, 2008).

Mr. Lehman further testified:

Q: And this is the Lindberg furnace?

A: That's the Lindberg furnace.

Q: What was the Lindberg furnace used for, do you know?

A: They put the crankshafts in that furnace, heated them, and took them out and straightened them is what they done with that furnace.

Q: What about this furnace do you believe was asbestos-containing products?

A: I don't know personally if it had asbestos in them – in the furnace, but I would say the gloves that the men wore when he took these crankshafts out of this machine to put them on the straightening machine may have had asbestos in them….

(Dean Lehman Dep. 23:19-24:9, Feb. 27, 2008).

Anthony DiSalvo's testimony was as follows:

Q: You mentioned about a furnace in the crankshaft?

A: Yes.

Q: Who made that furnace?

A: I have no idea, sir. At least I don't remember.

* * * * * * * * * * *

Q: Do you have any personal knowledge that Mr. Copenhaver had anything to do with that furnace?

A: No, I have no knowledge whether he did or not.

Q: Do you happen to know when that furnace was originally installed at Avco?

A: State that again.

Q: Certainly. Do you have any idea as to when that particular furnace may have been originally installed at Avco?

A: Oh boy. That was in the 60s.

(Anthony DiSalvo Dep. 100:5-101:2, Feb. 28, 2008).

Mr. DiSalvo, however, later testified:

Q: Sir, anytime through your career at Avco, did you ever come to be familiar with the name Lindberg?

A: A furnace, yes.

Mr. Orszulak: Objection to the form of the question. Leading.

Q: Go ahead.

A: Uh-huh.

Q: Which furnace was that?

A: That was the furnace over here in the crankshaft –

Q: Now, that –

A: --the Lindberg furnace.

(Anthony DiSalvo Dep. 110:7-19, Feb. 28, 2008).

Mr. DiSalvo testified later during his deposition that he recalled the name Lindberg was displayed on the outside of the furnace. (Anthony DiSalvo Dep. 134:8-23, Feb. 28, 2008).

In addition to Defendant Lindberg's Interrogatory Responses which admit that certain asbestos-containing components were used in their furnaces and ovens up until

the early 1980s, Plaintiffs rely upon the deposition testimony of Stephen Speltz, corporate representative for Defendant, Lindberg. Although Mr. Speltz was unable to locate documents relative to the first or "earlier" furnace supplied by Lindberg to Avco, Mr. Speltz's testimony regarding the 1982 replacement furnace included the following:

> Q: Do you know if there were any asbestos containing component parts in the oven that was manufactured by Lindberg in this case?
>
> Mr. Hadden: Referring to the documents that were provided and the documents we've been talking about?
>
> Mr. Fryncko: Yes.
>
> Mr. Hadden: Okay.
>
> A: I saw one instance of – of a door gasket.
>
> Q: Do you have that document before you right now, sir?
>
> A: Yes, its stamped 0138.
>
> * * * * * * * * * *
>
> Q: And what – what type of door gaskets are we referring to, sir? Do you know the name brand or manufacturer of that door gasket?
>
> A: Well, I can just read to you what's on the material list. I wasn't even aware –
>
> * * * * * * * * * *
>
> Q: Okay. And what purpose did that gasket serve, if you know?
>
> A: It served – you know, because the door is opened and closed when the material is rolled into the oven, it served, while the door was closed, to insulate or to keep the heat enclosed in the oven and so that the heat losses were minimized.
>
> Q: Okay. And is that an asbestos contain—containing component –that asbestos containing component would not be encased in anything, am I correct?
>
> * * * * * * * * * *

Q: It's an external component, right?

A: It's –you mean ex—the asbestos in it is external?

Q: The gasket itself is an external component?

A: It's in the doorframe.

Q: Okay. Where the door meets the door jam –

A: Jam.

Q: --so to speak?

A: Jam. Where the door meets the door jam.

(Stephen Speltz Dep. 26:22-29:7, May 29, 2008).

Mr. Spetz additionally testified regarding insulation materials present in Lindberg furnaces. This testimony was as follows:

Q: Did those insulation materials release dust, and is that why Lindberg was concerned and removed them from their furnaces?

A: They are susceptible to that if the customer's operating procedures are not particularly good or if after an extended period of operation the oven has to be serviced, that type of thing.

(Stephen Speltz Dep. 34:9-15, May 29, 2008).

Mr. Speltz's clearly testified, however, that he did not believe that the particular furnace sold to AVCO Lycoming in 1982 had asbestos-containing insulation. This testimony was as follows:

Q: Do you know or are you familiar with what type of insulation would have been used in that oven?

A: I'm not specifically aware, no.

Q: Do you know anyone that would be aware of that?

A: No.

