IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM BOESENHOFER, *et al.*	:	**CIVIL ACTION**
Plaintiffs	:	
	:	**NO. 17-1072**
v.	:	
	:	
AECOME, *et al.*	:	
Defendants	:	

ORDER

AND NOW, this 22nd day of June 2021, upon consideration of Defendant John Crane Inc.'s *motion for summary judgment*, [ECF 209], Plaintiff's response in opposition, [ECF 256], Defendant's reply, [ECF 276], Defendant's supplemental motion, [ECF 319], Plaintiff's opposition to the supplemental motion, [ECF 333], and Defendant's supplemental reply, [ECF 354], it is hereby **ORDERED** that Defendant's motion for summary judgment is **GRANTED** *only* with respect to Plaintiff's claims for nonpecuniary damages, including punitive damages, and **DENIED** in all other respects.[1]

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[1] Plaintiff Rose Diane Boesenhofer ("Plaintiff") alleges that her husband, William J. Boesenhofer ("Mr. Boesenhofer"), developed mesothelioma as a result of exposure to Defendants' asbestos-containing products while working as a civilian employee at the Philadelphia Naval Shipyard (the "PNSY"). Specifically, Mr. Boesenhofer worked at the PNSY as a boilermaker mechanic from 1966 to 1978, as a ship systems boiler inspector from 1978 to 1986, and as a mechanical engineering technician from 1986 until his retirement in 1997. Mr. Boesenhofer was diagnosed with mesothelioma on April 8, 2016 and passed away on August 20, 2016.

Mr. Boesenhofer commenced this action against numerous defendants, including John Crane Inc. ("Defendant" or "JCI"), in the Court of Common Pleas of Philadelphia County, on May 27, 2016, asserting a product liability action contending that his mesothelioma was caused by his exposures to Defendants' asbestos-containing products. After Mr. Boesenhofer's death in August 2016, his complaint was amended to substitute Rose Diane Boesenhofer, his widow and executrix of his estate, as the Plaintiff. This case was removed to this Court in March 2017. Before this Court are numerous motions for summary judgement, each will be addressed independently.

I. *Summary Judgment Standard*

Federal Rule of Civil Procedure ("Rule") 56 governs summary judgment motion practice. Rule 56 requires a court to grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The movant bears the initial burden of informing the court of the basis for the motion and identifying the portions of the record that the movant "believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is "material" if its existence or non-existence would affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of fact is "genuine" when there is sufficient evidence from which a reasonable juror could find in favor of the non-movant regarding the existence of that fact. *Id.* at 248-49. If the non-movant bears the burden of proof at trial, a movant can meet this burden by showing that the non-moving party has "fail[ed] to make a showing sufficient to establish the existence of an element essential to that party's case." *Celotex*, 477 U.S. at 322.

After the movant meets its initial burden, summary judgment is appropriate if the non-movant party fails to rebut the moving party's claim by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials" that show a genuine issue of material fact or by "showing that the materials cited do not establish the absence or presence of a genuine dispute." *See* Rule 56(c)(1)(A-B). The non-movant must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574, 586 (1986). The non-movant may not rely on "bare assertions, conclusory allegations or suspicions," *Fireman's Ins. Co. of Newark v. DuFresne*, 676 F.2d 965, 969 (3d Cir. 1982), nor rest on the allegations in the pleadings. *Celotex*, 477 U.S. at 324. Rather, the non-movant must "go beyond the pleadings" and either by affidavits, depositions, answers to interrogatories, or admissions on file, "designate 'specific facts showing that there is a genuine issue for trial.'" *Id*. "In considering the evidence, the court should draw all reasonable inferences against the moving party." *El v. SEPTA*, 479 F.3d 232, 238 (3d Cir. 2007).

II. *Applicable Law: Maritime Law v. State Law*

In their respective briefs, the parties outline various aspects of maritime and Pennsylvania state law. Plaintiff argues that maritime law applies, while Defendant fails to definitively stake out a position as to which body of law applies. The question of whether maritime law is applicable is a threshold dispute and a question of federal law governed by the law of the circuit in which this Court sits. *See* U.S. Const. Art. III, § 2; 28 U.S.C. § 1333(1); *Various Plaintiffs v. Various Defendants*, 673 F. Supp. 2d 358, 362 (E.D. Pa. 2009). In this circuit, courts apply the locality and connection tests in determining whether to apply maritime law to a products liability claim. *Conner v. Alfa Laval, Inc.*, 799 F. Supp. 2d 455, 463-66 (E.D. Pa. 2011) (discussing *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.,* 513 U.S. 527, 534 (1995)). In order for maritime law to apply, a plaintiff's exposure to the product must satisfy both the locality and connection tests. *Id*.

