

NO. 74458-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

---

YEANNA WOO, Personal Representative for the Estate of YUEN  
WING WOO and his Surviving Spouse, JEAN OI WOO,

Appellants,

v.

ASBESTOS CORP. LTD.; et al.,

Defendants,

GENERAL ELECTRIC COMPANY,

Respondent.

---

Appeal from the Superior Court of Washington  
for King County  
(Cause No. 12-2-07945-5 SEA)

---

**BRIEF OF APPELLANTS**

---

WILLIAM RUTZICK, WSBA #11533  
KRISTIN HOUSER, WSBA #7286  
THOMAS J. BREEN, WSBA #34574

**SCHROETER, GOLDMARK & BENDER**

500 Central Building  
810 Third Avenue  
Seattle, Washington 98104  
(206) 622-8000

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2016 MAR 28 PM 4:33

## TABLE OF CONTENTS

	<u>Page</u>
I. ASSIGNMENTS OF ERROR.....	1
II. ISSUES RELATING TO ASSIGNMENTS OF ERROR.....	1
III. STATEMENT OF FACTS .....	1
A. Facts Relating To Mr. Woo’s Working For Significant Periods Of Time Aboard Ships And In Engine Rooms Containing Turbines Manufactured And Supplied By GE .....	1
B. Facts Relating To (1) Asbestos-Containing Gaskets And Packing As Well As Asbestos Insulation On GE Turbines Being Required For These Turbines’ Operation Prior To The 1970s; And (2) Such Insulation, Gaskets and Packing Necessarily Creating Asbestos Dust During Ship Operation, Repair, And Maintenance .....	2
C. Facts Concerning Mr. Woo’s Asbestos Exposure Relating To GE Turbines And The Effects Of Such Exposure In His Contracting Mesothelioma.....	5
D. Facts Relating To GE’s Knowledge Prior To 1960 Of Dangers Of Asbestos .....	7
E. Facts Relating to GE’s Role In Shipyard Repairs Of GE Turbines.....	7

**Table of Contents, continued**

	<b><u>Page</u></b>
IV. ARGUMENT.....	8
A. Introduction.....	8
B. <i>Macias</i> Is The Washington Precedent That Controls This Case.....	12
C. Substantial Precedent From Non-Washington Cases Supports Plaintiffs' Position .....	15
1. Appellate Cases Particularly In California, New York, Maryland Provide Considerable Support For Plaintiffs' Position Under The Facts Presented In This Appeal.....	17
2. Plaintiffs' Position Is Also Supported By Cases Involving GE .....	22
3. Most Trial Court Decisions Addressing The Kind Of Evidence Plaintiffs Have Presented In This Case Support Plaintiffs' Position.....	23
D. Plaintiffs' Evidence Provides The Necessary Circumstantial Evidence .....	25
E. GE Did Not Meet Its Initial Burden Of Proof Under CR 56 .....	31
V. CONCLUSION.....	34

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>Abate v. AAF-McQuay, Inc.</i> , CV106006228S, 2013 WL 812066 (Conn. Super. Ct. Jan. 29, 2013).....	16
<i>Abate v. Advanced Auto Parts, Inc.</i> , CV106005674S, 2014 WL 683843 (Conn. Super. Ct. Jan. 23, 2014).....	16
<i>Allen v. Asbestos Corp., Ltd.</i> , 138 Wn. App. 564, 157 P.3d 406 (2007).....	passim
<i>Baldwin v. Sisters of Providence in Washington, Inc.</i> , 112 Wn.2d 127, 769 P.2d 298 (1989).....	32
<i>Berkowitz v. A.C. &amp; S., Inc.</i> , 733 N.Y.S.2d 410 (2001).....	15, 19, 20, 24
<i>Berry v. Crown Cork &amp; Seal Co., Inc.</i> , 103 Wn. App. 312, 14 P.3d 789 (2000).....	10, 25, 27, 29
<i>Bettencourt v. Hennessy Indus., Inc.</i> , 205 Cal. App. 4th 1103, 141 Cal. Rptr. 3d 167 (2012).....	15, 19
<i>Braaten v. Saberhagen Holdings</i> , 165 Wn.2d 373, 198 P.3d 493 (2008).....	8, 12, 15
<i>Branon v. Gen. Elec. Co.</i> , 2004-CA-000568-MR, 2005 WL 1792122 (Ky. Ct. App. July 29, 2005) .....	15, 22, 23
<i>Cabasug v. Crane Co.</i> , 989 F. Supp. 2d 1027 (D. Haw. 2013).....	16, 17, 24
<i>Chicano v. Gen. Elec. Co.</i> , CIV.A. 03-5126, 2004 WL 2250990 (E.D. Pa. Oct. 5, 2004).....	17, 22
<i>Englehart v. General Electric Co.</i> , 11 Wn. App. 922, 527 P.2d 685 (1974).....	9
<i>Faddish v. Buffalo Pumps</i> , 881 F. Supp. 2d 1361 (S.D. Fla. 2012) .....	16, 17, 21

**Table of Authorities, continued**

	<b><u>Page</u></b>
<i>Ford Motor Co. v. Wood</i> , 119 Md. App. 1 (1998) .....	21
<i>Gitto v. American Standard</i> , 2010 U.S. Dist LEXIS 144568 (S.D.N.Y. Dec. 7, 2010) .....	16, 24
<i>Guile v. Ballard Commty. Hosp.</i> , 70 Wn. App. 18, 851 P.2d 689 (1993) .....	31, 33
<i>Hue v. Farmboy Spray Co., Inc.</i> , 127 Wn.2d 67, 896 P.2d 682 (1995) .....	27, 28, 29
<i>Hughes v. A.W. Chesterton Co.</i> , 435 N.J. Super. 326, 89 A.3d 179 (N.J. Super. Ct. App. Div. 2014) .....	16, 21
<i>In re Asbestos Litig.</i> , CIV.A. N10C-08216ASB, 2012 WL 2007291 (Del. Super. June 1, 2012) .....	16
<i>In re Asbestos Litig.</i> , CV N11C-05-257 ASB, 2013 WL 4493568 (Del. Super. Aug. 19, 2013) .....	16
<i>In re Asbestos Litig.</i> , CV N12C-03-057 ASB, 2013 WL 4715263 (Del. Super. Aug. 30, 2013) .....	16
<i>In re Asbestos Litig.</i> , N10C-12-100 ASB, 2012 WL 1694442 (Del. Super. May 14, 2012) .....	16
<i>In re Asbestos Litigation Limited to Taska</i> , CIV.A.09C-03-197 ASB, 2011 WL 379327 (Del. Super. Jan. 19, 2011) .....	16
<i>In re Asbestos Products Liab. Litig. (No. VI)</i> , 09-00257, 2011 WL 5881008 (Hoffeditz, et al.) .....	16, 22
<i>In re Hawaii Federal Asbestos Cases</i> , 960 F.2d 806 (9th Cir. 1992) .....	26
<i>In re New York City Asbestos Litig.</i> , 121 A.D.3d 230, 990 N.Y.S.2d 174 (N.Y. App. Div. 2014) .....	15, 19

**Table of Authorities, continued**

	<b><u>Page</u></b>
<i>Ingram v. AC&amp;S, Inc.</i> , 977 F.2d 1332 (9th Cir. 1992) .....	26
<i>Kochera v. Foster Wheeler, LLC</i> , 14-CV-29-SMY-SCW, 2015 WL 5584749 (S.D. Ill. Sept. 23, 2015).....	16, 17, 22
<i>Lindstrom v. A-C Prod. Liab. Trust</i> , 424 F.3d 488 (6th Cir. 2005) .....	16, 21
<i>Lockwood v. AC&amp;S, Inc.</i> , 109 Wn.2d 235, 744 P.2d 605 (1987).....	passim
<i>Macias v. Saberhagen Holdings, Inc.</i> , 175 Wn.2d 402, 282 P.3d 1069 (2012).....	passim
<i>Mavroudis v. Pittsburgh Corning Corp.</i> , 86 Wn. App. 22, 935 P.2d (1997).....	28, 29
<i>May v. Air &amp; Liquid Sys. Corp.</i> , 219 Md. App. 424, 100 A.3d 1284 (2014).....	20
<i>May v. Air &amp; Liquid Sys. Corp.</i> , 446 Md. 1, 129 A.3d 984 (2015) .....	11, 15, 20, 21
<i>Morgan v. Aurora Pump Co.</i> , 159 Wn. App. 724, 248 P.3d 1052 (2011).....	10, 27, 28
<i>Morgan v. Bill Vann Co., Inc.</i> , 969 F. Supp. 2d 1358 (S.D. Ala. 2013).....	16, 25
<i>Nelson v. Air &amp; Liquid Sys. Corp.</i> , C14-0162JLR, 2014 WL 6982476 (W.D. Wash. Dec. 9, 2014).....	24
<i>O'Neil v. Crane Co.</i> , 53 Cal. 4th 335, 266 P.3d 987, 135 Cal. Rptr. 3d 288 (2012) .....	passim
<i>Quirin v. Lorillard Tobacco Co.</i> , 17 F. Supp. 3d 760 (N.D. Ill. 2014) .....	passim
<i>Rogers v. Sears, Roebuck &amp; Co.</i> , 268 A.D.2d 245, 701 N.Y.S.2d 359 (1st Dept.2000).....	19
<i>Salisbury v. Asbestos Corp. Ltd.</i> , 12-03260, 2014 WL 345214 (E.D. Pa. Jan. 29, 2014).....	16, 17, 24

