THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

Case Details

Case Number: RG15795754 **Title: Brucker VS 3M Company**

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	This Tentative Ruling is made by Judge Brad Seligman Defendant John Crane Inc. (JCI)'s motion to strike the complaint's prayer for punitive damages and supporting allegations is DENIED, as is Plaintiffs' request for sanctions pursuant to Code of Civil Procedure section 128.5. JCI contends that the complaint does not allege with sufficient specificity conduct by JCI that could support a finding of malice on a theory of conscious disregard, in large part because Plaintiffs have pled their allegations of misconduct identically as to all "Asbestos Defendants" without specifying the malicious conduct of each such Defendant. While that is true, Plaintiffs' complaint alleges that each Defendant was in the business of making, selling, installing, etc., products containing asbestos (Compl., Â¶ 12); that it was foreseeable to each such Asbestos Defendant that original asbestos in its products would be removed and replaced in ways releasing respirable asbestos fibers into the air, exposing workers like Plaintiff, whom the Asbestos Defendants failed to warn (id., Â¶ 15); that in developing and marketing their products, the

3/2/2016	Asbestos Defendants acted "with conscious disregard for the safety of [end] users" because those Defendants "had specific prior knowledge [of] a high risk of injury or death resulting from exposure to ... [such] products" and were "aware" that users of their products did not know that asbestos could cause injury, and knew that such users would assume that exposure to such products was safe (id., Â¶Â¶ 24-25); and that, "[w]ith said knowledge, said Asbestos Defendants opted to manufacture and distribute [the] products without attempting to protect ... or warn users," and instead "intentionally failed to reveal ... [and] fraudulently, consciously, and actively concealed such knowledge." (Id., Â¶ 26.) Finally, the Complaint alleges that the Asbestos Defendants consciously chose to let asbestos in their products injure end users in order to further their financial interests (id., Â¶ 27), and that their officers, directors, and managing agents participated in, authorized, and/or ratified the conduct. (Id., Â¶ 28.) Although those allegations apply generically to all the Asbestos Defendants named in the Complaint, they are not empty, conclusory allegations of malice appended to allegations of wrongful conduct that plainly amounts only to negligence, of the sort held inadequate in decisions like Smith v. Superior Court (1992) 10 Cal.App.4th 1033 and Brousseau v. Jarrett (1977) 73 Cal.App.3d 864. Nor does JCI cite any authority holding that a plaintiff seeking punitive damages cannot allege the same course of conduct-one that would, if proven, support a finding of malice-against multiple similarly situated defendants. Insofar as JCI bases its argument on Dillard v. County of Kern (1943) 23 Cal.2d 271, 277-whose title it misspells as "Dillard v. Kem Co."-the court readily agrees with Plaintiffs that the decision in Dillard, which concerned the specificity required in a claim for compensation filed with a public entity under a predecessor of the Government Tort Claims Act, is irrelevant. So too is the comment in Falahati v. Kondo (2005) 127 Cal.App.4th 823 that it is insufficient to refer to a defendant only in the caption of a pleading but not in its body, as Plaintiffs have not done so. But the court does not find that JCI's citation of Dillard and Falahati entailed a sanctionable attempt to deceive the court, as opposed to some combination of sloppiness or ill-conceived argument. (JCI's opening memo referred to the fact that Dillard involved the standards for identifying "a public employee" with sufficient specificity "to enable the entity to identify the person involved" (MPA at p. 6), dispelling any inference that JCI's misspelling of defendant Kern County's name as "Kem Co." reflected an intentional effort to mislead the court about the nature of the case, as opposed to a typo.) The decision in G.D. Searle & Co. v. Superior Court (1975) 49 Cal.App.3d 22, on which JCI also relies, mainly served to establish the conscious-disregard standard for malice in cases not involving

an intent to harm, and to hold that conclusory allegations that conduct was "wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damage." (Id. at p. 29.) But the plaintiffs in that case pled only that the defendant knew that the "type" of product at issue, and not defendant's specific product, posed a risk of harm, and further alleged that Defendant knew that its product could safely do the job. JCI cites no decision in the 40 years since that has treated G.D. Searle as establishing a heightened pleading standard for malice based on "conscious disregard." Another issue on which the court finds JCI's arguments incorrect but not sanctionably frivolous is whether Plaintiffs' claim for punitive damages based on allegedly manufacturing and distributing a dangerous product with conscious disregard of the effects on end users is subject to Civil Code section 3294, subdivision (b). That provision states that "[a]n employer shall not be liable for [punitive] damages ... based upon acts of an employee ... unless the employer [knew in advance of the employee's unfitness] and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct," and that the advance knowledge or subsequent authorization or ratification "must be on the part of an officer, director, or managing agent." Plaintiffs are correct that subdivision (b) does not apply to conduct of the sort alleged here-i.e., not an isolated wrongful act by a single employee, but the sustained manufacture and sale of a dangerous product without warnings. Such conduct necessarily reflects corporate policy rather than a potentially unauthorized act of a rogue employee below the policy-setting level, which corporate management may or may not have had any way to foresee, and may or may not have later ratified. (See Romo v. Ford Motor Co. (2002) 99 Cal.App.4th 1115, 1141, cert. granted, vacated, and remanded on other grounds, Ford Motor Co. v. Romo (2003) 123 S.Ct. 2072; see also Romo v. Ford Motor Co. (2003) 113 Cal.App.4th 738, 744, fn. 1 [original Romo opinion retains precedential effect except as to issues involving amount of punitive damages].) In reply, however, JCI cites a CACI instruction that its counsel could plausibly have misinterpreted to render the officer-director-managing agent requirement applicable, at the pleading stage, even to corporate conduct that is obviously likely to reflect high-level corporate policy. Plaintiffs have not cited any authority making JCI's misguided invocation of Section 3294, subdivision (b), so plainly improper as to warrant sanctions. JCI shall have 15 days from the date of Plaintiffs' service of a notice of entry of this order to answer the complaint.

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