# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
# DIVISION ONE

| | | |
|---|---|---|
| JIM HAUTALA,<br><br>Appellant,<br><br>v.<br><br>CUTLER HAMMER, INC. and EATON CORPORATION,<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. 56701-2-I<br><br><br><br><br>UNPUBLISHED OPINION<br><br><br>FILED: September 11, 2006 |

PER CURIAM. Jim Hautala is a former electrician who suffers from asbestos-related lung disease. He filed claims against multiple defendants, including Cutler-Hammer and its parent corporation, Eaton (collectively, Cutler). Hautala claims his lung disease was caused, in part, by exposure to asbestos-containing electrical products manufactured by Cutler and used at Weyerhauser where Hautala was employed. But Hautala has presented no evidence to show that Cutler's asbestos-containing products were present at his worksite. We therefore affirm summary judgment of dismissal.

## FACTS

Hautala worked at Weyerhauser from 1959 until 1999. He alleges he was

exposed to asbestos from Cutler products while repairing motors and generators and working with arc chutes, starters, breakers, switch gear, and limit lamps.

From the 1940s through the late 1970s, Cutler manufactured and sold electrical equipment. Cutler introduced its Citation line of motor starters in approximately 1968. The starters contained asbestos. Between the late 1970s and early 1980s, Cutler removed the asbestos from the Citation line. Hautala worked with Cutler products at Weyerhaeuser,[1] but he was unable to recall the specific products or time periods. And he could present no evidence showing that any of the Cutler products he worked with contained asbestos. The trial court granted Cutler's motion for summary judgment.

## DISCUSSION

We apply the usual standard of review on summary judgment.[2]

An asbestos plaintiff can prevail at trial by presenting circumstantial evidence of asbestos exposure, and need not offer a detailed recollection of facts surrounding the plaintiff's exposure to the asbestos-containing product. See Van Hout v. Celotex

[1] Hautala identified Cutler starters among the five or six brands that he recalled working on. He also recalled working on Cutler breakers and arc chutes. He further testified that he worked on other equipment that contained Cutler starters, including air filters used in a room where asbestos was removed from bags. He also recalled working on Cutler push buttons. See Clerk's Papers at 164–69.

[2] We review a grant of summary judgment de novo, engaging in the same inquiry as the trial court and viewing the facts and the reasonable inferences from those facts in the light most favorable to the nonmoving party. Overton v. Consol. Ins. Co., 145 Wn.2d 417, 429, 38 P.3d 322 (2002). Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c).

Corp., 121 Wn.2d 697, 706–07, 853 P.2d 908 (1993); Lockwood v. A C & S, Inc., 109 Wn.2d 235, 246, 744 P.2d 605 (1987); Lunsford v. Saberhagen Holdings, Inc., 125 Wn. App. 784, 787–92, 106 P.3d 808 (2005); Berry v. Crown Cork & Seal Co., 103 Wn. App. 312, 14 P.3d 789 (2000).

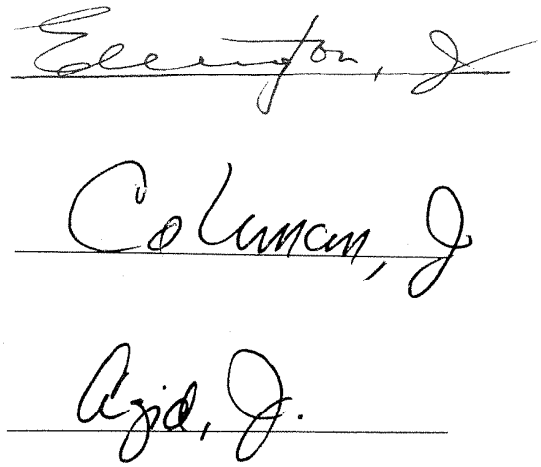
But Hautala has no evidence that he worked with Cutler product lines that contained asbestos. He was unable to discover whether Weyerhaeuser purchased asbestos-containing products from Cutler, or whether Cutler shipped any such products to Weyerhaeuser. Hautala simply has no evidence that the products he worked on were from Cutler's asbestos-containing product lines, or that he handled Cutler products during the period when the product lines contained asbestos.

Hautala relies upon Berry v. Crown Cork, but in that case there was evidence that the defendant supplied asbestos-containing insulation products which were used at the plaintiff's worksite during the time the plaintiff was there, as well as direct evidence that coworkers saw products distributed by the defendant on the worksite, on a near-daily basis. Berry, 103 Wn. App at 315–16, 324. The Berry court held this evidence sufficient to raise an issue of fact as to whether Berry was exposed to asbestos-containing products distributed by the defendant during the relevant time frames. Id. at 325.

By contrast, Hautala fails to provide a basis for an inference that he was exposed to asbestos in products manufactured by Cutler, because he does not show that such products were ever present at his worksite. A fact finder could only arrive at such a conclusion through speculation.

Circumstantial evidence may create inferences sufficient to defeat summary judgment, but this is not one of those occasions, because here, the circumstantial evidence does not point to Cutler. We affirm summary judgment of dismissal.[3]

FOR THE COURT:



[3] Given our disposition, we do not address Cutler's arguments about admissibility of certain causation evidence.