A. Locality Test

The locality test requires that the alleged tort occurred on navigable waters or, for injuries suffered on land, that the injury was caused by a vessel on navigable waters. *Id.* In assessing whether a tort occurred on "navigable waters" (*i.e.*, was sea-based), it is important to note that work performed aboard a ship that is docked at a shipyard is sea-based work and, thus, is work performed on navigable waters. *See Sisson v. Ruby,* 497 U.S. 358 (1990). This includes work aboard a ship that is in "dry dock." *See Deuber v. Asbestos*

Corp. Ltd., 2011 WL 6415339, at *1 n.1 (E.D. Pa. Dec. 2, 2011). In contrast, work performed in other areas of a shipyard or on a dock is considered land-based work, not performed on navigable waters. *Id*. If a plaintiff performed some work at a shipyard on land or on a dock itself, *and* some work onboard a ship docked at the shipyard, "the locality test is satisfied as long as *some portion* of the asbestos exposure occurred on a vessel on navigable waters." *Conner*, 799 F. Supp. 2d at 466; *Deuber*, 2011 WL 6415339, at *1 n.1 (emphasis added). If, however, a plaintiff was never exposed to asbestos *onboard* a ship, then the locality test is not satisfied and maritime law will not apply. Here, it is undisputed that Mr. Boesenhofer's alleged exposures (pertinent to JCI) occurred aboard ships docked at the PNSY. Therefore, the locality test is satisfied.

B. Connection Test

The connection test requires that the alleged tort have "a potentially disruptive impact on maritime commerce" and that "'the general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'" *Grubart,* 513 U.S. at 534 (citing *Sisson v. Ruby*, 497 U.S. 358, 364-65, n.2 (1990)). When a plaintiff's claim satisfies the locality test, if the exposure was primarily sea-based/on navigable waters (as defined above), then the claim will satisfy the connection test. *Conner*, 799 F. Supp. 2d at 467-69. In contrast, if the plaintiff's exposure was primarily land-based, then the claim will not satisfy the connection test. *Id.* Where there are distinct periods of both types of exposure (*i.e.*, sea-based and land-based), a court may apply different laws to the different types of exposure (*e.g.*, apply maritime law to the sea-based exposure and state law to the land-based exposure). *See, e.g., Lewis v. Asbestos Corp., Ltd.*, 2011 WL 5881184, at *1 n.1 (E.D. Pa. Aug. 2, 2011) (applying Alabama state law to period of land-based exposure and maritime law to period of sea-based exposure). Here, all of Mr. Boesenhofer's alleged exposures (pertinent to JCI) occurred on board ships docked at the PSNY. Therefore, his claims satisfy the connection test.

Because Plaintiff's claims against JCI satisfy both the locality test and the connection test, this Court finds that maritime law applies. *See Conner,* 799 F. Supp. 2d at 462-63.

III. *JCI's Motion for Summary Judgment*

In its motion for summary judgment, JCI argues several grounds for judgment in its favor, which this Court will briefly address.

A. *Statute of Limitations*

JCI argues that Plaintiff's claims are barred by the statute of limitations. Claims brought under maritime law are subject to a three-year statute of limitations. *See* 46 U.S.C. § 30106 ("[A] civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose."). Plaintiff filed this action on May 27, 2016. As such, Plaintiff's claims are timely only if the cause of action accrued after May 27, 2013. JCI argues that the claims are barred because Mr. Boesenhofer previously brought an asbestos-exposure claim in 1983 for an asbestosis diagnosis he received in 1981—well before May 27, 2013.