**Table of Authorities, continued**

	<b><u>Page</u></b>
<i>Schaffner v. Aesys Techs., LLC</i> , 1901 EDA 2008, 2010 WL 605275 (Pa. Super. Ct. Jan. 21, 2010).....	16
<i>Schwartz v. Abex Corp.</i> , 106 F. Supp. 3d 626 (E.D. Pa. 2015) .....	16, 22
<i>Sether v. Agco Corp.</i> , 07-809-GPM, 2008 WL 1701172 (S.D. Ill. Mar. 28, 2008).....	16, 22
<i>Shields v. Hennessy Indus., Inc.</i> , 205 Cal. App. 4th 782, 140 Cal. Rptr. 3d 268 (2012).....	15, 19
<i>Simonetta v. Viad Corp.</i> , 165 Wn.2d 341, 197 P.3d 127 (2008).....	passim
<i>Sparkman v. Goulds Pumps, Inc.</i> , 2:12-CV-02957-DCN, 2015 WL 727937 (D.S.C. Feb. 19, 2015).....	16
<i>Spychalla v. Boeing Aerospace Operations Inc.</i> , 11-CV-497, 2015 WL 3504927 (E.D. Wis. June 3, 2015).....	16
<i>State v. Bencivenga</i> , 137 Wn.2d 703, 974 P.2d 832 (1999).....	10
<i>Surre v. Foster Wheeler LLC</i> , 831 F. Supp. 2d 797 (S.D.N.Y. 2011).....	16, 22
<i>Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzger Co.</i> , 129 Cal. App. 4th 577, 28 Cal. Rptr. 3d 744 (2004).....	15, 18
<i>Thurmon v. A.W. Chesterton, Inc.</i> , 61 F. Supp. 3d 1280 (N.D. Ga. 2014).....	21
<i>Van Hout v. Celotex</i> , 121 Wn.2d 697, 853 P.2d 908 (1993).....	10, 25, 29
<i>White v. Kent Medical Center, Inc.</i> , 61 Wn. App. 163, 810 P.2d 4 (1991).....	31, 33
<i>Young v. Key Pharmaceuticals, Inc.</i> , 112 Wn.2d 216, 770 P.2d 182 (1989).....	31
<b><u>Rules</u></b>	
CR 56 .....	31

## I. ASSIGNMENTS OF ERROR

1. The King County Superior Court (“trial court”) erred in granting respondent General Electric’s (“GE”) Motion For Summary Judgment against Yeanna Woo, Personal Representative for the Estate of Yuen Wing Woo and his Surviving Spouse, Jean Oi Woo (“plaintiffs”).

2. The trial court erred in concluding that there were no material disputed issues of fact in connection with defendant’s motion for summary judgment.

## II. ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Does the record contain evidence raising material disputed issues of fact, including whether a jury could conclude GE owed a duty to warn about the harmful effects of asbestos from asbestos-containing insulation, gaskets, and packing that GE knew were necessary to the proper functioning of its turbines and that Yuen Woo (“Mr. Woo”) was exposed to asbestos from those products?

## III. STATEMENT OF FACTS

### A. **Facts Relating To Mr. Woo’s Working For Significant Periods Of Time Aboard Ships And In Engine Rooms Containing Turbines Manufactured And Supplied By GE**

GE admits that it manufactured and supplied marine turbines to the USS GEORGE K. MACKENZIE (DD-836), USNS PVT JOHN R. TOWLE (T-AK 240), and USNS JAMES O’HARA (T-AP 179). CP 239. Mr. Woo

served on the MACKENZIE from July 13, 1945 to July 6, 1946 (CP 52, 111-113); on the TOWLE from December 16, 1949 to January 24, 1951 (CP 52, 96, 98-100); and on the O'HARA from March 1, 1951 to January 16, 1952. CP 52, 88, 91, 95. As a ship engineer, Mr. Woo's work aboard those ships would have primarily been in engine rooms. CP 146.

**B. Facts Relating To (1) Asbestos-Containing Gaskets And Packing As Well As Asbestos Insulation On GE Turbines Being Required For These Turbines' Operation Prior To The 1970s; And (2) Such Insulation, Gaskets and Packing Necessarily Creating Asbestos Dust During Ship Operation, Repair, And Maintenance**

In 1989, GE issued a Technical Information Letter ("TIL"), which reflects a GE copyright and was signed by a number of GE managers. CP 344. The TIL contained two parts: a part intended to be seen only by GE and not distributed to GE customers or the public, and a part to be distributed to customers of GE's Industrial Steam Turbine Generators. In the part of the document not distributed to customers, the TIL admitted that insulation for such GE turbines was "usually purchased and field installed by GE to functional factory specification" (emphasis added). CP 343. The portion of the same TIL to be distributed to customers, admitted that asbestos insulation was necessary to GE turbines prior to 1970s because non-asbestos equivalent materials were not available until the "early 1970s." The TIL stated in relevant part:

Applications of the previously used asbestos and/or the presently used non-asbestos substitution are described as follows:

1. Heat retention material used for thermal insulation has been typically purchased to functional specifications from insulation vendors and field installed. In the early 1970's non-asbestos equivalent materials became available and the GE specifications were subsequently revised to prohibit the use of asbestos. The bulk of asbestos applied in turbine generators was used for heat retention application.<sup>1</sup>

CP 345 (emphasis added).

GE also admitted in the TIL that the same was true for gaskets used in GE turbines:

4. Flat sheet gaskets are used extensively for low pressure and low temperature sealing applications. As with the spiral wounds, asbestos containing materials have been used exclusively and the industry has only recently developed suitable non-asbestos replacements.

CP 346 (emphasis added).

Everett Cooper, an expert in marine engineering, also provided evidence at CP 142-144 that asbestos-containing insulation and other asbestos-containing products were necessary for GE ship turbines to operate properly; and that asbestos-containing insulation on those turbines

---

<sup>1</sup> CP 211-234 are published articles more than 20 years old providing evidence as to asbestos exposure and asbestos disease affecting seamen and marine engineers who worked aboard ships in the 1940s-1960s. CP 216 also provides evidence that “[l]ong after the vessel has put to sea, flaking and cracking due to ship motion and vibration are suspected of releasing asbestos into the surrounding space.” *See also* CP 231 (“In the lifetime of a ship, the heat and aging of the asbestos insulation products will lead to increased friability. The natural movements of the ship’s structure and vibration will assist fiber releases.”) (Emphasis added.)

deteriorated and gave off asbestos dust while being used as well as while being maintained or replaced:

7. .... Turbo generators are used aboard Navy and many MSTS ships built in the 1940s and 1950s for providing electricity. These turbines require insulation on the exterior in order to function properly. Additionally, steam turbines require asbestos gaskets to seal piping flange connections and asbestos packing on the nozzle valves. The most common brands of marine turbines are Westinghouse, General Electric, Elliot and DeLaval. Regular maintenance of steam turbines involves inspection of the blades on the interior of the turbine and replacing the bearings on the turbine shaft. If this maintenance work is not done, the turbine will not operate properly. This work cannot be performed without dismantling the turbine which in turn requires removal of the asbestos insulation covering the top half of the turbine. Typically the insulation removed from the top half of the turbine would be replaced with new insulation. On MSTS and other ships, the maintenance for each turbine had to be done at approximately 4-5 year intervals. The insulation covering the bottom half of the turbine did not have to be typically replaced in connection with regular maintenance and that insulation often remained on the turbines for considerably longer periods of time, although it too would deteriorate over time. Additionally, regular maintenance of steam turbines requires the replacement of asbestos gaskets and packing on the turbine and associated piping. There is no way that asbestos insulation, gaskets, packing and piping can be removed from a steam turbine without creating asbestos dust.

....

9. .... During the 1950s and 1960s, the insulation on the outside of the turbines and connecting pipes typically contained asbestos. The turbines were in use much, if not all of the time, that the ships were moving. It was typical in my experience for the insulation on and around the turbines to deteriorate over time. That deterioration was compounded by the ships' movement in heavy weather or

when the vessel was vibrating while the vessel was moving. Furthermore, it was common for the insulation over time to be damaged by accidental contact or as a result of leaks. Much of my work and the work of other people in the engineering spaces aboard the MSTS ships was with or in close proximity to the various turbines. It was not uncommon to see dust or other debris from the insulation on and around the turbines while working in the engineering spaces. (Emphasis added.)

Mr. Cooper also stated at CP 144-145 that GE provided extra sets of “specially precut” asbestos-containing gaskets with their new turbines. *See also* CP 421-422 (testimony by GE’s 30(b)(6) witness).<sup>2</sup>

**C. Facts Concerning Mr. Woo’s Asbestos Exposure Relating To GE Turbines And The Effects Of Such Exposure In His Contracting Mesothelioma.**

“[M]uch of Mr. Woo’s work in the Navy and at MSTS, would have been in the various ship’s engine spaces where the turbines were located.” CP 146, 138. At CP 614-615, Mr. Cooper further explained this as follows:

Q. With respect to Mr. Woo’s work, would you agree that you do not know what Mr. Woo did himself on any particular day during his work history?

