

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN**

ROBIN GOULD and LYNDA RUSH,)
as Co-Executors of the Estate of)
GENE SCHAAB, deceased,)
)
Plaintiffs,)
)
v.)
)
AIR & LIQUID SYSTEMS CORP., et al.,)
)
Defendants.)

No. 13 L 105

McLEAN
FILED
MAY 31 2016
CIRCUIT CLERK

ORDER

This cause comes before the Court for hearing on Defendant J.P. Bushnell Packing Supply Co.'s Supplemental Motion for Summary Judgment, filed on April 15, 2016 and argued before the Court on May 26, 2016. Plaintiffs appeared by counsel, Andrew Kelly; Defendant, J.P. Bushnell Packing Supply Co. appeared by counsel, Owen Blood. The Court, having considered the motion and briefs, in addition to arguments of counsel, hereby finds and orders as follows:

1. Defendant, J.P. Bushnell's Supplemental Motion for Summary Judgment is based on lack of product identification. As Gene Schaab was not deposed prior to his death, the parties must rely on the testimony of his co-workers and others with regard to this issue.

2. Lowell Gwin testified that packing used at General Electric came in boxes with the name J.P. Bushnell on them. (Gwin deposition, pp. 60-1). In addition to the packing, ring gaskets used to connect boilers to piping and other equipment were provided by J.P. Bushnell. (Gwin deposition pp. 60-1). Mr. Gwin indicated that to his knowledge, Gene Schaab never replaced or installed packing or gaskets on valves. (Gwin deposition pp. 193-194, 199). He did establish that Mr. Schaab was in the area of others working with gaskets and packing (his desk was located in the maintenance shop next to the boiler room and part of his job as a supervisor included walking around the facility).

(Gwin deposition pp. 27-29, 57-59, 184-85). However, Mr. Gwin did not testify regarding the composition of any of the J.P. Bushnell products utilized at General Electric.

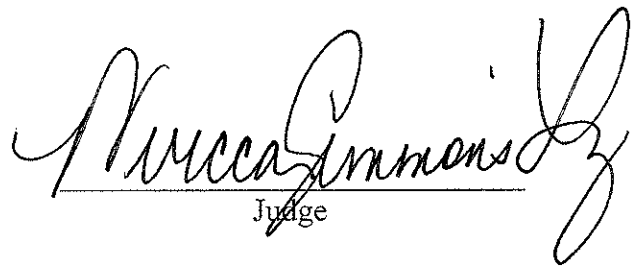
3. J.P. Bushnell does not deny that some of the gaskets and packing it supplied, including those used in high-temperature applications, contained asbestos. The testimony of Justin Sullivan, cited by Plaintiffs in their opposition to the Motion for Summary Judgment, acknowledges this. However, Mr. Sullivan's testimony also establishes that many other non-asbestos containing products were used in high-temperature applications during the time frame at issue. (Discovery deposition of Justin Sullivan, with exhibits).

4. The record is silent as to whether the J.P. Bushnell products supplied to General Electric did or did not contain asbestos. Accordingly, the jury would be left to guess, speculate or surmise as to their composition. In turn, there is no evidence to establish that Mr. Schaab ever worked on or around any asbestos-containing products supplied by J.P. Bushnell. Accordingly, Plaintiffs have failed to meet the frequency, regularity and proximity test established in *Thacker v. UNR Industries, et al.*, 151 Ill.2d 343 (1992). Accordingly, Defendant, J.P. Bushnell Packing Supply Co.'s Supplemental Motion for Summary Judgment is allowed. Defendant, J.P. Bushnell Packing Supply Co. is dismissed with prejudice.

Counsel for Defendant, J.P. Bushnell Packing Supply Co. shall post a copy of this Order via electronic service.

SO ORDERED.

Enter: May 31, 2016



Judge