IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

LARRY C. BEVERAGE, Individually and as Personal Representative of the Estate of CHARLES E. BEVERAGE, Deceased, and LINDA K. ANDERSON, and BONNIE K. VAL,	)	**Case No. LACE129455**
Plaintiffs,	)	**RULING AND ORDER ON: DEFENDANT ARCONIC, INC.'S MOTION FOR SUMMARY JUDGMENT**
v.	)	**&**
ALCOA, INC., a Pennsylvania Corporation, et al.	)	**DEFENDANT IOWA-ILLINOIS TAYLOR INSULATION, INC.'S MOTION FOR SUMMARY JUDGMENT**
Defendants.	)	

On September 17, 2019, the above-captioned motions came before the Court for oral argument. The Plaintiffs were represented by Attorneys Kevin Paul, Ethan Horn, and Erich Priebe. The Defendants were represented by Attorneys Donna Miller (Alcoa) and Kevin Horan (Iowa-Illinois Taylor Insulation). After having considered the pleadings, the written and oral arguments of counsel, and the applicable law, the Court enters the following ruling on the pending motions.

FACTUAL AND PROCEDURAL BACKGROUND

Decedent Charles Beverage owned Beverage Construction from approximately 1955 to 1975. Decedent and his construction company performed construction projects exclusively at the

Alcoa plant in Bettendorf, Iowa.[1] Decedent continued to work in and around the Alcoa plant as an employee of Priester Construction until 1979.

Defendant Iowa-Illinois Taylor Insulation, Inc. (IITI) installed insulation throughout the Alcoa plant while the Decedent worked there. In addition, IITI mixed and applied insulating cement at the Alcoa plant and served as an insulation distributor to Alcoa. IITI was the only insulation contractor at Alcoa during the relevant timeframe.

During his work at the Alcoa plant, Decedent was allegedly exposed to asbestos. In September 2015, Decedent was diagnosed with malignant mesothelioma, a disease caused by asbestos exposure, and he died from the disease on October 7, 2015.

On September 27, 2017, Plaintiffs filed the present action asserting claims for negligence, premises liability, strict liability for manufacture and/or sale of defective products, breach of express and implied warranties of merchantability and fitness for intended purposes, and loss of consortium.

The parties have raised numerous issues in their summary judgement motions which the Court will not address in this ruling. The Court has limited this ruling to the single issue of the applicability of Iowa Code Section 686B.7(5). The Court finds that this code section creates immunity for the Defendants in this action and is therefore dispositive.

ANALYSIS

I. Summary Judgment Standard

A motion for summary judgment is appropriate "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

[1] Defendant Arconic Inc. (Arconic) is a successor of Alcoa.

matter of law." Iowa R. Civ. P. 1.981(3). The moving party carries the burden of proving the absence of an issue of material fact. *McIlravy v. N. River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002). A fact is "material" when it could affect the outcome of the case. *DuTrac Cmty. Credit Union v. Radiology Grp. Real Estate, L.C.*, 891 N.W.2d 210, 215 (Iowa 2017). "If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists." *McIlravy*, 653 N.W.2d at 328. In ruling on a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party. *Hlubek v. Pelecky*, 701 N.W.2d 93, 95 (Iowa 2005). Thus, the Court "consider[s] on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record." *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 717–18 (Iowa 2001). "An inference is legitimate if it is 'rational, reasonable, and otherwise permissible under the governing substantive law.'" *Id.* (quoting *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994)). "However, the nonmoving party may not rest upon the mere allegations of his pleading but must set forth specific facts showing the existence of a genuine issue for trial. Speculation is not sufficient to generate a genuine issue of fact." *Hlubek*, 701 N.W.2d at 95–96.

II. Iowa Code Section 686B.7(5)

In 2017, the Iowa General Assembly adopted and the Governor signed into law Iowa Code Chapters 686A and 686B. Relevant to the present action is Iowa Code Section 686B.7(5):

> A defendant in an asbestos action or silica action shall not be liable for exposures from a product or component part made or sold by a third party.

Iowa Code § 686B.7(5) (2017).

No Iowa appellate court has interpreted Iowa Code Section 686B.7(5). Furthermore, no valuable legislative history is available. Only one other district court has interpreted the statute, and this Court finds that opinion highly persuasive. *See Fankhauser et al. v. Borg-Warner Morse Tec, Inc. et al.*, No LACL140972 (Polk County, Aug. 14, 2019).