A. No, I don’t think that’s correct. The assignment for third- and fourth-assistant engineers was pretty much across the board on all the MSTS vessels. You had certain

---

<sup>2</sup> Mr. Cooper also testified more generally in his deposition at CP 624-625 that based on his 40 years of experience, if “a ship came out with General Electric HP and LP turbines and three turbogenerators and the ship required spare parts, they would only get those spare parts from the manufacturer, and the ship’s crew or a shipyard would install these parts, dependent on the situation.” CP 624, lines 17-22. (Emphasis added.) *See also* CP 624, line 25 – 625, line 9.

particular machinery you took care of, certain watch, 8-to-12 watch or the 12-to-4 watch, if you were a third or a fourth engineer. So I don't think that's I have a good recollection of what was required.

Nicholas Heyer, PhD stated at CP 138:

11. In my opinion, Mr. Woo's work in engineering spaces around GE and Westinghouse turbines resulted in exposures to asbestos that were substantially above ambient levels. This would be true even when work was not being done to or near the turbines because, as discussed in a number of the above articles, the vibration aboard ships also resulted in the release of asbestos fibers from the asbestos insulation on the turbines. It is also my opinion that this exposure was a substantial contribution to the total asbestos exposure of Mr. Woo. By "substantial," I mean that the exposure was something that is "important" or "material" or "not insignificant." As a consequence, it was a substantial factor in causing his mesothelioma. (Emphasis added).

*See also* CP 372 (GE's admission that "level of exposure to asbestos need only be very small to precipitate rather disastrous results".)

Dr. Samuel Hammar stated at CP 126-127:

6. I have read numerous articles dealing with asbestos-related diseases, including lung cancer and mesothelioma. These articles show that asbestos-related diseases are more likely to occur with greater amounts of exposure to asbestos. Asbestos-related diseases are therefore characterized as dose-related. The more exposure to asbestos, the greater the likelihood an individual will develop an asbestos-related disease. (Emphasis added).

**D. Facts Relating To GE's Knowledge Prior To 1960 Of Dangers Of Asbestos**

CP 313-314 sets forth evidence of GE's knowledge about asbestos in the early 1930s as well as evidence that during the 1930s and 1940s GE kept "apprised of studies [relating to asbestos disease] that were done in the medical literature." CP 385-386 also provides evidence of GE's knowledge about the connection between asbestos and cancer in the early 1950s.

**E. Facts Relating to GE's Role In Shipyard Repairs Of GE Turbines**

CP 182-198 and CP 144 provide evidence of GE's routine presence at and role in connection with shipyard repairs of GE turbines. This is relevant, among other things, to GE being in a position – after sales of its turbines – both to observe how its turbines were repaired at shipyards and to communicate warnings about the risks of asbestos-containing insulation and other materials such as gaskets necessary to the GE turbines proper use.<sup>3</sup> However, GE did not inform its own employees

---

<sup>3</sup> *Lockwood v. AC&S*, 109 Wn.2d. 235, 260, 744 P.2d 605 (1987) also discussed *infra*, explains that:

We believe that where a person's susceptibility to the danger of a product continues after that person's direct exposure to the product has ceased, the manufacturer still has a duty after exposure to exercise reasonable care to warn the person of known dangers, if the warning could help to prevent or lessen the harm. Such a warning should be required to the extent practicable. Thus, it will depend on the circumstances if a warning to previous users of the product must be made by direct personal contact with such users. Alternative warning

doing such work about the dangers of asbestos, including David Skinner, its current corporate representative until “about 2005” (CP 78).

#### IV. ARGUMENT

##### A. Introduction

The trial court’s ruling at RP 29-30 acknowledged that plaintiffs’ position depended both on “reasonable inferences” and on applying the law set forth in *Macias v. Saberhagen Holdings, Inc.*, 175 Wn.2d 402, 282 P.3d 1069 (2012). The trial court, however, ruled (a) that there was not sufficient “specific evidence” to support plaintiffs’ position, and (b) that “the case is governed by *Simonetta [v. Viad Corp.]*, 165 Wn.2d 341, 197 P.3d 127 (2008)] and *Braaten [v. Saberhagen Holdings]*, 165 Wn.2d 373, 198 P.3d 493 (2008)] and not *Macias*.”<sup>4</sup> (a) The trial court’s view of the

---

methods which may be reasonable in a given situation might include notices to physicians or advertisements.

....

In this case, in view of the expert testimony at trial that asbestos remains in the lungs long after exposure and that cigarette smoking aggravates asbestosis, we believe that if Raymark had made a reasonable effort to provide Lockwood with the information it acquired about the dangers of asbestos exposure after his retirement, the seriousness of his injury might have been reduced. Under these circumstances, Raymark had a continuing duty to warn Lockwood of the known dangers of its product after he was no longer exposed to it.

<sup>4</sup> The trial court stated in full on that point at RP 29-30 that:

There is not any specific evidence linking GE personnel to any specific repairs where Mr. Woo is present on any particular ship. There is no evidence of any product, of any material specifically linking GE in terms of supplying, installing, or specifying asbestos in the facts of this case. There is some brochures, some information from other dates. There is some information from land turbines. There’s not any specific evidence supplied that specifies the kind of evidence the Court needs to link GE to supplying, installing, requiring asbestos.

evidence and inferences to be drawn from such evidence was inconsistent with Washington law. Turning first to the appropriate role of inferences in connection with oppositions to summary judgment, it is well-established that, as held in *Allen v. Asbestos Corp., Ltd.*, 138 Wn. App. 564, 570, 157 P.3d 406 (2007), “the evidence and all reasonable inferences therefrom must still be examined in the light most favorable to the nonmoving party to determine if there are genuine issues of material fact for trial.” Washington law also permits reasonable “radial” inferences. As the Supreme Court Commissioner explained at CP 465 in denying review involving a former defendant in this case:

The Woos, on the other hand, contend these inferences are reasonable “radial” inferences, citing *Martin v. Insurance Co. of North America*, 1 Wn. App. 218, 221, 460 P.2d 682 (1969) (a given set of facts may radially project multiple separate inferences where one inferential conclusion is not pyramided upon another) and *Englehart v. General Electric Co.*, 11 Wn. App. 922, 927, 527 P.2d 685 (1974) (the circumstantial

---

This Court would find that the case is governed by *Simonetta* and *Braaten* and not *Macias*. Those cases hold when the defendant’s products are installed or encased in insulation. There has to be a tie that is shown when routine maintenance or replacement is done and the insulation is removed. There is not that tie shown here. And I would grant the motion of summary judgment as to GE. I don’t find that there’s a specific tie shown to GE as to the insulation. And I think *Simonetta* and *Braaten* do control, and not *Macias* in this case. (Emphasis added.)

evidence surrounding the insured's disappearance allowed radial inferences of death and how the death occurred such that jury could find accidental death by preponderance of the evidence.<sup>2</sup>

---

<sup>2</sup> I note that in the context of a criminal proceedings, this court has quoted with approval the statement in a treatise on evidence that “[i]f the inferences and the underlying evidence are strong enough to permit a rational fact finder to find guilt beyond a reasonable doubt, a conviction may be properly based on “pyramiding inferences.” *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999).

Both this Court and the Supreme Court have routinely permitted the extensive use of inferences in asbestos injury cases. *See, e.g., Lockwood*, 109 Wn.2d. at 247-49; *Van Hout v. Celotex*, 121 Wn.2d 697, 706-07, 853 P.2d 908 (1993); *Berry v. Crown Cork & Seal Co., Inc.*, 103 Wn. App. 312, 323-25, 14 P.3d 789 (2000); *Allen v. Asbestos Corp., Ltd.*, 138 Wn. App. at 572-75. *See also Morgan v. Aurora Pump Co.*, 159 Wn. App. 724, 737, 248 P.3d 1052, 1060 (2011) (holding testimony about the practices followed in working with an asbestos product at one time period would allow a reasonable inference to be drawn that the practices did not change significantly within a matter of a few years). The record in this case includes (and plaintiffs argued both in writing and orally) evidence that (i) asbestos-containing insulation was necessary prior to 1970 to the proper functioning of GE turbines; (ii) such asbestos-containing insulation

deteriorates over time giving off asbestos fibers into the air;<sup>5</sup> (iii) Mr. Woo worked in engine spaces containing insulated GE turbines for over three years; and (iv) Mr. Woo necessarily breathed in such asbestos fibers. *See, e.g.,* CP 41-48; RP 15-22. That evidence gives rise to the reasonable inferences that GE breached its duty to warn of the dangers of asbestos and that such breach was a substantial factor in causing Mr. Woo's mesothelioma.

The trial court's position that *Simonetta* or *Braaten* rather than *Macias* control this case is inconsistent with *Macias*, which repeatedly distinguished the two earlier cases based upon evidence very similar to that here. *See* discussion, Section B, *infra*. Moreover, *Macias*' recognition of limits or exceptions to what is sometimes referred to as the "bare metal defense"<sup>6</sup> is consistent with the approach taken in numerous appellate and trial court decisions throughout state and federal jurisdictions when, as here, evidence shows that a defendant's product requires, or defendant specifies, the use of asbestos-containing products. *See* discussion, Section C, *infra*.

---

<sup>5</sup> Given the evidence at CP 144, 216, 231, that the asbestos-containing insulation deteriorates while in use, asbestos exposure from such insulation occurs at times other than installation or removal.

