

STATE OF CONNECTICUT

IN RE: BRIDGEPORT ASBESTOS
LITIGATION

SUPERIOR COURT JUDICIAL
DISTRICT OF FAIRFIELD AT
BRIDGEPORT
DOCKET NO: FBT-CV23-6120092S

CONRAD JOHNS and ELIZABETH JOHNS)
)
 Plaintiffs,)
)
 VS.)
)
 ALFA LAVAL, INC., individually And as)
 successor in interest to DeLaval Purifier and)
 Sharples Corp., et al.,)
 Defendants.)

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MOTION TO STRIKE PLAINTIFFS' COMPLAINT**

Pursuant to Conn. Prac. Book §10-39 et seq. the Defendant, International Business Machines Corporation (“IBM”) respectfully moves to strike all Counts of the Plaintiffs’ Complaint against IBM. As more fully set forth in the attached memorandum of law, the Plaintiffs’ claims as to IBM are legally insufficient to the extent they arise from plaintiff Conrad John’s alleged exposure to asbestos during the course of his employment by IBM. Accordingly, any such claims are barred by the exclusivity provision of the Connecticut Workers’ Compensation Act, Conn. Gen. Stat. Ann. §31-284(a). Furthermore, as any loss of consortium claims are derivative of Mr. John’s claims against IBM, they too should be stricken. In addition, IBM seeks a protective order staying any discovery against it pending the resolution of the within Motion to Strike.

WHEREFORE, IBM respectfully requests that this Court strike all Counts against it and issue a protective order staying any discovery against IBM pending the resolution of this motion.

Respectfully submitted,

The Defendant,
INTERNATIONAL BUSINESS MACHINES
CORPORATION,
By its attorneys,

/s/ Mark J. Hoover

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Dated: March 3, 2023

CERTIFICATION

I, Mark J. Hoover, hereby certify that a true copy of the above document was served electronically via e-mail to all parties of record.

/s/ Mark J. Hoover

Mark J. Hoover

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**INTERNATIONAL BUSINESS MACHINES CORPORATION'S
MEMORANDUM IN SUPPORT OF MOTION TO STRIKE AND FOR ISSUANCE OF
PROTECTIVE ORDER**

INTRODUCTION

Defendant International Business Machines Corporation (“IBM”) submits this Memorandum in Support of its Motion to Strike plaintiffs’ claims against it. IBM so moves on the grounds that to the extent that plaintiffs’ claims arise from plaintiff Conrad John’s alleged exposure to asbestos during the course of his employment by IBM, those claims are barred by the Workers’ Compensation exclusivity defense. IBM further moves for a protective order staying discovery against it pending the resolution of this motion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs Conrad Johns and Elizabeth Johns commenced this action on or about December 13, 2022, naming thirty (30) defendants, including IBM. Plaintiffs brought this action to recover for personal injuries allegedly caused by plaintiff Conrad Johns' exposure to asbestos.¹

A) The Nature of the Matter Before the Court:

This is an action to recover damages for injuries arising from plaintiff Conrad Johns' alleged exposure to asbestos while working in the Navy, during his employment by IBM, and through non-occupational automotive repair work. *See* plaintiffs' complaint, a copy of which is annexed hereto as Exhibit "A," at ¶ 5.

The complaint does not provide much in the way of factual detail beyond the brief summary provided above. Indeed, the specifics – such as they are -- of plaintiffs' claims are quoted below in their entirety:

The Plaintiff, CONRAD JOHNS, was exposed to asbestos-containing products while serving in the Navy from approximately 1959-1963, during his employment with International Business Machines Corporation in the mid-to-late 1960s, and through the performance of automotive repair work on his family's personal vehicles. Such exposure contributed in part or totally to the Plaintiff's contraction of asbestos-related mesothelioma and other asbestos-related pathologies.

Id.

There are, literally, no other specific factual allegations regarding the details of plaintiff's alleged exposure, only boilerplate and conclusory allegations of the various legal elements of the counts (product liability against all defendants; recklessness as to all defendants; and loss of consortium) thereafter alleged. The exact nature of the claims against IBM is, therefore, necessarily somewhat ill-defined and undetermined at this juncture.

¹ As plaintiff Elizabeth Johns' claim for loss of consortium is purely derivative, all references to "plaintiff," singular, will be to plaintiff Conrad Johns.

Nonetheless, a fair reading of the allegations presented in paragraph 5 of plaintiffs' complaint suggests that plaintiff alleges three distinct sources of exposure:

- 1) exposure from some unknown source or sources during his Naval service from 1959 to 1963;
- 2) exposure from some unknown source or sources while employed by IBM in the mid-to-late 1960s; and
- 3) exposure from automotive repair work during some unknown period of time.

Stated otherwise, the most reasonable interpretation of paragraph 5 is that plaintiffs' claims against IBM arise out of, and in the course of his employment by IBM, since it is hard to see why plaintiffs would claim that IBM should be held responsible for plaintiff's alleged exposure to asbestos "during his employment with" IBM unless said exposure arose out of his employment by IBM in some fashion. But if that is, in fact, the basis for plaintiffs' claims against IBM, then those claims are barred by Connecticut's Workers' Compensation exclusivity defense.

Thus, under long-settled Connecticut law, IBM is entitled to the dismissal of any claims against it arising from plaintiff's employment by IBM. IBM also respectfully submits that a protective order staying discovery against it should be granted pending the resolution of this motion.

SUMMARY OF THE ARGUMENT

1. Plaintiffs' claims are barred by the Workers' Compensation exclusivity defense of Connecticut:

Under a fair reading of the complaint, plaintiffs' claims against IBM arise from his alleged employment by IBM. Connecticut Courts have interpreted the exclusivity provision of the Workers' Compensation Act very strictly, and there is no allegation to support any exception

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