

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,

Justice.

THOMAS O'ROURKE AND KATHRYN
O'ROURKE,

Plaintiffs,

-against-

TRIAL/IAS PART 2
NASSAU COUNTY

MOTION SEQUENCE #001

ORIGINAL RETURN DATE: 05/02/12

SUBMISSION DATE: 05/02/12

Index No. 1819/2011

ARMSTRONG INTERNATIONAL, INC.,
(Individually and as Successor to ARMSTRONG
MACHINE WORKS); AURORA PUMP COMPANY,
BELL & GOSSETT COMPANY; BLACKMAN
PLUMBING SUPPLY COMPANY, INC; BMI-
FRANCE (Individually and as Successor to J. H.
France Refractories Co.); BURNHAM CORPORATION
(Individually and as Successor to KEWANEE BOILER);
CARRIER CORPORATION; CHICAGO PNEUMATIC
TOOL COMPANY, LLC; CLEAVER BROOKS CO.;
CONSOLIDATED VALVE, LTD. (Individually and as
Successor to LUNKENHEIMER CO. INC.); CRANE
CO. (Individually and as Successor to DEMING PUMP,
WEINMAN PUMP MANUFACTURING COMPANY,
PACIFIC STEEL BOILER CORPORATION AND
THATCHER BOILER); CROWN CORK & SEAL USA,
INC.; DAMPNEY COMPANY, THE; DANA HOLDING
CORPORATION (Individually and as Successor to
WICHITA CLUTCH, INC); DAVIS & WARSHOW,
INC.; ELLIOTT TURBOMACHINERY CO., INC.;
FOSTER WHEELER CORPORATION; GENERAL
ELECTRIC COMPANY; GEORGIA-PACIFIC LLC;
GOULD'S PUMPS, INCORPORATED; HONEYWELL
INC. (Individually and as Successor to formerly known as
Allied Signal as Successor in interest to Bendix Corpora-
tion); IMO INDUSTRIES, INC. (Individually and as
Successor to DELAVAL TURBINE, TRANSAMERICA
DELAVAL AND IMO DELAVAL); INGERSOLL-RAND
COMPANY (Individually and as Successor to ALDRICH
PUMP COMPANY AND TERRY STEAM TURBINE

COMPANY); ITT FLUID PRODUCTS CORPORATION (Individually and as Successor to ITT GRINNELL CORP.); ITT FLUID TECHNOLOGY CORPORATION; J.A. SEXAUER, INC.; J.H. FRANCE REFRACTORIES CO., INC.; KEELER/DORR-OLIVER; MUNACO PACKING & RUBBER CO.; NAGLE PUMPS, INC.; S.W. ANDERSON SALES CORP.; SARCO COMPANY, INC.; SID HARVEY INDUSTRIES, INC.; STERLING FLUID SYSTEMS (USA), LLC., FORMERLY KNOWN AS PEERLESS PUMP COMPANY; THE TRANE COMPANY (A DIVISION OF AMERICAN STANDARD); TODD COMBUSTION INC.; TODD SHIPYARDS CORP. (Individually and as Successor to TODD COMBUSTION EQUIPMENT, INC.); UNITED GILSONSITE LABORATORIES; VIACOM, INC. as Successor in Interest by Merger to CBS Corporation fka Westinghouse/1st payment (Individually and as Successor to CBS CORPORATION (BY MERGER) F/K/A WESTINGHOUSE ELECTRIC CORPORATION); WASTE MANAGEMENT INC. (Individually and as Successor to ROBERT A. KEASBEY COMPANY); WEIL MCLAIN (A DIVISION OF THE MARLEY COOLING TOWER CO.); YARWAY CORPORATION; YORK INDUSTRIES, INC.;

Defendants.

The following papers read on this motion:

Notice of Motion 1

Defendant's, BURNHAM LLC's ("Burnham"), unopposed motion for summary judgment in this asbestos litigation, pursuant to CPLR 3212, dismissing plaintiff's complaint and all cross claims against it on the grounds that there are no triable issues of fact is granted.

The standards for summary judgment are well settled. A court may grant summary judgment where there is no genuine issue of a material fact; and the moving party is, therefore, entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Thus, when faced with a summary judgment motion, a court's task is not to weigh the evidence or to make the ultimate determination as to the

truth of the matter; its task is to determine whether or not there exists a genuine issue for trial (*Miller v Journal-News*, 211 AD2d 626 [2d Dept. 1995]).