<sup>6</sup> In *May v. Air & Liquid Sys. Corp.*, 446 Md. 1, 14, 129 A.3d 984, 992, n. 15 (2015), the Maryland Court of Appeals explained the bare metal defense is "a position that "manufacturers ... are not liable for the dangers of asbestos-containing replacement parts supplied by a third party." *Quirin*, 17 F.Supp.3d at 768."

**B. *Macias* Is The Washington Precedent That Controls This Case.**

The relevant facts in this case are far closer to the facts found relevant in *Macias* than to the facts in *Simonetta* or *Braaten*. *Macias* involved a product that, as manufactured, contained no asbestos. The court nevertheless imposed a duty on the manufacturer “to warn of the danger of asbestos exposure inherent in the use and maintenance of the defendant manufacturers’ own products.” 175 Wn.2d at 405. A jury could reasonably find the same is true in this case. The majority opinion in *Macias* contrasted in some detail the facts in that case with those in *Simonetta* and *Braaten*. The court explained that, under the factual record in those two cases:

[t]he products involved in the *Simonetta* and *Braaten* cases [a] did not require that asbestos be used in conjunction with their products, [b] nor were they specifically designed to be used with asbestos. Nor [c] were those products designed as equipment that by its very nature would necessarily involve exposure to asbestos. (Emphasis added.)

175 Wn.2d at 414.<sup>7</sup> The *Macias* court then held at p. 416 that those differences in the facts meant that, unlike the product in *Macias*, the

---

<sup>7</sup> In *Braaten v. Saberhagen Holdings*, 165 Wn.2d at 397, the majority opinion explicitly left open the issue of the liability of a manufacturer who specified or whose product required asbestos:

In light of the facts here, we need not and do not reach the issue of whether a duty to warn might arise with respect to the danger of exposure to asbestos-containing products specified by the manufacturer to be applied to, in, or connected to their products, or required because of a peculiar, unusual, or unique design. (Emphasis added.)

products in those two cases “did not, in and of themselves pose any inherent danger of exposure to asbestos:”

*Simonetta* and *Braaten* do not control because unlike in those cases, where the manufacturers' products did not, in and of themselves, pose any *inherent* danger of exposure to asbestos, here when the products were used exactly as intended and cleaned for reuse exactly as intended they *inherently* and invariably posed the danger of exposure to asbestos. (Emphasis added.)

*Macias* at n. 4 further explicated the distinctions between the products in

*Macias* and in *Simonetta* and *Braaten*:

[T]he products in *Simonetta* and *Braaten* were not designed for or intended for use with asbestos, but only came into contact with asbestos because that was the purchaser-Navy's choice to use as shipwide insulation. .... [the products at issue in *Macias*] themselves involve risk of asbestos exposure when they are used exactly for the purpose for which they were manufactured and sold. There is no such inherent, necessarily existent risk of exposure in use of products that, at the ultimate choice of the purchaser, are coated with asbestos-containing insulation.

*Macias*, 175 Wn.2d at 416.

That explication applies to the GE turbines in this case given the factual record. That is particularly so because, as set forth above, reasonable inferences must be drawn in plaintiffs' favor given that plaintiffs were the non-moving party in this summary judgment motion. The relevant time period in this case in terms of Mr. Woo's exposure to asbestos relating to GE turbines was the 1940s and 1950s. For summary judgment purposes, a reasonable inference is that during that time period,

GE turbines had an “inherent, necessarily existent risk” of asbestos exposure because, as GE stated, only asbestos-containing insulation could be used to insulate the GE turbines; such asbestos-containing products were needed for the GE turbines to function properly; and the insulation deteriorated and gave off asbestos over time while being used.<sup>8</sup> Use of those GE turbines would therefore necessarily and inherently involve asbestos exposure, particularly absent a warning to avoid or limit exposure. The use of asbestos in the GE turbines also was not “the ultimate choice of the purchaser;” Rather, the use of asbestos for these purposes was the only available option both for private companies and the military.

GE’s TIL and reasonable inferences therefrom favoring plaintiffs must be accepted for purposes of this appeal pursuant to *Allen*. Therefore, the reason that in 1989 private “utility and industrial steam turbine generator customers” (CP 342) needed to know about the potential location of asbestos-containing insulation, gaskets, and packing in their GE-manufactured turbines was that (a) it was not until the early 1970s that “non-asbestos equivalent material became available” for insulating GE turbines (CP 345); and (b) as of 1989 “the industry has only recently

---

<sup>8</sup> Similarly only asbestos-containing gaskets and packing could be used in the GE turbines according to GE at CP 346.

developed suitable non-asbestos replacements” for asbestos-containing gaskets suitable for such GE turbines (CP 346). The record here also showed that GE was in a position to know about the absence of alternative materials because GE purchased the asbestos-containing gaskets for its turbines and because “heat retention materials for new installations are usually purchased and field installed by GE to functional factory specifications.” CP 343 (emphasis added).<sup>9</sup>

**C. Substantial Precedent From Non-Washington Cases Supports Plaintiffs’ Position**

The issues discussed in *Macias*, *Braaten*, and *Simonetta* have also come up in the asbestos context in multiple state and federal jurisdictions. These include appellate decisions in California,<sup>10</sup> New York,<sup>11</sup> Maryland,<sup>12</sup> Kentucky,<sup>13</sup> Pennsylvania,<sup>14</sup> and New Jersey,<sup>15</sup> applying state

---

<sup>9</sup> GE’s argument to the trial court that the TIL was addressed to private non-governmental entities, rather than to the U.S. Government, thus misses the point. Navy or military specifications would not have applied to those private, non-governmental entities so the decision to use asbestos-containing insulation gaskets or packing was based on the non-availability of suitable non-asbestos-containing substitutes, not the dictates of military specifications.

<sup>10</sup> *O’Neil v. Crane Co.*, 53 Cal. 4th 335, 266 P.3d 987, 135 Cal. Rptr. 3d 288 (2012); *Shields v. Hennessy Indus., Inc.*, 205 Cal. App. 4th 782, 140 Cal. Rptr. 3d 268 (2012); *Bettencourt v. Hennessy Indus., Inc.*, 205 Cal. App. 4th 1103, 141 Cal. Rptr. 3d 167 (2012); *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzer Co.*, 129 Cal. App. 4th 577, 28 Cal. Rptr. 3d 744 (2004).

<sup>11</sup> *Berkowitz v. A.C. & S., Inc.*, 733 N.Y.S.2d 410 (2001); *In re New York City Asbestos Litig.*, 121 A.D.3d 230, 250-51, 990 N.Y.S.2d 174, 189-90 (N.Y. App. Div. 2014).

<sup>12</sup> *May v. Air & Liquid Sys. Corp.*, 446 Md. 1 (2015).

<sup>13</sup> *Branon v. Gen. Elec. Co.*, 2004-CA-000568-MR, 2005 WL 1792122 (Ky. Ct. App. July 29, 2005).

law and in the Sixth and Third Circuits applying maritime law.<sup>16</sup> They also include federal or state trial court decisions in Illinois,<sup>17</sup> Wisconsin,<sup>18</sup> New York,<sup>19</sup> South Carolina,<sup>20</sup> Alabama,<sup>21</sup> Hawaii,<sup>22</sup> Florida,<sup>23</sup> Delaware,<sup>24</sup> Connecticut,<sup>25</sup> and Pennsylvania,<sup>26</sup> some of which apply

---

<sup>14</sup> *Schaffner v. Aesys Techs., LLC*, 1901 EDA 2008, 2010 WL 605275 (Pa. Super. Ct. Jan. 21, 2010).

<sup>15</sup> *Hughes v. A.W. Chesterton Co.*, 435 N.J. Super. 326, 89 A.3d 179 (N.J. Super. Ct. App. Div. 2014).

<sup>16</sup> *Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488 (6th Cir. 2005); *In re Asbestos Products Liability Litig. (No. VI)* Order from the Third Circuit dated February 5, 2016. A copy of this Order is attached as **Appendix A** to this Brief.

<sup>17</sup> *Quirin v. Lorillard Tobacco Co.*, 17 F. Supp. 3d 760 (N.D. Ill. 2014); *Sether v. Agco Corp.*, 07-809-GPM, 2008 WL 1701172 (S.D. Ill. Mar. 28, 2008); *Kochera v. Foster Wheeler, LLC*, 14-CV-29-SMY-SCW, 2015 WL 5584749, at \*4 (S.D. Ill. Sept. 23, 2015).

<sup>18</sup> *Spychalla v. Boeing Aerospace Operations Inc.*, 11-CV-497, 2015 WL 3504927 (E.D. Wis. June 3, 2015).

<sup>19</sup> *Surre v. Foster Wheeler LLC*, 831 F. Supp. 2d 797 (S.D.N.Y. 2011); *Gitto v. American Standard*, 2010 U.S. Dist LEXIS 144568 (S.D.N.Y. Dec. 7, 2010).

<sup>20</sup> *Sparkman v. Goulds Pumps, Inc.*, 2:12-CV-02957-DCN, 2015 WL 727937, at \*1 (D.S.C. Feb. 19, 2015).

<sup>21</sup> *Morgan v. Bill Vann Co., Inc.*, 969 F. Supp. 2d 1358, 1368 (S.D. Ala. 2013).

<sup>22</sup> *Cabasug v. Crane Co.*, 989 F. Supp. 2d 1027, 1041 (D. Haw. 2013).

