

No. 62996-4-I
(Consolidated)

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION I

MICHAEL FARROW and LIDIA FARROW,
Husband and wife

Appellants/Plaintiffs

v.

LESLIE CONTROLS, INC.,

And

ALFA LAVAL, Inc., *et. al.*

Respondents/Defendants

FILED
CLERK OF SUPERIOR COURT
STATE OF WASHINGTON
2009 SEP -8 PM 4:54

Consolidated Appeal from the Superior Court of Washington
For King County

Cause No. 08-2-07177-4 SEA

BRIEF OF RESPONDENTS YARWAY CORPORATION
AND TYCO FLOW CONTROL, INC.

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TABLE OF AUTHORITIES

Yarway and Tyco Flow Control hereby incorporate by reference all authorities cited in the following briefs filed with the Court: 1) Response Brief of Respondents Crane Co., Garlock Sealing Technologies, Inc., Fairbanks Morse Pump Corporation, Coltec Industries, and McWane Inc., and 2) Response Brief of Leslie Controls, Inc., and ITT Corporation.

I. INTRODUCTION

The facts and legal arguments regarding the federal enclave issue before this Court are virtually identical to all Respondents and are set forth in the following briefs filed with this Court: 1) Response Brief of Respondents Crane Co., Garlock Sealing Technologies, Inc., Fairbanks Morse Pump Corporation, Coltec Industries, and McWane Inc., and 2) Response Brief of Leslie Controls, Inc., and ITT Corporation. These briefs set forth relevant facts, arguments, and legal authorities demonstrating why the trial court correctly dismissed the Appellants' claims arising at a federal enclave, Puget Sound Naval Shipyard ("PSNS"). In the interests of judicial economy and brevity, Yarway Corporation ("Yarway") and Tyco Flow Control, Inc., ("Tyco Flow Control") hereby join in the briefs to the extent they address the common federal enclave defense.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Yarway and Tyco Flow Control hereby incorporate by reference the Issues Pertaining to Assignment of Error sections of the following briefs: 1) Response Brief of Respondents Crane Co., Garlock Sealing Technologies, Inc., Fairbanks Morse Pump Corporation, Coltec Industries, and McWane Inc., and 2) Response Brief of Leslie Controls, Inc., and ITT Corporation.

III. COUNTER-STATEMENT OF THE CASE

This is an asbestos personal injury case. Appellants Michael and Lidia Farrow alleged that Mr. Farrow was exposed to asbestos during his service in the United States Navy from 1950 to 1953, his time as a civilian employee at PSNS from 1953 to 1974, and his time as an engineering technician on nuclear submarines at various military facilities from 1974 to 1991.

Appellants claimed that Mr. Farrow was exposed to asbestos from products for which Yarway and Tyco Flow Control were allegedly responsible while he worked at PSNS from 1953 to 1974. A-CP 967-9. Appellants did not allege that Mr. Farrow was exposed to such products outside of his employment at PSNS and there is no evidence supporting such a claim. *Id.*

Defendant IMO Industries, Inc. ["IMO"] moved for summary judgment seeking dismissal of all claims arising out of Mr. Farrow's work at PSNS. L-CP 51-141. Yarway and Tyco Flow Control joined IMO's Motion. A-CP 351-354; A-CP 580-1.

On October 22, 2008, Judge Lum granted IMO's Motion for Summary Judgment, as well as Yarway and Tyco Flow Control's joinders. L-CP 1498-501; A-CP 594-5; A-CP 954-955.

Subsequently, Yarway and Tyco Flow Control moved for summary judgment dismissal of any remaining claims arising out of Mr. Farrow's work outside of PSNS. ACP 818-22; ACP 951-1001; ACP 1215-18. Plaintiff filed an affirmative notice of non-opposition stating that he did not oppose the motions [A-CP 1792-93], and on December 5, 2008, the trial court entered an order dismissing Plaintiff's remaining claims against Yarway and Tyco Flow Control. A-CP 933-4 & 937-8.

In addition to the above Counter-Statement of the Case, Yarway hereby incorporates by reference the Counter-Statements of the case in the following briefs: 1) Response Brief of Respondents Crane Co., Garlock Sealing Technologies, Inc., Fairbanks Morse Pump Corporation, Coltec Industries, and McWane Inc., and 2) Response Brief of Leslie Controls, Inc., and ITT Corporation.

IV. ARGUMENT

This brief is filed pursuant to RAP 10.1(g), which states in relevant part:

[...] in a case with more than one party to a side, a party may (1) join with one or more other parties in a single brief, or (2) file a separate brief and adopt by reference any part of the brief of another.

Yarway and Tyco Flow Control hereby join in and adopt by reference all statements of fact, authorities, and arguments set forth in the

“Argument” sections of the following briefs filed with this Court: 1) Response Brief of Respondents Crane Co., Garlock Sealing Technologies, Inc., Fairbanks Morse Pump Corporation, Coltec Industries, and McWane Inc., and 2) Response Brief of Leslie Controls, Inc., and ITT Corporation.

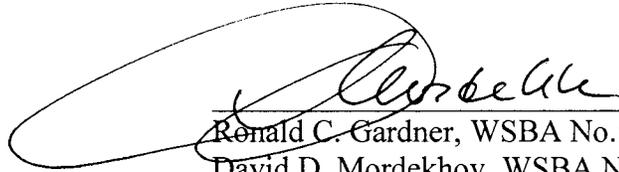
Furthermore, Yarway and Tyco Flow Control submit that Appellants have waived their right to appeal the trial court’s orders granting Yarway and Tyco Flow Control motions for summary judgment to dismiss all remaining claims that may have arisen outside of PSNS, because Appellants did not oppose those motions at the trial court.

V. CONCLUSION

Yarway and Tyco Flow Control respectfully request that this Court affirm the trial court’s order dismissing all of the Appellants’ claims against Yarway and Tyco Flow Control.

RESPECTFULLY SUBMITTED this 8TH day of September, 2009.

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