Defendant Burnham submits that plaintiffs have failed to offer evidence which would serve to show that a Burnham product was a cause in fact of any alleged injury or a substantial factor in causing that injury.

In light of defendant Burnhams' showing of entitlement to judgment as a matter of law, the burden shifts to plaintiff as the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact requiring a trial (*Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). This plaintiffs have failed to do.

Court records indicate that plaintiffs have stipulated to discontinue the action against the following defendants: CARRIER CORPORATION; CRANE CO.; CROWN CORK & SEAL USA, INC.; THE DAMPNEY COMPANY; ELLIOTT COMPANY, incorrectly sued herein as ELLIOTT TURBOMACHINERY CO., INC.; J.A. SEXAUER, INC.; SARCO COMPANY, INC.; and WASTE MANAGEMENT INC.

Accordingly, the complaint and all cross claims are dismissed as against defendant Burnham, and the caption of the action is amended to read as follows:

"THOMAS O'ROURKE AND KATHRYN
O'ROURKE,

Plaintiffs,

-against-

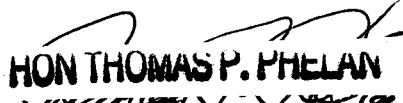
ARMSTRONG INTERNATIONAL, INC.,
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MACHINE WORKS); AURORA PUMP COMPANY,
BELL & GOSSETT COMPANY; BLACKMAN
PLUMBING SUPPLY COMPANY, INC; BMI-
FRANCE (Individually and as Successor to J. H.
France Refractories Co.); BURNHAM CORPORATION
(Individually and as Successor to KEWANEE BOILER);
CHICAGO PNEUMATIC TOOL COMPANY, LLC;

CLEAVER BROOKS CO.; CONSOLIDATED VALVE, LTD. (Individually and as Successor to LUNKENHEIMER CO. INC.); PACIFIC STEEL BOILER CORPORATION AND THATCHER BOILER); DANA HOLDING CORPORATION (Individually and as Successor to WICHITA CLUTCH, INC); DAVIS & WARSHOW, INC.; FOSTER WHEELER CORPORATION; GENERAL ELECTRIC COMPANY; GEORGIA-PACIFIC LLC; GOULD'S PUMPS, INCORPORATED; HONEYWELL INC. (Individually and as Successor to formerly known as Allied Signal as Successor in interest to Bendix Corporation); IMO INDUSTRIES, INC. (Individually and as Successor to DELAVAL TURBINE, TRANSAMERICA DELAVAL AND IMO DELAVAL); INGERSOLL-RAND COMPANY (Individually and as Successor to ALDRICH PUMP COMPANY AND TERRY STEAM TURBINE COMPANY); ITT FLUID PRODUCTS CORPORATION (Individually and as Successor to ITT GRINNELL CORP.); ITT FLUID TECHNOLOGY CORPORATION; J.H. FRANCE REFRACTORIES CO., INC.; KEELER/DORR-OLIVER; MUNACO PACKING & RUBBER CO.; NAGLE PUMPS, INC.; S.W. ANDERSON SALES CORP.; SID HARVEY INDUSTRIES, INC.; STERLING FLUID SYSTEMS (USA), LLC., FORMERLY KNOWN AS PEERLESS PUMP COMPANY; THE TRANE COMPANY (A DIVISION OF AMERICAN STANDARD); TODD COMBUSTION INC.; TODD SHIPYARDS CORP. (Individually and as Successor to TODD COMBUSTION EQUIPMENT, INC.); UNITED GILSONSITE LABORATORIES; VIACOM, INC. as Successor in Interest by Merger to CBS Corporation fka Westinghouse/1st payment (Individually and as Successor to CBS CORPORATION (BY MERGER) F/K/A WESTINGHOUSE ELECTRIC CORPORATION); WEIL MCLAIN (A DIVISION OF THE MARLEY COOLING TOWER CO.); YARWAY CORPORATION; YORK INDUSTRIES, INC.;

Defendants."

This decision constitutes the order of the court under Index No. 1819/2011, motion sequence #001.

Dated: May 16, 2012


HON THOMAS P. PHELAN
THOMAS P. PHELAN, J.S.C.

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