<sup>23</sup> *Faddish v. Buffalo Pumps*, 881 F. Supp. 2d 1361 (S.D. Fla. 2012).

<sup>24</sup> Compare *In re Asbestos Litig.*, CIV.A. N10C-08216ASB, 2012 WL 2007291 at \*3-4 (Del. Super. June 1, 2012) (applying Arkansas law) and *In re Asbestos Litig.*, CV N12C-03-057 ASB, 2013 WL 4715263 (Del. Super. Aug. 30, 2013) (applying Virginia law) with *In re Asbestos Litig.*, CV N11C-05-257 ASB, 2013 WL 4493568, at \*1 (Del. Super. Aug. 19, 2013) (applying Delaware law); *In re Asbestos Litigation Limited to Taska*, CIV.A.09C-03-197 ASB, 2011 WL 379327, at \*1 (Del. Super. Jan. 19, 2011) (applying Connecticut law); and *In re Asbestos Litig.*, N10C-12-100 ASB, 2012 WL 1694442, at \*1 (Del. Super. May 14, 2012) (applying Massachusetts law).

<sup>25</sup> Compare *Abate v. AAF-McQuay, Inc.*, CV106006228S, 2013 WL 812066, at \*5 (Conn. Super. Ct. Jan. 29, 2013) with *Abate v. Advanced Auto Parts, Inc.*, CV106005674S, 2014 WL 683843, at \*1 (Conn. Super. Ct. Jan. 23, 2014).

<sup>26</sup> *Salisbury v. Asbestos Corp. Ltd.*, 12-03260, 2014 WL 345214 (E.D. Pa. Jan. 29, 2014); *Schwartz v. Abex Corp.*, 106 F. Supp. 3d 626, 663 (E.D. Pa. 2015); *In re Asbestos*

maritime law.<sup>27</sup> While there are other trial court cases dealing with those issues, including multiple trial court cases in New York, Delaware, and the MDL cases in the Eastern District of Pennsylvania, the above are many of the cases.

Most of the appellate decisions and a large number of trial court decisions favor plaintiffs' position, as discussed in more detail below. That is particularly true of those decisions where the courts considered situations where the use of asbestos in replacement components or in insulation covering the products was required because of the unavailability of non-asbestos substitutes or because of the defendant's specifications.

**1. Appellate Cases Particularly In California, New York, Maryland Provide Considerable Support For Plaintiffs' Position Under The Facts Presented In This Appeal**

In *O'Neil v. Crane Co.*, 53 Cal. 4th 335, 361, 266 P.3d 987, 1004, 135 Cal. Rptr. 3d 288, 308 (2012), the California Supreme Court ruled based on a record where (a) none of the defendant's "original [asbestos-containing] parts remained on board THE ORISKANY by the time O'Neil arrived decades later" and "there was no evidence that defendant's products required asbestos-containing gaskets or packing in order to function." *Id.* at 349-50. *See also* n.6 in that opinion. Plaintiffs'

---

*Products Liab. Litig. (No. VI)*, 09-00257, 2011 WL 5881008 (Hoffeditz, et al.), at \*1 (E.D. Pa. July 29, 2011); *Chicano v. Gen. Elec. Co.*, CIV.A. 03-5126, 2004 WL 2250990, at \*9 (E.D. Pa. Oct. 5, 2004).

<sup>27</sup> *See, e.g., Kochera; Faddish; Salisbury; Hoffeditz, and Cabasug, supra.*

evidence differs from the evidence in *O'Neil* because plaintiffs' evidence from GE establishes a reasonable inference that Mr. Woo was aboard ships containing GE turbines, which required both asbestos-containing insulation and asbestos-containing gaskets and packing in order to function.<sup>28</sup>

*O'Neil* also approved the analysis of the Court of Appeals in *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzer Co.*, 129 Cal. App. 4th 577 (2004), but distinguished that case for reasons that are inconsistent with the facts and reasonable inferences in this case. First, given evidence such as contained at CP 142-145, 216, 231 and 345-46, it is not true in this case, for summary judgment purposes, that the normal operation of GE turbines:

[D]id not inevitably cause the release of asbestos dust. This is true even if "normal operation" is defined broadly to include the dusty activities of routine repair and maintenance, because the evidence did not establish that defendants' products needed asbestos-containing components or insulation to function properly.

*O'Neil*, 53 Cal. 4th at 361. Secondly, given the evidence here, it is not true in this case that:

Nothing about ... [GE's turbines] caused or contributed to the release of this dust [from thermal insulation and packings].

---

<sup>28</sup> Turbines were not the products at issue in *O'Neil*.

*Id.* See also *Shields v. Hennessy Indus., Inc.*, 205 Cal. App. 4th 782 (2012) and *Bettencourt v. Hennessy Indus., Inc.*, 205 Cal. App. 4th 1103 (2012) (applying exception to the “bare metal defense”).

New York appellate law also supports plaintiffs’ position. In *In re New York City Asbestos Litig. [Dummitt]*, 121 A.D.3d 230, 250-51, 990 N.Y.S.2d 174, 189-90 (N.Y. App. Div. 2014), the court stated:

For example, in *Berkowitz v. A.C. & S., Inc.*, 288 A.D.2d 148, 733 N.Y.S.2d 410 (1st Dept.2001), this Court affirmed the denial of summary judgment to a manufacturer of pumps on Navy ships, although the plaintiff conceded that the manufacturer did not necessarily install asbestos on the pumps. According to the decision,

“While it may be technically true that its pumps could run without insulation, defendants’ own witness indicated that the government provided certain specifications involving insulation, and it is at least questionable whether pumps transporting steam and hot liquids on board a ship could be operated safely without insulation, which [the defendant] knew would be made out of asbestos” (288 A.D.2d at 149, 733 N.Y.S.2d 410).<sup>29</sup> (Emphasis added.)

---

<sup>29</sup> The New York court also pointed out that the:

The *Dummitt* plaintiff also relies on *Rogers v. Sears, Roebuck & Co.*, 268 A.D.2d 245, 701 N.Y.S.2d 359 (1st Dept.2000). In *Rogers*, the plaintiffs were injured when a propane tank that one of them was attempting to attach to the barbecue grill manufactured by the defendant exploded. Although the defendant did not place the tank in the stream of commerce, this Court affirmed the denial to it of summary judgment, since “its grill could not be used without the tank” (268 A.D.2d at 246, 701 N.Y.S.2d 359). (Emphasis added.)

The New York Court of Appeals has accepted review of this case. The facts here are much closer to those at issue in *Berkowitz* and *Rogers* than they are to those in *Rastelli, Drabczyk, Surre and Tortoriello*.

Current Maryland appellate law also supports plaintiffs' position. Prior to December 18, 2015, GE likely would have relied heavily on *May v. Air & Liquid Sys. Corp.*, 219 Md. App. 424, 100 A.3d 1284 (2014). That decision by the Court of Special Appeals was reversed, however, by Maryland's highest Court – the Maryland Court of Appeals. The Court of Appeals decision explained at 129 A.3d at 992:

The present case, on appeal from a summary judgment, falls within the exception, carved out by the New York and Illinois cases,<sup>30</sup> to the “bare metal defense.” Significantly, the record contains evidence supporting a reasonable inference that asbestos was the only available insulating material that could be used in the gaskets and packing in high-temperature operations. (Emphasis added.)

Finally, the Court of Appeals concluded in language applicable to this case:

When an expendable noxious component such as asbestos is essential to a product that is sold, we should not consider the expendable component as the “product.” Rather, we should focus on the final product, the pump. It is undisputed that the pump contained asbestos, and there is sufficient evidence that the asbestos was essential to its operation, needed periodic replacement, and was dangerous. (Emphasis added.)

129 A.3d at 1000.

---

<sup>30</sup> *Berkowitz* discussed *supra* was one of the New York cases relied upon by the *May* court and the court *Quirin v. Lorillard Tobacco Co.*, 17 F. Supp. 3d 760, 769 (N.D. Ill. 2014) was an Illinois case utilized by *May*, 129 A.3d at 997. Cases from both jurisdictions looked to evidence of the necessity of the use of asbestos. Also, since Maryland law incorporate some negligence principles into strict liability, the *May* court included into strict liability a requirement that the “manufacturer knew or should have known of the risks from exposure to asbestos.” 129 A.3d at 998. That is not part of Washington common law of strict liability (*see* 109 Wn.2d at 254-55). Moreover, plaintiffs provided some such evidence at CP 313-14 and CP 385-86.

The New Jersey Appellate Division in *Hughes v. A.W. Chesterton Co.*, 435 N.J. Super. 326, 89 A.3d 179 (N.J. Super. Ct. App. Div. 2014) concluded that it “would be reasonable, practical and foreseeable to impose a duty to warn upon Goulds under the facts here” although the court ultimately ruled against the plaintiff on proximate cause grounds. The *Hughes* court’s conclusions on Goulds’s duty took into account evidence that Goulds’s corporate designee was not “aware of any substitutes for asbestos for the components in Goulds’s pumps until the late 1960s or early 1970s.” *Id.* at 188.

