

62996-4

62996-4

FILED
CLERK OF SUPERIOR COURT
STATE OF WASHINGTON
2009 SEP -8 PM 1:45 E

No. 62996-4-I

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

MICHAEL FARROW and LIDIA FARROW,
husband and wife,

Plaintiffs/Appellants,

v.

ALFA LAVAL, INC., et al.,

Defendants/Respondents.

BRIEF OF RESPONDENT FMC CORPORATION

ATTORNEYS FOR Respondent FMC Corporation:

Katherine M. Steele, WSBA #11927
J. William Ashbaugh, WSBA #21692
James R. Lynch, WSBA #39274
STAFFORD FREY COOPER
601 Union Street, Suite 3100
Seattle, WA 98101-1374
Tel. (206) 623-9900
Fax (206) 624-6885

ORIGINAL

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	3
II. STATEMENT OF ISSUES	3
III. STATEMENT OF THE CASE	3
A. JOINDER IN BRIEFS ADDRESSING “FEDERAL ENCLAVE” DISCLAIMER FILED BY CRANE CO., GARLOCK SEALING TECHNOLOGIES, INC., FAIRBANKS MORSE PUMP CORPORATION, COLTEC INDUSTRIES, MCWANE, INC., LESLIE CONTROLS, INC. AND ITT CORPORATION.....	3
B. FACTS SPECIFIC TO FMC.	4
IV. ARGUMENT	5
A. SUMMARY JUDGMENT STANDARD.....	5
B. JOINDER IN CRANE CO.'S, GARLOCK SEALING TECHNOLOGIES, INC.'S, FAIRBANKS MORSE PUMP CORPORATION'S, COLTEC INDUSTRIES', MCWANE, INC.'S, LESLIE CONTROLS, INC.'S AND ITT CORPORATION'S “FEDERAL ENCLAVE” AUTHORITIES.	5

TABLE OF AUTHORITIES

Page

Cases

Braaten v. Saberhagen Holdings, et al, 165 Wn.2d at 383, 198 P.3d
493 5
Osborn v. Mason County, 157 Wn.2d 18, 134 P.3d 197 (2006) 5

Rules

CR 56(c) 5

I. INTRODUCTION

Respondent FMC Corporation (“FMC”) respectfully joins in the arguments, authorities, and facts stated in the Brief of Respondents Crane Co., Garlock Sealing Technologies, Inc., Fairbanks Morse Pump Corporation, Coltec Industries, McWane, Inc. and in the Brief of Respondents Leslie Controls, Inc. and ITT Corporation.¹ Both briefs ask this Court to affirm the trial court’s dismissal of all claims based on Michael and Lidia Farrow’s disclaimer of all causes of action arising from asbestos exposure occurring within a federal enclave.

II. STATEMENT OF ISSUES

1. Whether the Court should affirm dismissal of all claims against FMC because the Farrows disclaimed all causes of action based on exposure to asbestos occurring in a federal enclave, and all exposures alleged against FMC occurred in the federal enclave of Puget Sound Naval Shipyard.

III. STATEMENT OF THE CASE

A. Joinder in Briefs Addressing “Federal Enclave” Disclaimer filed by Crane Co., Garlock Sealing Technologies, Inc., Fairbanks Morse Pump Corporation, Coltec Industries, McWane, Inc., Leslie Controls, Inc. and ITT Corporation.

In *Farrow v. Alfa Laval, Inc.*, subject to this appeal, defendant IMO Industries, Inc. (“IMO”) moved for summary judgment based on the Farrows’ “federal enclave”

¹ Appellants initially noticed two appeals – *Farrow v. Leslie Controls*, No. 62996-4-I (involving just Leslie Controls, Inc. and ITT Corporation) and *Farrow v. Alfa-Laval*, No. 63554-9-I (involving the rest of the defendants/respondents) – which were subsequently consolidated by court order. Though the two appeals have been consolidated under No. 62996-4-I, substantive briefs have been filed by two groups of Respondents who were each involved in the separate cases filed by the Farrows. Respondent FMC therefore joins in both of these substantive briefs.

disclaimer. L-CP 51.² Most Defendants, including FMC, joined in IMO's Motion for Summary Judgment. A-CP 389. IMO and the joining defendants argued that the Farrows' disclaimer entitled them to a dismissal of all claims associated with Farrows' asbestos exposure at PSNS, including any alleged exposures that occurred on Naval vessels docked at PSNS. L- CP 51.

