STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: March 7, 2013)

DOUGLAS SWEREDOSKI and ROSE K. SWEREDOSKI	:	
	:	**C.A. No. PC 2011-1544**
v.	:	
ALFA LAVAL, INC., et al.	:	

DECISION

GIBNEY, P.J. In this asbestos action, Defendant Crane Co. ("Defendant"), Individually and as Successor to Chempump, Jenkins Bros., Weinman Pump Manufacturing Co., Pacific Steel Boiler Corp., Thatcher Boiler, Chapman Valve Co., and Cochrane, brings a Motion for Summary Judgment (the "Motion") against Plaintiffs Douglas Sweredoski ("Sweredoski") and Rose K. Sweredoski (collectively, "Plaintiffs"). Defendant argues that summary judgment is appropriate because Plaintiffs have failed to produce any evidence showing that Defendant's products were the proximate cause of Sweredoski's mesothelioma. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

Sweredoski served in the United States Navy (the "Navy") from 1964 to 1968. From 1965 to 1967, Sweredoski was assigned to the U.S.S. Independence (the "Independence"), a Forrestral-class Attack Aircraft Carrier commissioned on January 10, 1959. He worked as a fireman and boiler operator in the Independence's boiler rooms for approximately one year during his assignment on the ship. Among other duties,

Sweredoski replaced the packing and gaskets in steam valves allegedly designed and manufactured by Defendant. Both the packing and gaskets contained asbestos.

Plaintiffs allege that Defendant knew or should have known of the dangers of asbestos exposure at the time Sweredoski served in the Navy. Plaintiffs allege that despite such knowledge, Defendant designed, manufactured, and sold its valves with asbestos-containing packing and gaskets and expressly recommended the use of similar replacement products for servicing purposes. As a result, Plaintiffs claim that Defendant owed Sweredoski a duty to warn him of the dangers of working with and servicing its valves, and breached that duty when it failed to inform him of these dangers. Plaintiffs allege that such misconduct also subjects Defendant to strict products liability pursuant to the Restatement (Second) of Torts § 402A (1965).

Plaintiffs claim that Defendant impliedly warranted that the valves were safe and of merchantable quality by selling the valves to the Navy for use in its ships. Plaintiffs claim that Defendant made these warranties knowing that the valves were, in fact, defective and harmful to humans. Accordingly, Plaintiffs allege that Defendant breached these warranties because the valves were "inherently dangerous" and unsafe for any use. Plaintiffs also allege that Defendant engaged in a conspiracy to injure Sweredoski when it failed to disclose its knowledge of the dangers of working with asbestos or intentionally misrepresented to Sweredoski that exposure to asbestos was not harmful.

Plaintiffs allege that as a result of working with and servicing Defendant's valves, Sweredoski was exposed to and breathed in asbestos fibers and contracted malignant mesothelioma. Plaintiffs claim that this disease has caused Sweredoski physical and

mental pain and suffering, and he has lost wages and earning capacity and incurred present and future medical expenses.

Plaintiffs filed this case on March 21, 2011, and Defendant responded with the instant Motion. Defendant argues that summary judgment is appropriate because Plaintiffs have failed to present any evidence showing that when servicing the Independence's valves, Sweredoski was exposed to original, factory-installed asbestos-containing packing and gaskets. Defendant contends that Plaintiffs have also failed to show that it manufactured, designed, supplied, installed, or recommended the use of the replacement packing and gaskets that Sweredoski actually was exposed to. Defendant asserts that absent such evidence, Plaintiffs cannot prevail on any of their claims because Defendant cannot be liable for defective replacement packing and gaskets manufactured, designed, and sold by others.