The recent Order by the Third Circuit attached as **Appendix A** generally supports plaintiffs’ position citing a number of decisions from Washington and elsewhere cited by plaintiffs. Finally, *Lindstrom v. A-C Prod. Liab. Trust*, is of limited relevance to this case because either the record there did not contain (or the Sixth Circuit did not discuss), any evidence that asbestos-containing products were required or were specified by defendant manufacturers. Indeed, at 129 A.3d at 999-1000, the Maryland Court of Appeals faulted *Lindstrom* and several other cases<sup>31</sup> for failing to recognize an exception to the “bare metal defense” when the ultimate product sold “cannot function properly without the expendable

---

<sup>31</sup> *Ford Motor Co. v. Wood*, 119 Md. App. 1 (1998); *Faddish v. Buffalo Pumps*, 881 F. Supp. 2d 1361, 1368, 1372-73 (S.D. Fla. 2012); and *Thurmon v. A.W. Chesterton, Inc.*, 61 F. Supp. 3d 1280, 1286 (N.D. Ga. 2014).

and noxious component. *See Surre*, 831 F. Supp. 2d at 810; *Quirin*, 17 F., Supp. 3d at 769-70; *cf. O'Neil*, 266 P.3d at 996, n. 6, 1005.”

## **2. Plaintiffs’ Position Is Also Supported By Cases Involving GE**

Plaintiffs’ position is also supported by decisions in other jurisdictions involving asbestos claims against the manufacturers of engines and turbines, including GE. These cases interpreted maritime law,<sup>32</sup> Pennsylvania law,<sup>33</sup> Kentucky law,<sup>34</sup> and general common law.<sup>35</sup> All of those decisions found a duty by GE or other manufacturers despite defendant’s not having supplied the asbestos product. For example, in *Kochera*, the court stated at \*4:

In this case, GE asserts that, to the extent any heat insulation material was later applied to its turbines, GE was not involved with that process. Plaintiff, on the other hand, points to evidence indicating that GE turbines required asbestos-containing components to function properly in the high-heat applications for which they were supplied and that GE was aware of this fact

In *Schwartz*, the MDL court held at p. 663:

---

<sup>32</sup> *Kochera v. Foster Wheeler, LLC*, 2015 WL 5584749, at \*4.

<sup>33</sup> *Schwartz v. Abex Corp.*, 106 F. Supp. 3d at 663; *In re Asbestos Products Liab. Litig. (No. VI)*, 09-00257, 2011 WL 5881008 (Hoffeditz, et al.), at \*1 (E.D. Pa. July 29, 2011); *Chicano v. Gen. Elec. Co.*, CIV.A. 03-5126, 2004 WL 2250990, at \*9 (E.D. Pa. Oct. 5, 2004).

<sup>34</sup> *Branon v. Gen. Elec. Co.*, *supra*.

<sup>35</sup> *Sether v. Agco Corp.*, 07-809-GPM, 2008 WL 1701172, at \*2 (S.D. Ill. Mar. 28, 2008).

The parties do not dispute that Defendant neither manufactured nor supplied the insulation at issue. There is evidence in the record that (arguably) supports a conclusion that Defendant knew its engines would be insulated with asbestos-containing insulation.

....

[B]ecause there is evidence in the record that (arguably) supports a conclusion that Defendant knew its engines would be insulated with asbestos-containing insulation, Defendant is potentially liable in negligence (if all elements of the negligent failure to warn cause of action are satisfied). (Emphasis added; footnotes omitted.)

In *Branon*, the Kentucky Court of Appeals reversed summary judgment against a plaintiff who at \*2 was “alleging that GE specified the use of an asbestos-containing product as insulation on its turbines.”

### **3. Most Trial Court Decisions Addressing The Kind Of Evidence Plaintiffs Have Presented In This Case Support Plaintiffs’ Position**

Some trial court decisions do not address the relevance to the “bare metal” defense of evidence that (a) a manufacturer’s product requires asbestos-containing materials within or adjacent to the product in order to function properly, or (b) the manufacturer specifies or recommends asbestos-containing materials. Those cases generally find no duty on a manufacturer to warn about asbestos-containing products unless the

manufacturer made or distributed the asbestos-containing products to which a plaintiff shows evidence of exposure.<sup>36</sup>

Trial court opinions, on the other hand, that address the relevance of such evidence generally find that such evidence is relevant. For example, in *Quirin v. Lorillard Tobacco Co.*, 17 F. Supp. 3d 760, 769 (N.D. Ill. 2014), the court discussed cases such as *Cabasug* but adopted what the *Quirin* court characterized as a “middle road” approach:

Finally, some courts have followed a middle road, finding a duty where the use of asbestos-containing materials was specified by a defendant, was essential to the proper functioning of the defendant's product, or was for some other reason so inevitable that, by supplying the product, the defendant was responsible for introducing asbestos into the environment at issue. *See, e.g., Salisbury*, 2014 WL 345214, at \*8. (Emphasis added.)

Similarly in *Gitto v. Chesterton*, 7:07-CV-04771, 2010 WL 8752912, at \*1-2 (S.D.N.Y. Dec. 7, 2010), the court stated:

Where Crane's products merely could have been used with asbestos-containing components, the New York Court of Appeals holding in *Rastelli* cautions against imposing liability. Yet where, as in *Berkowitz*, Crane meant its products to be used with asbestos-containing components or knew that its products would be used with such components, the company remains potentially liable for injuries resulting from those third-party manufactured and installed components.

---

<sup>36</sup> *See, e.g., Cabasug; Nelson v. Air & Liquid Sys. Corp.*, C14-0162JLR, 2014 WL 6982476 (W.D. Wash. Dec. 9, 2014). *See also some of the cases cited at n. 24 and 25 and the case cited at n. 23.*

In *Morgan v. Bill Vann Co., Inc.*, 969 F. Supp. 2d at 1368, the court indicated that the existence of evidence that the product at issue was designed to require asbestos at the time it was sold would have been relevant to the court's analysis of liability:

The record is devoid of evidence from which a reasonable fact finder could conclude that the Durco pumps in use at Alabama River Pulp were designed to *require* asbestos packing, to the exclusion of other kinds of packing materials.<sup>37</sup>

**D. Plaintiffs' Evidence Provides The Necessary Circumstantial Evidence**

The Washington cases most on point on the necessary proof of plaintiff's exposure to asbestos-containing products for which defendant is responsible include *Lockwood*; *Allen*; *Van Hout*; *Berry*; and *Morgan*. These cases highlight the various methods, types, and levels of proof a plaintiff may offer in an asbestos case. In *Lockwood*, the only evidence of exposure to defendant's product that was relied upon by the Supreme Court related to a single ship. There was testimony by an insulator that "Raymark's product was used on a large liner conversion at Puget Sound Bridge and Dredge in 1947 and 1948," as well as Mr. Lockwood's testimony that he "had worked on the overhaul of the George Washington and that there was asbestos on that kind of a job". *Lockwood*, 109 Wn.2d

---

<sup>37</sup> See also cases cited at n. 17 and 26 as well as some of the cases cited at n. 24 and 25.

at 244. As explained by the Supreme Court, that evidence “indicate[d] that Raymark’s product was used on a ship where Lockwood worked.” *Id.*

The evidence in *Lockwood* did not show when or where during that 1947-1948 period such cloth was used on that ship, or how much such cloth was used. Rather, the evidence simply was that Mr. Lockwood worked for some time during the 1947-48 period on the overhaul of one ship where such cloth was also used at some times during the overhaul. There was thus no evidence in the record, other than inference, that defendant’s cloth was being used at the same time that Mr. Lockwood worked on that ship.<sup>38</sup>

---

<sup>38</sup> The *Lockwood* court also relied on expert evidence that:

[A]fter asbestos dust was released, it drifted in the air and could be inhaled by bystanders who did not work directly with asbestos. Thus, even if Lockwood did not work directly with Raymark’s product on the George Washington, it is reasonable to infer that since that product was used on that ship when Lockwood worked there, Lockwood was exposed to it. . . .

109 Wn. App. at 247 (emphasis added). Finally, the *Lockwood* court relied on:

[E]xpert testimony that all exposure to asbestos has a cumulative effect in contributing to the contraction of asbestosis, [so that] it would be reasonable for a jury to conclude that Lockwood’s exposure to Raymark’s product was a proximate cause of his injury. (Emphasis added.)

*Id.* at 247-48. See also discussion at CP 465-66. The *Lockwood* test did not adopt the “frequency, regularity, proximity” test utilized by some courts, e.g., because there is no requirement under *Lockwood* that the exposure must be “on a regular basis,” or be “over some extended period of time,” or be “in proximity to where the plaintiff actually worked.” For example, in *Lockwood*, while one of the factors to be considered is “the extent of time plaintiff was exposed to the product;”, the *Lockwood* test did not require that the exposure to the product be “frequent,” but merely requires that the “frequency” be evaluated. Nor do the facts in *Lockwood* demonstrate that Mr. Lockwood’s exposure to Raymark products was “frequent.” Rather, *Lockwood* has been recognized as establishing a relatively broader standard than exists in some other states. See, e.g., *In re Hawaii Federal Asbestos Cases*, 960 F.2d 806 (9<sup>th</sup> Cir. 1992), and *Ingram v. AC&S, Inc.*,

*Berry* also depended largely on circumstantial evidence to meet these factors as did *Allen*, 138 Wn. App. 571, where this Court summarized the *Lockwood* factors for determining “whether sufficient evidence of causation exists”:

*Lockwood v. AC&S, Inc.*, 109 Wn.2d 235, 744 P.2d 605 (1987). *Lockwood* established factors that a court should consider to determine whether sufficient evidence of causation exists: (1) plaintiff's proximity to the asbestos product when the exposure occurred, (2) the expanse of the work site where asbestos fibers were released, (3) the extent of time plaintiff was exposed to the product, (4) what types of asbestos products the plaintiff was exposed to, (5) how the plaintiff handled and used those products, (6) expert testimony on the effects of inhalation of asbestos on human health in general and the plaintiff in particular, and (7) evidence of any other substances that could have contributed to the plaintiff's disease (and expert testimony as to the combined effect of exposure to all possible sources of the disease).

