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Case Number: 21-6597

Case Name: LaPointe, Judith A estate et al vs 3M Co et al

/s/ Judge Kenneth J Fishman

Lapointe v. 3M Co., et al, C.A. 21-6597. Recommended Ruling on Defendant American Art Clay Company's Motion for Summary Judgment

The defendant American Art Clay Company, Inc. (AMACO) has moved for summary judgment pursuant to Mass. R. Civ. P. 56, claiming, *inter alia*, that the Plaintiff Michael Lapointe, Individually and as Personal Representative of the Estate of Judith A. Lapointe, (1) has not presented credible evidence that Judith Lapointe worked with or in the vicinity of others who were working with a product manufactured, sold or supplied by AMACO; and (2) that even if the slip that Judith Lapointe worked with or around was manufactured, sold or supplied by AMACO, the Plaintiff has produced no evidence that the AMACO slip used by or around Judith Lapointe contained asbestos. (File&ServeXpress Transaction ID 73110856) After hearing, and upon review and consideration, and for the reasons stated below, the Special Master recommends that the motion be **Denied**.

In Morin v. AutoZone Northeast, Inc., 79 Mass. App. Ct. 39, 42-43 (2011) (footnotes omitted), the court summarized the controlling law regarding causation in asbestos cases:

To prove causation in an asbestos case, the plaintiff must establish (1) that the defendant's product contained asbestos (product identification), (2) that the victim was exposed to the asbestos in the defendant's product (exposure), and (3) that such exposure was a substantial contributing factor in causing harm to the victim (substantial factor). *Welch v. Keene Corp.*, [31 Mass. App. Ct. 157, 161–162 (1991)]. . .[S]ummary judgment is appropriate only if the plaintiff has “no reasonable expectation” of proving one of these elements. *Kourouvacilis v. General Motors Corp.*, [410 Mass, 706, 716 (1991)].

Ms. Lapointe was diagnosed with mesothelioma in September 2021. She died in November 2021. Her husband, Michael Lapointe, was the only product identification witness. Michael and Judith met in 1965. Judith's mother ran Mohawk Ceramics, a ceramics studio, in the basement of her home. She taught ceramics classes every night, five days a week, using one part of her studio for pouring molds and firing greenware in kilns, and the other side for classes. As the business grew, she moved the pouring equipment and kilns to the garage. Judith helped with the business daily which Michael first personally observed in 1965. She continued to assist in the business even after she married Michael Lapointe in 1972 and moved out of the house, and ended in the mid 1980's when

her mother closed the business was closed.

Michael occasionally helped with tipping and draining the heavy larger mold, and estimated that he did so on “hundreds of occasions. He testified to the process of making ceramics, including scraping down the slip from the molds and the sanding of the greenware by hand. He observed that the studio was “full of dust most of the time,” a condition from which a jury could infer existed even when he was not present to personally observe it. Judith both personally engaged in the process of scraping and sanding, and was present when the students engaged in the process, as well as the pouring of the molds. Mohawk Ceramics had hundreds of molds. Judith also had responsibility of cleaning the studio, including sweeping which created a significant amount of dust. Again, it can be inferred that these are roles in which Judith engaged even when Michael was not present.

Micheal Lapointe specifically identified “AMACO” as the brand of liquid slip used at Mohawk Ceramics. He described the product as packaged in a 12-14 inch box weighing 15 to 10 pounds, with the slip in liquid form contained in a plastic bag, and the name “AMACO” printed on the side of the box. He recalled first observing in 1967 the delivery of this product via box truck with 15 to 20 boxes per load. He did not recall any warnings on the boxes. He did not recall seeing any other brand of slip at Mohawk Ceramics. When they ran short, he and Judith would get slip from a ceramics store or another studio until their shipment arrived, and noted that the slip they borrowed from other studios was AMACO brand, “as everybody used the stuff.”

Mr. Lapointe did not know the ingredients of the slip that Mohawk Ceramics used, nor the style, type, model, or number of the slip used. The plaintiff relies on Michael’s description of the AMACO slip to support its claim that it is AMACO No. 15-S slip. He described the liquid slip as being “like “brownish gray,” that it was “grayish green” or “brownish-green” in its greenware state, and was “white” after it has been fired. In a 1965 AMACO catalog, No. 15-S Slip was described as “gray-white in the raw state,” and “intensely white when fired.” The catalog also states that the slip is packaged in an “unbreakable polyethylene container with fiber carton.” The catalog does not describe the color of the slip in its greenware state.

While the Special Master finds that it is a close call, from this record, a jury could conclude that the AMACO product used at Mohawk Ceramics was No. 15-S Slip. Mr. Lapointe’s description of it as liquid slip, and not clay, the plastic

packaging, and its coloring both in its liquid state and after firing could be found to be consistent with the catalog description. Certainly, the color described by Mr. Lapointe of the product in its greenware state is not contradictory as the catalog does not describe that color. Although there is evidence, in the form of the testimony of AMACO's corporate representative William Berry in another action, that AMACO made clays other than No. 15-S Slip in the 1970's and 1980's that fired white, a jury could find that those clays were either not manufactured during the exposure period at issue in the case at bar, or were specialty clays that were not used in the manner described by Mr. Lapointe.

There is also evidence in the summary judgment record, in particular the testimony of Mr. Berry, to support the conclusion that White Clay Casting No.15 formula liquid slip contained NYTAL 100 talc during the period from 1950 until 2007. Records from R.T Vanderbilt, which mined and manufactured NYTAL 100 talc, support a claim that this talc contained high percentage of tremolite and/or anthophyllite, which are both a fibrous amphibole asbestos.

In assessing the record on a motion for summary judgment, all reasonable inferences are drawn in favor of the nonmoving party. *Terra Nova v. Fray-Witzer*, 449 Mass. 406, 411 (2007). The summary judgment record here contains genuine issues of material fact, and for the reasons stated above, the Special Master recommends that the motion be **Denied**.

The parties have the right to seek review of the Special Master's Ruling per PTO-9 within seven (7) days of the date of this Ruling given the date scheduled for the commencement of trial.

/s/ Signature on File with Court

Hon. Kenneth J. Fishman (Ret.)
Special Master, SMAL