The Court begins its analysis of Iowa Code Section 686B.7(5) with an overview of the principles of statutory interpretation:

> When interpreting statutes, our primary objective is to ascertain the legislature's intent. *Branstad v. State ex rel. Nat. Res. Comm'n*, 871 N.W.2d 291, 295 (Iowa 2015). We begin with the statute's language. *Des Moines Flying Serv., Inc. v. Aerial Servs. Inc.*, 880 N.W.2d 212, 220 (Iowa 2016). If a word is not defined by the statute, however, we assign the word its common, ordinary meaning, interpreted within the context of the statute and its history. *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 880 (Iowa 2014). We do not extend, expand, or change the meaning of a statute under the guise of construction, even if we believe doing so would mitigate the hardship of a consequence or if we question the statute's wisdom. *Reg'l Util. Serv. Sys. v. City of Mount Union*, 874 N.W.2d 120, 124 (Iowa 2016). We construe statutes "in light of the legislative purpose," *In re A.J.M.*, 847 N.W.2d 601, 605 (Iowa 2014) (quoting *State v. Erbe*, 519 N.W.2d 812, 815 (Iowa 1994)), and "give weight to explanations attached to bills as indications of legislative intent," *Homan v. Branstad*, 887 N.W.2d 153, 166 (Iowa 2016).

Myria Holdings Inc. v. Iowa Dep't of Revenue, 892 N.W.2d 343, 348 (Iowa 2017).

The Court also looks to Iowa Code Chapter 4 in construing statutes. The Court presumes that the state legislature intended "[a] just and reasonable result," as well as "[a] result feasible of execution." *See* Iowa Code § 4.4(3), (4) (2019). "When the text of a statute is plain and its meaning clear, the court should not search for meaning beyond the express terms of the statute." *Cox v. Iowa Dep't of Human Servs*., 920 N.W.2d 545, 553 (Iowa 2018). Regarding the potential ambiguity within the statute, "where the language chosen by the legislature is unambiguous, [the

courts] enforce a statute as written." *State v. Iowa Dist. Court for Scott Cty*., 889 N.W.2d 467, 471 (Iowa 2017).

The Court uses this guidance from the Iowa Supreme Court and the legislature to interpret the terms in Iowa Code Section 686B.7(5). The Court begins with the unambiguous term "defendant." The Court finds that Alcoa and IITI fit squarely within the definition of "defendant" for purposes of this code section.

The next term is "asbestos action," which is defined by statute. Iowa Code Section 686B.2(3) refers to Iowa Code Section 686A.2, which in turn provides:

> "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance, and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person.

Id. § 686A.2(2). Based on this definition, the present action is an "asbestos action" within the meaning of the statute. All of Plaintiffs' asserted causes of action, including their premises liability claim, are "arising out of, based on, or related to the health effects of exposure to asbestos."

The next phrase, "shall not be liable," is intended to create an immunity from suit. *See Liability*, Black's Law Dictionary (11th ed. 2019) (defining "liable" as "The quality, state, or condition of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment."). The plain meaning of this term is unambiguous and leaves no room for further interpretation.

The terms addressed above are well-defined and unambiguous. The next set of terms that the Court must define are where the Plaintiff takes issue with the wording of the statute. For purposes of this ruling the Court will break them down into two pockets. The first is an examination of "product or component part" and the second is "made or sold by a third party."

A. Product or Component Part

When the legislature has not defined a term the courts look "to the common law and dictionary definitions." *State v. Steenhoek*, 182 N.W.2d 377, 379 (Iowa 1970). In interpreting these undefined words courts must do so in a manner designed "to prevent absurdities and incongruities that may prevent justice." *Id.* Employing these principles the Iowa Supreme Court has defined the word "product" as "anything produced." *Id.* "Produce" in its verb form is defined in several ways by Webster's Dictionary. The definitions that are applicable to this matter are "to cause to have existence or to happen," "to give being, form, or shape to," "to compose, create, or bring about by intellectual or physical effort." *Produce*, Merriam–Webster's Collegiate Dictionary 991 (11th ed. 2003).