In *Morgan v. Aurora Pump Co.*, 159 Wn. App. at 739, this court analyzed the *Lockwood* and *Allen* factors permitting circumstantial evidence to show the time and proximity factors:

. . . The first factor concerns Morgan's proximity to the asbestos product when the exposure occurred and the expanse of the work site where asbestos fibers were released. The second factor is the extent of time the plaintiff was exposed to the product. “The proximity and time factors can be satisfied if there is evidence that the plaintiff worked at a job site where asbestos products were

---

977 F.2d 1332 (9<sup>th</sup> Cir. 1992). Indeed, the Washington Supreme Court later characterized *Lockwood* as holding that “(plaintiffs need establish only that defendant's asbestos products were among those in the plaintiff's work environment)”. *Hue v. Farmboy Spray Co., Inc.*, 127 Wn.2d 67, 92, n. 22, 896 P.2d 682, 695 (1995).

used, particularly where there is expert testimony that asbestos fibers have the ability to drift over an entire job site.” *Allen*, 138 Wn. App. at 571, ....

....  
But he [Morgan] presented evidence that, at the very least, created an issue of fact as to whether the work he or others did on Respondents’ pumps and valves resulted in asbestos exposure. (Emphasis added.)

*Morgan*, 159 Wn. App. at 741, also explained the proximate cause analysis as follows:

Respondents argue that the evidence of Morgan’s exposure to their individual products is insufficient as a matter of law to find that their products were a substantial factor in causing his disease, particularly considering his likely exposure to other asbestos-containing products at PSNS. While we do not decide the frequency of asbestos exposure a plaintiff must demonstrate to survive summary judgment, we note that this case involves allegations of more than a single instance of exposure to asbestos from each Respondent’s products. Knowles testified that Morgan worked with new and existing pumps or valves – plural – from each Respondent, which means that Morgan could have been exposed to asbestos in each Respondent’s products numerous times during the years he worked at PSNS, particularly in his capacity as a pipefitter/steamfitter. For purposes of summary judgment, this showing is sufficient. (Emphasis added.)

Plaintiffs’ position in the case at bar is also supported by *Mavroudis v. Pittsburgh Corning Corp.*, 86 Wn. App. 22, 935 P.2d 1684 (1997), and *Hue*. *Hue* is directly on point, and holds:

The trial court correctly determined that plaintiffs did not have to prove or apportion individual causal responsibility.<sup>22</sup> Rather, plaintiffs' burden was, as the trial court ruled, to prove that a portion of a particular application “was . . . part of a cloud that then was the proximate cause of damage.”

127 Wn.2d at 91 (emphasis added; footnote omitted). *Hue*, thus, indicates that in cases involving multiple suppliers of a toxic material, it is not necessary to show individual causation for a particular supplier.<sup>39</sup>

The *Lockwood*, *Van Hout*, *Berry*, *Mavroudis*, *Hue*, *Allen*, and *Morgan* cases apply to the evidence presented here. Mr. Woo offered ample evidence to comport with the requirements set forth under Washington Law. Evidence of Mr. Woo's proximity to asbestos products for which GE could be found liable was provided by occupational hygiene expert Dr. Heyer as well as Mr. Cooper, the marine engineer, and the other evidence cited above, including, but not limited to, the TIL. This evidence shows that GE turbines containing and necessarily insulated with asbestos were present in the engineering spaces on each of three ships on which Mr. Woo worked for more than a year (which covers the time factor); that GE understood the asbestos was necessary to insulate its turbines (and for gaskets and packing); that GE likely was present and had an oversight role

---

<sup>39</sup> As explained in *Mavroudis* at page 30 “the *Hue* court certainly implied that asbestos-injury plaintiffs need not prove or apportion individual causal responsibility but need only show that the defendant's asbestos products were among those in the plaintiff's work environment when the injurious exposure occurred.”

(and a direct opportunity to warn) when those turbines were installed and/or repaired; that such asbestos was put into the air while the ships were moving and the turbines were repaired; that Mr. Woo likely breathed that asbestos by being on the same ship and working in the engineering spaces; and that such asbestos was a likely cause of his mesothelioma.<sup>40</sup>

The expanse of the work site was the size of the ships when Mr. Woo was aboard the ships. *See, e.g., Lockwood*. Evidence on the drift of fibers from asbestos materials required for use with defendant's products as well as medical causation testimony, is supplemented by the declaration of Drs. Heyer and Hammar, by the various medical and industrial hygiene

---

<sup>40</sup> GE marine turbines manufactured in that time period also necessarily contained asbestos-containing gaskets and packing. CP 142, 144, 346. GE also sold "extra sets of specially precut asbestos-containing gaskets along with their new turbines" (CP 144-145, 421-422), and as testified to by Mr. Cooper above, generally supplied repair parts for its turbines. While GE did not itself manufacture the gaskets and packing it purchased and incorporated into its turbines, *Macias* explains that the "general rule" set forth in *Braaten* and *Simonetta*:

... does not apply to a manufacturer who incorporates a defective component into its finished product," noting that this is sometimes called assembler liability. *Id.* at n. 7. We explained [in *Braaten*] that the justification for assembler's liability "is that the assembler derives an economic benefit from the sale of the product incorporating the defective component and has the ability to test and inspect the component when it is within the assembler's possession, and by including the component in its finished product represents to the consumer and ultimate user that the component is safe."

*Macias*, 175 Wn.2d at 411. (Emphasis added.) Since GE needed asbestos-containing gaskets and packing to make its turbines work, GE derived an economic benefit from, and was in a position to test the gaskets and packing. *Lockwood* also required GE to provide after-market warnings about the dangers of its products. *See* 109 Wn.2d at 260. GE failed to do so. GE's failure to provide warnings including after-market warnings also violated *Lockwood*.

articles plaintiffs submitted, by GE's own admission in the TIL and elsewhere, and by the testimony from Mr. Cooper and Mr. Nettekoven. All of this provides more than sufficient circumstantial evidence to call for reversing the granting of GE's motion for summary judgment.

**E. GE Did Not Meet Its Initial Burden Of Proof Under CR 56**

GE's failures to comport with the requirements that CR 56 places on litigants prior to granting a motion for summary judgment are not limited to substantive failings. GE also failed to meet the procedural requirement of the rule. GE's motion cited *Guile v. Ballard Commtty. Hosp.*, 70 Wn. App. 18, 21, 851 P.2d 689 (1993) as laying out the methods for meeting GE's burden on summary judgment:

A party may seek summary judgment in two ways. *Guile v. Ballard Commtty. Hosp.*, 70 Wn. App. 18, 21 851 P.2d 689, *rev. denied*, 122 Wn.2d 1010 (1993). First, a party may set out material facts and demonstrate that there is no genuine issue as to those facts. *Id.* Alternatively, a party moving for summary judgment can meet its burden by pointing out to the trial court that the nonmoving party lacks sufficient evidence to support its case. *Id.* (*citing Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

CP 10, n. 14 (emphasis added). *Guile* also holds at page 22 that when a defendant chooses the second alternative:

[T]he moving party must identify those portions of the record, together with the affidavits, if any, which he or she believes demonstrate the absence of a genuine issue of material fact. *White v. Kent Medical Center, Inc.*, 61 Wn. App. 163, 170, 810 P.2d 4, 9 (1991) (*citing Celotex*, 477

U.S. at 323, 106 S.Ct. at 2553; *Baldwin v. Sisters of Providence in Washington, Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989)). (Emphasis added.)

GE's motion did not meet its initial burden under either method. The only facts set out by GE at CP 7-9 are its examination of David Skinner, its own 30(b)(6) witness contained at CP 19-28. Contrary to GE's argument, Mr. Skinner's testimony does not even purport to confirm that there is no evidence in the record that Mr. Woo was exposed to any asbestos-containing material supplied or required by GE. As admitted by GE at CP 482, n. 6, there had been a previous summary judgment motion, to which plaintiffs had responded with extensive material. GE was thus aware when it filed this motion, that the plaintiffs had previously submitted evidence such as Mr. Woo's employment records, and much of the evidence discussed in the above Statement of Facts. GE, however, never made a meaningful effort to identify portions of the record, which it believed "demonstrate the absence of a genuine issue of material fact" or show that "the non-moving party lacks sufficient evidence to support its case." (Emphasis added.)<sup>41</sup>

---

<sup>41</sup> Defendant's only substantive response in front of the trial court on this issue was:

GE was not required to address, yet again, the same evidence that Plaintiffs submitted in response to GE's (first) Motion for Summary Judgment.<sup>9</sup> The Court previously considered that evidence and found that the evidence did not establish an issue of fact as to whether GE was responsible for any asbestos. (Footnote omitted.)