II

Standard of Review

Pursuant to Super R. Civ. P. 56(c),[1] our Supreme Court has held that "summary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the non-moving party, the court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." Mutual Development Corp. v. Ward Fisher & Co., LLP, 47 A.3d 319, 323 (R.I. 2012); Olamuyiwa v. Zebra Atlantek, Inc., 45 A.3d 527, 532 (R.I. 2012). "Conversely,

[1] Rule 56(c) provides in pertinent part:

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

summary judgment is not appropriate 'if there are any genuine issues of material fact or if the moving party cannot prevail as a matter of law.'" In re Estate of Dermanouelian, 51 A.3d 327, 331 (R.I. 2012) (quoting Narragansett Electric Co. v. Saccoccio, 43 A.3d 40, 44 (R.I. 2012)).

"The burden rests with the nonmoving party 'to prove the existence of a disputed issue of material fact by competent evidence; it cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." Mutual Development Corp., 47 A.3d at 323; Olamuyiwa, 45 A.3d at 532. Thus, "by affidavits or otherwise, nonmoving parties have an affirmative duty to set forth specific facts showing that there is a genuine issue of material fact for trial." Jessup & Conroy, P.C. v. Seguin, 46 A.3d 835, 839 (R.I. 2012). When considering a motion for summary judgment, a trial justice must "remain ever mindful . . . 'that summary judgment is an extreme remedy that warrants cautious application.'" Mutual Development Corp., 47 A.3d at 323; Olamuyiwa, 45 A.3d at 533.

III

Discussion

A

Plaintiffs' Products Liability Claims

Defendant argues that summary judgment should be granted with regard to Plaintiffs' claims for strict products liability, negligent failure to warn, and breach of the implied warranties of merchantability and fitness for a particular purpose because Plaintiffs have not presented evidence showing that the valves installed in the Independence were manufactured by Defendant. Assuming that Defendant's valves were fitted to the Independence, Defendant contends that Plaintiffs have also failed to show

that when Sweredoski serviced the valves, he was exposed to original, factory-installed packing and gaskets. Defendant maintains that due to the Independence's age and the need to regularly replace the ship's valves' packing and gaskets, Sweredoski could only have been exposed to replacement packing and gaskets. Defendant asserts that Plaintiffs have not presented any evidence showing that Defendant manufactured, designed, sold, or otherwise recommended the use of such replacement products in the Independence's valves. Defendant contends, therefore, that Plaintiffs' products liability claims fail as a matter of law because it cannot be liable for the harm caused by defective replacement component products manufactured, designed, and sold by third parties.

Plaintiffs respond that they have produced evidence showing that Defendant, knowing of the dangers of asbestos exposure, designed, manufactured, and sold its high-pressure steam valves with asbestos-containing packing and gaskets. Plaintiffs argue that they have shown that Defendant knew that these valves would require the regular replacement of asbestos-containing packing and gaskets and, in fact, expressly recommended the use of, and sold, such replacement products to the Navy. Plaintiffs contend that they have also presented evidence showing that Defendant's valves were installed on the Independence. Plaintiffs argue that under Rhode Island law, Defendant, as the manufacturer, designer, and seller of these asbestos-containing valves, was under a duty to warn Sweredoski of the reasonably foreseeable dangers posed by servicing the valves, even if that danger was caused by replacement asbestos products manufactured by others.

1

Strict Products Liability

The Rhode Island Supreme Court has adopted the doctrine of strict products liability as set forth in the Restatement (Second) Torts § 402A (1965).[2] A defendant is liable under this doctrine when the defendant "[sold the] product in a 'defective condition unreasonably dangerous,' . . . 'the [defendant] is engaged in the business of selling such a product,' and . . . the product 'is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.'" Olshansky v. Rehrig Int'l, 872 A.2d 282, 287 (R.I. 2005) (quoting Ritter, 109 R.I. at 188, 283 A.2d at 261); see Gray v. Derderian, 472 F. Supp. 2d 172, 181-82 (D.R.I. 2007).