In making this argument, JCI suggests that this Court reject and/or reexamine the decision of the Honorable Eduardo C. Robreno in *Nelson v. A.W. Chesteron Co.,* 2011 WL 6016990 (E.D. Pa. Oct. 27, 2011), in which the court held that the "separate disease" or "two- disease" rule—as opposed to the "one-disease" rule—applies to asbestos claims under maritime law. Under the two-disease rule, unlike the one-disease rule, a plaintiff may bring suit for a nonmalignant asbestos-related disease without triggering the

statute of limitations for any malignant asbestos-related diseases that the plaintiff may develop later. *Kiser v. A.W. Chesterton Co*., 770 F. Supp. 2d 745, 746 (E.D. Pa. 2011). Defendant contends that *Nelson* is unpersuasive and premised on various analytical errors. This Court disagrees and adopts the reasoning and analysis contained in *Nelson* here.

Consistent with *Nelson* and the two-disease rule, this Court finds, as a matter of law and pursuant to 46 U.S.C. § 30106, that a plaintiff can bring suit for *nonmalignant* asbestos-related disease without triggering the applicable statute of limitations for any subsequent *malignant* asbestos-related diseases that may develop in the future. Accordingly, the statute of limitations for claims based on any subsequent malignant asbestos-related disease begins to run when the subsequent malignant asbestos-related disease is diagnosed. Here, Mr. Boesenhofer's nonmalignant asbestosis diagnosis from 1981 does not affect the statute of limitations for claims stemming from his mesothelioma (malignant) diagnosis in 2016. Because Plaintiff's claims against JCI stem from Mr. Boesenhofer's subsequent malignant asbestos-related diagnosis of mesothelioma, which occurred in 2016, and the claims were filed within three years of that subsequent diagnosis, Plaintiff's claims are timely.

B. Nonpecuniary and Punitive Damages

Defendant also argues that Plaintiff cannot recover survival remedies or wrongful death nonpecuniary damages under maritime law. Though this precise issue has not been addressed by either the Third Circuit or the United States Supreme Court, this Court finds the Supreme Court's decision in *Miles v. Apex Marine Corp*., 498 U.S. 19 (1990), to be dispositive.

In *Miles*, the Supreme Court recognized a general maritime cause of action for the wrongful death of a seaman. *Id*. at 29. The Supreme Court based its decision on the reasoning of *Maragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970). The *Miles* court, however, found that *Moragne* did not address the issue of the scope of damages recoverable in a maritime wrongful death action. *Miles*, 498 U.S. at 29. In addressing that issue, the Court noted that both the Jones Act and the Death on the High Seas Act limited recoverable damages to pecuniary losses. *Id*. at 31-32. Based primarily on the damages limitations in these statutes, the Court held that "there is no recovery for loss of society in a general maritime action for the wrongful death of a Jones Act seaman." *Id.* at 32. The Court further held that an estate plaintiff "cannot recover for [a decedent's] lost future income . . . under general maritime law." *Id*. at 36. In reaching its holdings, the Court announced that it was "restor[ing] a uniform rule applicable to all actions for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law." *Id.* at 33. Subsequent decisions have reinforced the *Miles* Court's intent for uniformity under maritime law. *See*, *e.g.*, *Dooley v. Korean Air lines Co., Ltd*., 524 U.S. 116 (1998) (holding, under general maritime law, that relatives of decedent could not recover nonpecuniary damages, including damages for decedent's pre-death pain and suffering); *see also The Dutra Group v. Batterton*, __U.S.__, 139 S. Ct. 2275, 2278 (2019) (reiterating that recovery is limited to pecuniary damages in a wrongful death claim under general maritime law); *Scarborough v. Clemco Industries*, 391 F.3d 660, 668 (5th Cir. 2004) (holding neither a Jones Act seaman nor his survivors "may recover nonpecuniary damages from non-employer third parties.").

This Court finds that the reasoning of *Miles* precludes recovery of nonpecuniary damages in this action. This preclusion extends to punitive damages. *See Batterton*, 139 S. Ct. at 2278 (holding that punitive damages cannot be recovered on claims in admiralty where there is no historical basis for allowing such damages); *In re Asbestos Products Liability Lit*., 2014 WL 33533044, at *11 (E.D. Pa. July 9, 2014) (holding that punitive damages may not be obtained in either a wrongful death or survival action under general maritime law). Therefore, this Court finds, as a matter of law, that Plaintiff is precluded from

recovering nonpecuniary damages, including punitive damages. Accordingly, Defendant's motion for summary judgment is granted with respect to Plaintiff's claim for nonpecuniary and/or punitive damages.