While GE asserted there was no “competent” witness testimony, it provided no information in its opening motion as to which witness testimony was supposedly incompetent or why it is supposedly incompetent. GE’s failure to comply violates case law on summary judgments. Legally, if GE’s approach were interpreted to comply with requirements of Washington law under *Guile*, that would render the initial burden discussed in *Guile* meaningless. For example, it would mean that simply asserting the absence of a genuine issue of material fact with no further identification has satisfied the requirement that “the moving party must identify those portions of the record in which he or she believes demonstrate the absence of a genuine issue of material fact.” *White v. Kent Medical Center, Inc.*, 61 Wn. App. 163, 170, 810 P.2d 4, 9 (1991). That is inconsistent with the plain meaning of the above quoted portion of *White*. *Guile* and the cases it cites require more. GE was required to have met its burden before the burden shifted to plaintiffs. GE failed to meet its burden. Accordingly, even without considering the evidence plaintiffs offered in opposition to GE’s motion for summary judgment, this Court

---

CP 482-83. Defendant, however, misstated the Court’s Order, which at CP 575-74 actually denied part of defendant’s motion and continued the rest:

Defendant’s motion for summary judgment is denied insofar as it concerns whether Plaintiff was assigned to vessels that had defendant’s turbines on them. There is a reasonable inference that Plaintiff worked on ships where defendant’s turbines were and the ships had asbestos. Defendant’s motion for summary judgment as to whether Defendants are responsible for this asbestos is continued. (The Order begins on CP 575 and continues to CP 574.)

may reverse the trial court's order on summary judgment due to GE's procedural defect.

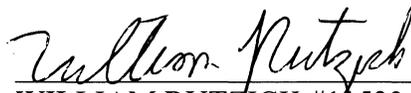
## V. CONCLUSION

For the foregoing reasons, the trial court's order should be reversed and the case should be remanded back for trial.

DATED this 28<sup>th</sup> day of March, 2016.

Respectfully submitted,

SCHROETER, GOLDMARK & BENDER



WILLIAM RUTZICK #1533

KRISTIN HOUSER, WSBA #7286

THOMAS J. BREEN, WSBA #34574

Counsel for Appellants

SCHROETER, GOLDMARK & BENDER

500 Central Building

810 Third Avenue

Seattle, Washington 98104

(206) 622-8000

## APPENDIX

# A

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

No. 15-1278

---

IN RE: ASBESTOS PRODUCTS LIABILITY  
LITIGATION (NO. VI)

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
(D.C. Nos. 5-13-cv-00474 & 2-01-md-00875)  
District Judge: Hon. Eduardo C. Robreno

---

Argued: January 29, 2016

---

Before: VANASKIE, SHWARTZ, and RESTREPO, Circuit Judges.

---

ORDER

---

John B. and Roberta G. DeVries brought strict products liability and negligence claims against various manufacturers, including Air & Liquid Systems Corp., IMO Industries, Inc., Warren Pumps, CBS Corporation, Foster Wheeler LLC, and General Electric Company (together, “Defendants”), based upon the theory that Defendants failed to warn Mr. DeVries of the dangers of handling the asbestos insulation and parts used in conjunction with their products, which contributed to his development of lung cancer.

Because Mr. DeVries's exposure to asbestos occurred while at sea on board a Navy vessel, the claims are governed by maritime law.

The District Court granted Defendants' motions for summary judgment. It applied the so-called "bare metal defense," under which a manufacturer cannot be held liable for injuries attributable to a product that it did not manufacture or distribute, App. 9, 17, 25, 33, 41, 49, and concluded that the evidence did not show that Mr. DeVries was exposed to asbestos products manufactured or sold by Defendants and hence could not prove that they caused his injury. **App. 12, 20, 29, 36-37, 44-45, 52-53.**

In reaching its decisions, the District Court relied upon Conner v. Alfa Laval, Inc., 842 F. Supp. 2d 791 (E.D. Pa. 2012), in which the District Court surveyed various cases as well as the Restatement (Second) of Torts § 402A (1965), which sets forth a theory of strict liability. *See, e.g., Schwartz v. Abex Corp.*, 106 F. Supp. 3d 626, 634-35 (E.D. Pa. 2015); Simonetta v. Viad Corp., 197 P.3d 127, 134 (Wash. 2008). While Conner appears to hold that the bare metal defense applies to both strict liability and negligence claims, 842 F. Supp. 2d at 802,<sup>1</sup> the opinions in this case contain no specific reference to

---

<sup>1</sup>In Conner, the District Court held that

under maritime law, a manufacturer is not liable for harm caused by, and owes no duty to warn of the hazards inherent in asbestos products that the manufacturer did not manufacture or distribute. This principle is consistent with the development of products liability law based on strict liability and negligence . . . . A plaintiff's burden to prove the defendant's product caused harm remains the same in cases involving third-party asbestos manufacturers as it would in other products liability cases based on strict liability and negligence.

842 F. Supp. 2d at 802.

negligence. Therefore, we are unable to determine whether the District Court considered the negligence claim or if it meant to apply the bare metal defense to it.

We also note that several maritime and state law cases examining the bare metal defense have mentioned circumstances under which a manufacturer could potentially be liable for asbestos parts that it did not supply. The District Judge is familiar with these cases and has ably examined them. See Schwartz, 106 F. Supp. 3d at 644-49. Those circumstances include when: (1) the defendant's product requires asbestos components to function, see Quirin v. Lorillard Tobacco Co., 17 F. Supp. 3d 760, 769-70 (N.D. Ill. 2014); Surre v. Foster Wheeler LLC, 831 F. Supp. 2d 797, 801-02 (S.D.N.Y. 2011); O'Neil v. Crane Co., 266 P.3d 987, 996 (Cal. 2012); May v. Air & Liquid Sys. Corp., — A.3d —, 2015 WL 9263907, at \*9 (Md. Dec. 18, 2015); (2) the defendant affirmatively specifies that asbestos components and replacement parts be used, see Sparkman v. Goulds Pumps, Inc., Civ. No. 2:12-cv-02957, 2015 WL 727937, at \*2 (D.S.C. Feb. 19, 2015); Quirin, 17 F. Supp. 3d at 769-70; O'Neil, 266 P.3d at 996; In re New York City Asbestos Litig., 990 N.Y.S.2d 174, 190 (N.Y. App. Div. 2014); Braaten v. Saberhagen Holdings, 198 P.3d 493, 495-96 (Wash. 2008); (3) the defendant "knew" that the customer would use asbestos parts with its product, see Schwartz, 106 F. Supp. 3d at 654-55; Surre, 831 F. Supp. 2d at 801; In re New York City Asbestos, 121 A.D. 3d at 259; or (4) the defendant intended that the product be used with asbestos, Macias v. Saberhagen Holdings, Inc., 282 P.3d 1069, 1077 n.4 (Wash. 2012).<sup>2</sup>

---

<sup>2</sup>We offer no opinion at this time whether such circumstances provide a basis for liability in this or any case.

Because of the District Judge's wealth of experience with these types of cases, and because we are unable to determine whether the District Court: (1) considered the negligence theory, (2) concluded that the bare metal defense applies to it and why, or (3) considered whether the circumstances listed in the cases cited herein should apply to a negligence claim brought under maritime law (and if not, why not, and if so, why and whether the record here would support such a claim), and upon consideration of the arguments by counsel presented in their briefs and at oral argument, it is hereby ordered that the case is summarily remanded to the District Court to consider these items.

In the event that a subsequent appeal is taken after the proceedings on remand have concluded, any future appeal will be considered by this panel after completion of briefing.

By the Court,

s/ Patty Shwartz  
Circuit Judge

DATED: February 5, 2016  
ARR/cc: All Counsel of Record

**COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I**

YEANNA WOO, Personal  
Representative for the Estate of  
YUEN WING WOO and his Surviving  
Spouse, JEAN OI WOO

Appellants,

ASBESTOS CORP. LTD.; et al.,

Defendants,

GENERAL ELECTRIC COMPANY,

Respondent.

NO. 74458-5-I

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington as follows:

1. I am an employee of Schroeter Goldmark & Bender, over the age of 18, not a party to this action and competent to make the following statements:
2. On **March 28, 2016**, copies of the Brief of Appellants and this Declaration of Service were filed with the Court of Appeals for the State of Washington, Division I, and served upon the attorneys of record for respondent by having said copies sent via legal

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2016 MAR 28 PM 4:33

messenger, US Mail, facsimile, electronic mail and/or Federal Express to the addresses listed below:

<p>Counsel for: <b>General Electric;</b> Christopher Marks, Rebecca A. Zotti Sedgwick, LLP 520 Pike Tower, 520 Pike Street, Suite 2200 Seattle, WA 98101 855.855.8573 <i>phone</i> <a href="http://www.sedgwicklaw.com">www.sedgwicklaw.com</a>; <a href="mailto:Chris.Marks@sedgwicklaw.com">Chris.Marks@sedgwicklaw.com</a>; <a href="mailto:Maria.Tiegen@sedgwicklaw.com">Maria.Tiegen@sedgwicklaw.com</a></p>	<p><input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Messenger <input type="checkbox"/> Via Email</p>
---	--

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 28<sup>th</sup> day of March, 20126.

  
\_\_\_\_\_  
RHONDA L. JONES  
810 Third Avenue, #500  
Seattle, WA 98104  
(206) 622-8000  
[SGBasbestos@sgb-law.com](mailto:SGBasbestos@sgb-law.com)