For a plaintiff to prevail on a strict products liability claim, he or she must prove:

> "(1) that there was a defect in the design or construction of the product in question; (2) that the defect existed at the time the product left the hands of the defendant; (3) that the defect rendered the product unreasonably dangerous . . . ; (4) that the product was being used in a way in which it

[2] Our Supreme Court formally adopted § 402A in Ritter v. Narragansett Electric Co., 109 R.I. 176, 192, 283 A.2d 255, 263 (1971). Section 402A provides in pertinent part:

> "(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
> (a) the seller is engaged in the business of selling such a product, and
> (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
>
> (2) The rule stated in Subsection (1) applies although
> (a) the seller has exercised all possible care in the preparation and sale of his product, and
> (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller."

> was intended at the time of the accident; and (5) that the defect was the proximate cause of the accident and plaintiff's injuries."

Guilbeault v. R.J. Reynolds Tobacco Co., 84 F. Supp. 2d 263, 267-68 (D.R.I. 2000) (quoting Crawford v. Cooper/T. Smith Stevedoring Co., Inc., 14 F. Supp. 2d 202, 211 (D.R.I. 1998)). "A product is 'unreasonably dangerous' if there is 'a strong likelihood of injury to a user who was unaware of the danger in utilizing the product in a normal manner.'" Guilbeault, 84 F. Supp. 2d at 268 (quoting Crawford, 14 F. Supp. 2d at 211).

Plaintiffs have produced deposition testimony from their naval expert, Captain Arnold Moore ("Moore"), showing that at the time of the Independence's commissioning in 1958, it was common practice for naval valve designers and manufacturers to include asbestos-containing products in their high-pressure steam valves. See Moore Dep. at 125 ¶¶ 11-24; 126 ¶¶ 1-15. Moore testified with regard to Defendant that it designed and manufactured its high-pressure steam valves with asbestos-containing packing and gaskets. See Moore Aff. at 1 ¶ 4; 2 ¶¶ 4-5, 7. Plaintiffs have also produced a Navy-approved technical manual and technical drawing, both created by Defendant around the time of the Independence's commissioning, containing entries showing that Defendant's valve designs expressly included asbestos-containing packing and gaskets.[3] See Crane Co. Technical Manual, January 1958 at 10-18; Crane Co. Technical Drawing # 29765 at 1-5. The deposition testimony of Anthony Pantaleoni ("Pantaleoni"), Defendant's Vice President of Health and Safety, shows that Defendant manufactured and sold its valves as

[3] Moore testified that although the proffered technical manual applied to valves used in the boiler rooms of Kitty-Hawk-class aircraft carriers, such boiler rooms were mechanically identical to those in Forrestral-class aircraft carriers like the Independence. (Moore Dep. at 231 ¶¶ 19-24; 232 ¶¶ 1-8.)

pre-assembled units with asbestos-containing packing and gaskets already installed. (Pantaleoni Dep., July 26, 2012 at 72 ¶¶ 6-17; 111 ¶¶ 12-25.)

Plaintiffs have also produced evidence showing that Defendant's valves were installed on the Independence at the time Sweredoski served aboard her. In particular, Moore testified that the valve design depicted in "Technical Drawing # 29765" was utilized on the Independence. See Moore Aff. at 2 ¶ 4. Sweredoski testified that he remembers seeing "many" valves labeled or stamped with Defendant's name during the regular course of his duties on the Independence. See Sweredoski Dep., August 30, 2011 at 41 ¶¶ 10-15; Sweredoski Dep., August 31, 2011 at 137 ¶¶ 4-16.

Sweredoski testified that he regularly serviced Defendant's valves on the Independence. See Sweredoski Dep., August 31, 2011 at 128, 23-24; 129 ¶¶ 1-24; 130 ¶¶ 1-24; 131 ¶¶ 1-9; 137 ¶¶ 17-20. Such work included replacement of the asbestos-containing packing and gaskets incorporated in the valves. See id. at 137 ¶¶ 17-24; 138 ¶¶ 22-24; 139 ¶¶ 8-15. When replacing these products, Sweredoski was often required to scrape off the old packing and gasket material with hand tools before adhering new material. See id. at 138 ¶¶ 2-3, 14-15; 139 ¶¶ 16-24; 140 ¶¶ 1-2, 13-17. Sweredoski testified that this servicing work was time-consuming, always "dirty," and caused, among other things, release of "debris" into the air and onto the floor. See id. at 138 ¶¶ 11-13; 140 ¶¶ 2-11.