In this appeal, FMC joins and incorporates by this reference as though set forth fully herein all facts and evidence presented in the Brief of Respondents Crane Co., Garlock Sealing Technologies, Inc., Fairbanks Morse Pump Corporation, Coltec Industries , McWane, Inc. and in the Brief of Respondents Leslie Controls, Inc. and ITT Corporation, both of which ask this Court to affirm the trial court's dismissal of all claims based on Michael and Lidia Farrow's disclaimer of all causes of action arising from asbestos exposure occurring within a federal enclave.

B. Facts Specific to FMC.

The Farrows can present no evidence supporting any claim against FMC arising from asbestos exposure outside Puget Sound Naval Shipyard. When asked whether he thought he was exposed to asbestos fibers that he inhaled while he was in the Navy, for example, Mr. Farrow responded: "I have no idea if I was or not." A-CP 394. Plaintiff has no evidence that Michael Farrow encountered and was exposed to asbestos associated with a Peerless pump, the sole brand of product for which Plaintiff has sued

² As noted above, Appellants initially noticed two appeals – *Farrow v. Leslie Controls*, No. 62996-4-I (involving just Leslie and ITT) and *Farrow v. Alfa-Laval*, No. 63554-9-I (involving the rest of the defendants/respondents) – which were subsequently consolidated by court order into No. 62996-4-I. In this regard, Appellants prepared two separate sets for Clerk's Papers, and cited to both in their opening brief. FMC will use the same designations as Appellants to avoid duplication and additional confusion. Thus, Citations to "L-CP" will be to the Clerk's Papers for No. 62996-4-L, and citations to "A-CP" will be to the Clerk's Papers for No. 63554-9-I.

FMC, anywhere other than Puget Sound Naval Shipyard. As such, Plaintiff's disclaimer of claims arising in a federal enclave applies to all of Plaintiff's claims against FMC.

IV. ARGUMENT

A. Summary Judgment Standard.

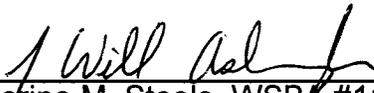
Summary judgment is reviewed *de novo*. *Braaten v. Saberhagen Holdings, et al*, 165 Wn.2d at 383, 198 P.3d 493 (citing *Osborn v. Mason County*, 157 Wn.2d 18, 22, 134 P.3d 197 (2006)). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). Evidence is construed in the light most favorable to the nonmoving party. *Braaten v. Saberhagen Holdings, et al*, 165 Wn.2d at 383, 198 P.3d 493.

B. Joinder in Crane Co.'s, Garlock Sealing Technologies, Inc.'s, Fairbanks Morse Pump Corporation's, Coltec Industries', McWane, Inc.'s, Leslie Controls, Inc.'s and ITT Corporation's "Federal Enclave" Authorities.

FMC joins and incorporates by this reference as though set forth fully herein all facts, points, and authorities set forth in the Brief of Respondents Crane Co., Garlock Sealing Technologies, Inc., Fairbanks Morse Pump Corporation, Coltec Industries , McWane, Inc. and in the Brief of Respondents Leslie Controls, Inc. and ITT Corporation, both of which ask this Court to affirm the trial court's dismissal of all claims based on Michael and Lidia Farrow's disclaimer of all causes of action arising from asbestos exposure occurring within a federal enclave. There is no evidence that Mr. Farrow ever encountered any FMC product outside PSNS, and the Farrows' disclaimer therefore encompasses all claims against FMC. The facts, points, and authorities set forth in the above-referenced briefs apply with equal force to FMC and the trial court's judgment is properly affirmed on the same grounds.

RESPECTFULLY SUBMITTED this 8th day of September, 2009.

STAFFORD FREY COOPER

By: 
Katherine M. Steele, WSBA #11927
J. William Ashbaugh, WSBA #21692
James R. Lynch, WSBA #39274
Attorneys for FMC Corporation