Next the Court considers the term "component part." The legislature did not define this term either; however, there is some guidance from the Iowa Court of Appeals in *United Properties, Inc. v. Home Ins. Co.*, 311 N.W.2d 689, 691 (Iowa Ct. App. 1981), where the court adopted the plain meaning definition of "component" as a "constituent part." *See also Schreiber v. Bastemeyer*, 644 N.W.2d 296 (Iowa 2002). A "constituent" is "an essential part." *Constituent*, Merriam–Webster's Collegiate Dictionary 402.

The products and component parts at issue in this case involve asbestos insulation used at the Alcoa plant. Almost all of this insulation was either purchased by or installed by IITI. There

is no factual dispute that this action concerns alleged exposures from these products or component parts. The central issue before the Court is whether or not these products and component parts were made or sold by a third party.

B. Made or Sold by a Third Party

The terms "made," "sold," and "third party" are also not defined within the Code. These terms are fairly easy for the Court to define. "Made" is defined as "artificially produced," or "put together of various ingredients." *Made*, Merriam–Webster's Collegiate Dictionary 746. "Sold" is the past tense of "sell" which is defined as "to offer for sale." *Sell*, Merriam–Webster's Collegiate Dictionary 1129. And "third party" is defined as "a person other than the principals." *Third party*, Merriam–Webster's New Collegiate Dictionary 1213 (5th ed. 1977).

Regarding Alcoa, there are no allegations that they manufactured or produced an asbestos containing product or component part. The record is completely devoid of any evidence that Alcoa was responsible for manufacturing, creating, or selling asbestos or an asbestos containing product. In viewing the evidence in the light most favorable to the Plaintiff the record simply shows that Alcoa was a consumer of asbestos insulation provided by a third party, IITI.

When it comes to IITI, the analysis is slightly different. The record is quite clear that their company sold products containing asbestos.[2] The record is also clear that IITI purchased these asbestos products from other sources, specifically, Johns Manville and Eagle-Pitcher.[3] When viewing the evidence in the light most favorable to the Plaintiff, any asbestos containing

[2] Plaintiff's Undisputed Facts Paragraphs 15–18, 33, 39–45.
[3] Plaintiff's Undisputed Facts Paragraphs 40–41.

products that IITI installed at Alcoa or sold to Alcoa were products or component parts made or sold by third parties such as Johns Manville and Eagle-Pitcher.

The Plaintiff argues this statute creates an unfair and an unreasonable result if it grants immunity to a defendant who has purchased a product from a third party. They argue that Alcoa, as a large corporation, who used asbestos products throughout their facility despite their knowledge of its risks, should not be immune simply because they didn't make the asbestos. The Plaintiff argues that IITI as an asbestos installer for decades, should not avoid liability merely because they purchase asbestos from the manufacturer. This argument centers on what the Defendant's knew about asbestos and its hazards and the extent to which they used products that contained asbestos.

The Plaintiff further argues that the statute is unclear as to how far back in the chain of commerce the immunity provision extends. The Plaintiff asserts that this ambiguity or lack of clarity allows the Court some latitude in interpreting the statute. While the Court is sympathetic to the argument, the Court also sees a valid rationale that the legislature may have intended litigation with the actual producers of products containing asbestos rather than entities who purchase it.

These arguments fail because they require the Court to "search for meaning beyond the express terms of the statute." *Cox*, 920 N.W.2d at 553. Iowa Code Section 686B.7(5) of the Code is concise and unambiguous, and therefore must be given its plain meaning as the legislature intended. Neither Alcoa nor IITI are the original manufacturer or seller of any asbestos product or component part. As such, the Court concludes that these products or component parts were

"made or sold by a third party," and Iowa Code Section 686B.7(5) makes these Defendants not liable in the instant matter.

RULING

For all of the above-stated reasons, it is the ruling of the Court that Defendant Alcoa, Inc.'s Motion for Summary Judgment is GRANTED.

For all of the above-stated reasons, it is the ruling of the Court that Defendant IITI's Motion for Summary Judgment is GRANTED.

Any remaining costs associated with this action shall be assessed to the Plaintiff.

ALL OF THE ABOVE IS ORDERED.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
LACE129455	BEVERAGE ESTATE V. ALCOA INC.

So Ordered

Patrick A. McElyea, District Court Judge
Seventh Judicial District of Iowa