Such evidence raises material fact issues concerning whether the Independence's valves were defective at the time they left Defendant's hands by reason of their design and incorporation of asbestos-containing products, and whether such defect made the valves unreasonably dangerous when being serviced by Sweredoski in their normal and

intended manner. See Crawford, 14 F. Supp. 2d at 211; Buonanno v. Colmar Belting Co., Inc., 733 A.2d 712, 717-18 (R.I. 1999). This evidence also creates issues of fact as to whether Sweredoski's servicing of Defendant's valves was the proximate cause of Sweredoski's mesothelioma. See Crawford, 14 F. Supp. 2d at 210; cf. Clift v. Vose Hardware, Inc., 848 A.2d 1130, 1132-33 (R.I. 2004) (affirming grant of summary judgment because the plaintiff could not produce evidence showing that the defendant's product proximately caused his injuries). Thus, Plaintiffs' strict products liability claim survives summary judgment. See Pichardo v. Stevens, 55 A.3d 762, 767-68 (R.I. 2012); Crawford, 14 F. Supp. 2d at 211; Ruzzo v. LaRose Enterprises, 748 A.2d 261, 267-69 (R.I. 2000).

2

Negligent Failure-to-Warn

In Rhode Island, "[t]he elements of a [strict products liability] claim and a negligence claim based on a product defect overlap significantly, with the negligence claim having the additional requirement that the defendant 'knew or had reason to know . . . that [the product] was defective in any manner.'" Guilbeault, 84 F. Supp. 2d at 268 (quoting Ritter, 283 A.2d at 259). With regard to a negligent failure-to-warn claim, a product manufacturer, designer, or seller "only has a duty to warn if he had reason to know about the product's dangerous propensities which caused plaintiff's injuries." Thomas v. Amway Corp., 488 A.2d 716, 722 (R.I. 1985). The defendant need only warn of "reasonably foreseeable" dangers. Id. Such knowledge may be actual or constructive. Castrignano v. E.R. Squibb & Sons, Inc., 546 A.2d 775, 782 (R.I. 1988). When the defendant fails to warn of "reasonably foreseeable" and knowable dangers, the defendant

has breached the duty of care and "the product is rendered defective." Raimbeault v. Takeuchi Manufacturing (U.S.), Ltd., 772 A.2d 1056, 1063 (R.I. 2001).

Plaintiffs have produced testimony from Moore showing that Defendant knew that the factory-installed asbestos-containing packing and gaskets in their valves would have to be replaced regularly with similar products for the valves to function properly. See Moore Aff. at 2 ¶ 6. Pantaleoni testified that Defendant knew that routine maintenance of its valves required the replacement of asbestos-containing packing and gaskets with similar products. See Pantaleoni Dep., July 26, 2012 at 72 ¶¶ 10-17; 81 ¶¶ 9-18; 112 ¶¶ 1-19, 25; 113 ¶¶ 1-11, 14-25; 114 ¶¶ 1-5.

Plaintiffs have produced a number of Defendant's catalogs from the relevant time period endorsing the sale of asbestos-containing replacement packing and gaskets for use in valves like those installed in the Independence. See Crane Co. Catalog No. 53 at 473-75; Crane Co. Catalog, 1960 at 320-24; Crane Co. Catalog No. 61 at 12-8. Pantaleoni testified that Defendant sold replacement asbestos-containing packing and gaskets to the Navy upon request. See Pantaleoni Dep., July 26, 2012 at 72 ¶¶ 10-17; 111 ¶¶ 17-24; 112 ¶¶ 1-19.