C. Insufficient Evidence

Defendant next argues that Plaintiff's evidence is insufficient to establish that any product for which it is responsible was a "substantial" cause of Mr. Boesenhofer's mesothelioma. Plaintiff disagrees and contends that she has identified sufficient product identification and causation evidence to survive summary judgment.

To establish causation for an asbestos claim under maritime law, a plaintiff must show that "(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. Trust*, 424 F.3d 488, 492 (6th Cir. 2005), *abrogated on other grounds by Air and Liquid Systems Corp. v. DeVries*, __ U.S. __, 139 S. Ct. 986, 994 (2019) (citing *Stark v. Armstrong World Indus., Inc.*, 21 F. App'x 371, 375 (6th Cir. 2001)). Substantial factor causation is determined separately for each defendant. *Stark*, 21 F. App'x at 375. Implicit in the test set forth in *Lindstrom* and *Stark*, a plaintiff must also show that the defendant manufactured or distributed the asbestos-containing product to which exposure is alleged. *Abbay v. Armstrong Int'l., Inc.*, 2012 WL 975837, at *1 n.1 (E.D. Pa. Feb. 29, 2012).

In establishing causation, a plaintiff may rely upon direct evidence and/or circumstantial evidence that supports an inference that the plaintiff was exposed to the defendant's product for some length of time. *Stark,* 21 F. App'x at 376 (quoting *Harbour v. Armstrong World Indus., Inc.*, 1991 WL 65201, at *4 (6th Cir. April 25, 1991)). A mere "minimal exposure" to a defendant's product is insufficient to establish causation. *Lindstrom*, 424 F.3d at 492. "Likewise, a mere showing that defendant's product was present somewhere at plaintiff's place of work is insufficient." *Id.* Rather, the plaintiff must show "a high enough level of exposure that an inference that the asbestos was a substantial factor in the injury is more than conjectural." *Id.* (quoting *Harbour*, 1991 WL 65201, at *4). The exposure must have been "actual" or "real," but the question of "substantiality" is best left to the fact-finder. *Redland Soccer Club, Inc. v. Dep't of Army of U.S.*, 55 F.3d 827, 851 (3d Cir. 1995).

To sustain her burden as to product identification and causation, Plaintiff cites to the following evidence:

> Deposition of Mr. Boesenhofer's Co-worker Daniel Cairns: From 1967 to 1972 and from 1976 to 1978, Mr. Cairns worked alongside Mr. Boesenhofer daily in the same boilermaker gang at the PNSY. From 1978 to 1986, Mr. Cairns worked alongside Mr. Boesenhofer every week as Mr. Boesenhofer inspected the work that Mr. Cairns and his crew performed. From 1986 until Mr. Boesenhofer's retirement in 1997, both Mr. Boesenhofer and Mr. Cairns worked together daily at PNSY's Naval Ship Systems Engineering Station as mechanical engineering technicians performing two-man boiler inspection and engineering jobs. Mr. Cairns testified that Mr. Boesenhofer worked with asbestos-containing sheet gasket material manufactured by JCI when cutting replacement gasket components, and with asbestos-containing packing manufactured by JCI while performing repair and maintenance work on various pieces of equipment on ships docked at the PNSY. This work involved removing and replacing JCI-manufactured sheet gaskets and packing, which resulted in "dust and debris flying all over the place." Mr. Boesenhofer was also frequently around other workers who removed and installed asbestos-containing packing on valves, which Mr. Cairns described as a "dusty process."

BY THE COURT:

/s/ *Nitza I. Quiñones Alejandro*
NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court

Other Documentary Evidence: JCI manufactured and supplied asbestos-containing sheet gasket and packing to the PNSY. Those asbestos-containing materials were present on the ships on which Mr. Boesenhofer performed his aforementioned duties. JCI also supplied asbestos-containing gaskets and packing to Crane Company in the form of original equipment manufactured components for Crane Company valves. Crane Company incorporated JCI asbestos packing within its valves, which were present on several ships on which Mr. Boesenhofer worked.

This evidence, viewed in the light most favorable to Plaintiff (the non-movant), creates a genuine issue of material fact with respect to Mr. Boesenhofer's exposure to respirable dust from asbestos-containing JCI sheet gasket and packing while working aboard various ships at the PNSY and with respect to whether JCI's asbestos-containing products were a substantial factor in causing Mr. Boesenhofer's mesothelioma. Accordingly, JCI's motion for summary judgment is denied in this respect.