Q: Do you know what type of insulation was commonly used in those Lindberg ovens, slash, furnaces at that time?

A: My—my opinion is is that at this point in time – this is dated – that page is dated October of 1982 –

Q: Yes.

A: --the type of insulation would be used in this particular section would not be asbestos containing.

(Stephen Speltz Dep. 31:13-32:2, May 29, 2008).

Although not in the specific furnace sold to AVCO Lycoming in 1982, Mr. Speltz testified that "the bulk insulation that was put in around the heating chamber" of Lindberg furnaces was purged or changed in the first months of 1973. Testimony regarding this purging was as follows:

Q: Do you know why that decision was made?

A: Why what was made?

Q: The decision to purge asbestos containing insulation from the oven.

* * * * * * * * * *

A: Well, as I understand it, OSHA about that time began to promulgate rules and regulations and required all companies to meet certain airborne dust requirements.

Q: To –so to satisfy those requirements, you – Lindberg, to your knowledge, purged the asbestos containing insulation materials from its ovens and furnaces?

* * * * * * * * * *

A: I'm talking about the asbestos containing insulation in the sections of the furnace that this bill of material refers to.

(Stephen Speltz Dep. 32:14-33:16, May 29, 2008).

Following a review of the evidence relied upon by the Plaintiffs' in opposition to Defendant, Lindberg's Motion for Summary Judgment, this Court finds that the

testimony of the fact witnesses unequivocally places Mr. Copenhaver in proximity to furnaces manufactured by Defendant Lindberg. Mr. Robinson testified that Mr. Copenhaver worked in the same department as the Lindberg furnace. Mr. Lehman confirmed that the Lindberg furnace was located in Department 61. Although none of the AVCO employees had sufficient knowledge as to whether Lindberg furnaces contained asbestos, the testimony of Stephen Speltz speaks directly to this issue.

According to Mr. Speltz, corporate representative for Defendant Lindberg, the 1982 Lindberg furnace delivered to AVCO Lycoming contained an asbestos-containing door gasket. Although it is unclear whether the original Lindberg furnace was asbestos-containing, the deposition testimony presented clearly supports Plaintiffs' claims that Mr. Copenhaver worked in proximity to the 1982 Lindberg furnace and the 1982 Lindberg model contained asbestos. The record establishes that Mr. Copenhaver worked at AVCO Lycoming from 1950 - 1986. (Emory Copenhaver Dep. 31:3-4;38:12-13, June 29, 2006). From 1954 – 1986 he worked as a "set-up man" in the "same area" of AVCO Lycoming. (Emory Copenhaver Dep. 38:12-19, June 29, 2006). According to Wayne Robinson, Mr. Copenhaver was in the area of the furnace "all the time." Although Defendant, Lindberg asserts that their Motion for Summary Judgment should be granted because the Plaintiffs have failed to produce "direct evidence that Plaintiff-Decedent was exposed to asbestos-containing dust created by the Lindberg furnace," this Court finds that pursuant to Gregg, any "bright line distinction between direct and circumstantial evidence cases is not warranted…" Gregg, *supra*, at 225. Rather, it is the role of this Court to "make a reasoned assessment concerning whether, in light of the evidence concerning frequency, regularity and proximity of a

plaintiff's/decedent's asserted exposure, a jury would be entitled to make the necessary inference of a sufficient causal connection between the defendant's product and the asserted injury." Id. at 227. In light of the foregoing evidence, and giving the Plaintiffs "the benefit of all favorable inferences that might reasonably be drawn from the evidence"[1] this Court must deny Defendant Lindberg's Motion for Summary Judgment.

O R D E R

AND NOW, this 3rd day of July, 2008, for the reasons set forth in the foregoing Opinion, Defendants' Allied Glove Corporation; Honeywell International, Inc., the successor in interest to Allied Signal, Inc., the successor in interest to the Bendix Corporation; Crane Company, Inc.; Fayjan Tool Sales, Co.; Ford Motor Company; Goulds Pumps, Inc.; Industrial Holdings Corp. f/k/a The Carborundum Company; St. Gobain-Abrasives, Inc., successor-in-interest to Norton Company and CBS Corporation, f/k/a Viacom Inc., successor by merger to CBS Corporation, f/k/a Westinghouse Electric Corporation's Motions for Summary Judgment are hereby GRANTED both as to Plaintiffs' Complaint and as to Defendants' Crossclaims, and therefore those Defendants are dismissed as party Defendants. Defendant Lindberg's Motion for Summary Judgment is hereby DENIED.

BY THE COURT,

_____

Richard A. Gray, J.

cc: See attached counsel list

[1] Michigan Bank v. Steenson, 236 A.2d 565, 566 (Pa.Super. 1967).