This evidence creates questions of fact as to whether Defendant knew or should have known of the dangers posed by its valves when serviced by Sweredoski, and whether it breached a duty when it did not warn of those dangers. See Crawford, 14 F. Supp. 2d at 210 (finding that the plaintiff presented sufficient evidence to raise facts questions concerning whether the defendant's product "was dangerous[,] whether those dangers were foreseeable to [the defendant] and knowable at the time it was sold[, and] . . . whether [the defendant's] action or non-action with respect to the [product]

constituted a breach of one of the duties it owed to [the plaintiff]"); see also Rogers v. Sears & Roebuck & Co., 268 A.D.2d 245, 246, 701 N.Y.S.2d 359, 359 (2000) (recognizing that the manufacturer of a gas grill was under a duty to warn of the dangers of a propane tank manufactured by a third party because, among other reasons, "[the] grill could not be used without the tank"). Plaintiffs' negligent failure-to-warn claim, therefore, also survives summary judgment. See Pichardo, 55 A.3d at 767-68; Wallace v. U.S., 335 F. Supp. 2d 252, 261-62 (D.R.I. 2004); Crawford, 14 F. Supp. 2d at 209-210.

3

Breach of Implied Warranties

a

Implied Warranty of Merchantability

Claims for breach of the implied warranty of merchantability in Rhode Island are governed by G.L. § 1956 § 6A-2-314.[4] Our Supreme Court has recognized "that strict

[4] Section 6A-2-314 provides:

> "Implied warranty-Merchantability-Usage of trade.-
>
> (1) Unless excluded or modified (§ 6A-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.
>
> (2) Goods to be merchantable must be at least such as
>
> (a) pass without objection in the trade under contract description; and
> (b) in the case of fungible goods, are of fair average quality within the description; and

liability and implied warranty of merchantability are parallel theories of recovery . . . ." Castrignano, 546 A.2d at 783 (citing Parrillo v. Giroux Co., Inc., 426 A.2d 1313, 1317 (R.I. 1981)).

Accordingly, "[i]n order to establish liability for breach of the implied warranty of merchantability [in Rhode Island], a plaintiff must 'prove that the product is defective, that it was in a defective condition at the time it left the hands of the seller, and that said defect was the proximate cause of the injury.'" Marketing Design Source, Inc. v. Pranda North America, Inc., 799 A.2d 267, 272 (R.I. 2002) (quoting Lariviere v. Dayton Safety Ladder Co., 525 A.2d 892, 896 (R.I. 1987)); see Scittarelli v. Providence Gas Co., 415 A.2d 1040, 1046 (R.I. 1980) (holding that "[a]s a threshold element of tort liability for personal injuries under [theories of strict liability and breach of the implied warranty of merchantability,] a plaintiff must prove that the defendant sold a defective product which posed a threat of injury to potential consumers").

Because Plaintiffs have produced evidence raising sufficient issues of facts with regard to their strict products liability claim against Defendant, such evidence also

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> (c) are fit for the ordinary purposes which such goods are used; and
>
> (d) run, within the variations permitted by the agreement, of even kind, quality, and quantity within each unit and among all units involved; and
>
> (e) are adequately contained, packaged, and labeled as the agreement may require; and
>
> (f) conform to the promises or affirmations of fact made on the container or label if any.
>
> (3) Unless excluded or modified (§6A-2-316) other implied warranties may arise from course of dealing or usage of trade."

suffices to establish questions of fact regarding whether Defendant's valves were "unfit for the ordinary purpose for which [they] were used." See Thomas, 488 A.2d at 719; Castrignano, 546 A.2d at 783; cf. Scittarelli, 415 A.2d at 1046-47 (affirming grant of summary judgment with regard to the plaintiff's claim for breach of the implied warranty of merchantability because the plaintiff did not produce any evidence raising questions of fact as to a defect in the defendant's product making the product unfit for ordinary use). Plaintiffs' claim for breach of the implied warranty of merchantability survives summary judgment. See Pichardo, 55 A.3d at 767-68; cf. Thomas, 488 A.2d at 718-19.

b

Implied Warranty of Fitness for a Particular Purpose

Section 6A-2-315 prescribes the requirements of a claim for breach of the implied warranty of fitness for a particular purpose.[5] Our Supreme Court articulated that the "implied warranty of fitness for a particular purpose arises when the seller has reason to know the buyer's particular purpose and that the buyer is relying on the seller's skill or judgment to furnish appropriate goods and the buyer relies on the seller's skill or judgment." Lariviere, 525 A.2d at 897.

Plaintiffs have proffered testimony from Pantaleoni showing that Defendant began designing and manufacturing asbestos-containing products for its naval valves as early as World War I. See Pantaleoni Dep., July 26, 2011 at 25 ¶¶ 7-22. Moore testified

[5] Section 6A-2-315 provides in pertinent part:

> "Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose."

that at the time Sweredoski served onboard the Independence, the Navy required all high-pressure steam valves designed and manufactured for its ships to include asbestos-containing packing and gaskets. See Moore Dep. at 125 ¶¶ 18-22; 127 ¶¶ 7-24; 128 ¶¶ 1-23. Moore testified that the Navy approved Defendant's high-pressure steam valve designs before incorporating them into its ships. See Moore Aff. at 2 ¶ 4. In fact, Plaintiffs have produced Defendant's Technical Drawing # 29765, depicting a detailed, Navy-approved design for a high-pressure, asbestos-containing steam valve of the type fitted to the Independence. See Crane Co. Technical Drawing # 29765 at 1-5; see also Moore Aff. at 2 ¶ 4. Pantaleoni testified that Defendant also sold to the Navy replacement asbestos-containing packing and gaskets meeting the Navy's specifications upon request because it knew that the Navy required the use of asbestos-containing replacement products in its valves. See Pantaleoni Dep., July 26, 2012 at 25 ¶¶ 24-25; 26 ¶¶ 1-6; 48 ¶¶ 9-18; 72 ¶¶ 10-17; 102 ¶¶ 21-24; 103 ¶¶ 1-2; 111 ¶¶ 11-24; 112 ¶¶ 1-19, 25; 113 ¶¶ 1-11.

Such evidence raises questions of fact as to whether Defendant knew of the particular purposes to which the Navy would put its valves, and whether the Navy relied on Defendant's skill and knowledge in designing and choosing the valves and replacement materials for its ships. See Crafford Precision Products Co. v. Equilasers, Inc., 850 A.2d 958, 964-65 (R.I. 2004); Acme Aluminum Alloys v. Pantex Manufacturing Corp., 75 R.I. 152, 160, 64 A.2d 868, 872-73 (R.I. 1949) (holding that evidence that the defendant represented that the defective product was fit for the particular purpose identified by the plaintiff satisfied a claim for breach of the implied warranty of fitness for a particular purpose); cf. Pranda North America, Inc., 799 A.2d at

272-73 (affirming the trial justice's grant of judgment as a matter of law because the plaintiff failed to present any evidence showing that the defendant knew that the plaintiff had "intended to use [the product] for a particular purpose"). Thus, Plaintiffs' claim for breach of the implied warranty of fitness for a particular purpose survives summary judgment. See Pichardo, 55 A.3d at 767-68; Oresman v. G. D. Searle & Co., 321 F. Supp. 449, 452-54 (D.R.I. 1971).

B

Plaintiffs' Civil Conspiracy Claim

Defendant argues that a civil conspiracy claim in Rhode Island requires a valid underlying intentional tort theory to be actionable. Because it cannot be liable to Plaintiffs under their asserted products liability claims, Defendant contends that Plaintiffs' civil conspiracy claim is ripe for summary judgment as well. Plaintiffs respond that summary judgment is inappropriate because they have presented evidence showing that Defendant intentionally misrepresented to Sweredoski and others that exposure to asbestos was not harmful or, at the least, concealed knowledge of the dangers of asbestos exposure.

In Rhode Island, "[a] civil conspiracy claim requires the specific intent to do something illegal or tortious." Guilbeault, 84 F. Supp. 2d at 268 (citing Stubbs v. Taft, 88 R.I. 462, 467-68, 149 A.2d 706, 708-09 (1959)). It is "not an independent basis of liability, but merely a means of establishing joint liability for tortious conduct." Guilbeault, 84 F. Supp. 2d at 268. Therefore, "a civil conspiracy claim requires a valid underlying intentional tort theory." Id. (citing ERI Max Entertainment, Inc. v. Streisand, 690 A.2d 1351, 1354 (R.I. 1997)).

Plaintiff alleges that "Defendan[t] . . . engaged in a conspiracy to injure plaintiff by failing to disclose knowledge [it] had or intentionally misrepresenting the dangers of exposure to asbestos and asbestos containing products." (Pls.' Third Am. Compl. at 6 ¶ 15.) This claim sounds in intentional misrepresentation or deceit. See Banco Totta e Acores v. Fleet National Bank, 768 F. Supp. 943, 947 (D.R.I. 1991); Cliftex Clothing Co., Inc. v. DiSanto, 88 R.I. 338, 343-44, 148 A.2d 273, 275-76 (1959). To establish a claim for intentional misrepresentation in Rhode Island, Plaintiffs must prove "[t]hat defendant made a false representation; [t]hat defendant intended thereby to deceive the plaintiff; [t]hat defendant intended that plaintiff rely on the representation; [t]hat plaintiff did in fact rely on the misrepresentation; and, [t]hat plaintiff was injured as a result." In re Frusher, 146 B.R. 594, 597 (Bankr. D.R.I. 1992) (citing Cliftex Clothing Co., Inc., 88 R.I. at 343-44, 148 A.2d at 275-76).

Plaintiffs have proffered evidence showing that in its advertisements for replacement asbestos-containing packing and gaskets, Defendant represented that its "packing is unhesitatingly recommended for a multitude of services, such as steam water . . . ." (Crane Co. Catalog, No. 53 at 473.) In the same catalog, Defendant also represented that "users will find it economical to purchase the packing in quantities and to carry it in stock." Id.

Assuming that such statements satisfy the requirement that Defendant "made a false representation," In re Frusher, 146 B.R. at 597, Plaintiffs have not presented any evidence creating questions of fact with regard to the other four elements of a claim for intentional misrepresentation in Rhode Island. See Banco Totta e Acores, 768 F. Supp. at 947-48 (granting summary judgment as to the plaintiff's intentional misrepresentation

claim because the plaintiff failed to present any evidence showing, among other things, that it justifiably relied on the defendant's alleged misrepresentations to its detriment); Halpert v. Rosenthal, 107 R.I. 406, 412, 267 A.2d 730, 733-34 (1970) (finding same). Thus, Plaintiffs' civil conspiracy claim does not survive summary judgment. See Banco Totta e Acores, 768 F. Supp. at 947-48; In re Frusher, 146 B.R. at 597.

IV

Conclusion

For the foregoing reasons, this Court finds that Plaintiffs have presented evidence sufficient to raise triable issues of fact with regard to their claims against Defendant for strict products liability, negligent failure-to-warn, and breach of the implied warranties of merchantability and fitness for a particular purpose. This Court finds that Plaintiffs have failed to produce evidence raising questions of fact concerning their civil conspiracy claim. Accordingly, Defendant's Motion is granted in part and denied in part.

Counsel shall submit an appropriate Order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Cover Sheet

TITLE OF CASE: Douglas Sweredoski and Rose K. Sweredoski

CASE NO: PC 11-1544

COURT: Providence County Superior Court

DATE DECISION FILED: March 7, 2013

JUSTICE/MAGISTRATE: Presiding Justice Alice Bridget Gibney

ATTORNEYS:

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