

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

In Re: Welding Rod Civil Actions)	Justice Francis E. Sweeney
Products Liability Litigation)	
)	
)	
Joseph Boyd, et al.,)	Case No. 545413
)	
Plaintiffs,)	
)	
v.)	<u>ENTRY AND OPINION</u>
)	
Lincoln Electric Co., et al.,)	
)	
Defendants.)	
)	

I. INTRODUCTION

The current litigation arises from a complaint filed by the above-captioned Plaintiff alleging that he is suffering from manganese-induced parkinsonism caused by his exposure to welding rod fumes during his career as a boilermaker from 1977 until mid-2004. Plaintiff has asserted causes of action for, among other things, conspiracy, fraud, fraudulent concealment, failure to warn, failure to test, aiding and abetting, and negligent performance of a voluntary undertaking.

For the foregoing reasons, Defendants’ Motion for Summary Judgment on Count Eleven is granted.

II. LAW AND ARGUMENT

A. Standard of Review

Summary judgment may be granted only when it is demonstrated:

“ *** (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.”

Harless v. Willis Day Warehousing Co. (1978), 54 Ohio St.2d 64; Civ.R. 56(E).

When seeking summary judgment, a party must specifically delineate the basis upon which the motion is brought, Mitseff v. Wheeler (1988), 38 Ohio St.3d 112, syllabus, and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. Dresher v. Burt (1996), 75 Ohio St.3d 280.

When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleading, but must respond with specific facts showing there is a genuine issue of material fact.

Civ.R. 56(E); Riley v. Montgomery (1984), 11 Ohio St.3d 75. A material fact is one that would affect the outcome of the suit under the applicable substantive law.

Needham v. Provident Bank (1986), 110 Ohio App.3d 817, citing Anderson v. Liberty Lobby, Inc. (1986), 477 U.S. 242.

B. Negligent Performance of a Voluntary Undertaking

Plaintiff argues that Defendants voluntarily undertook the duty of providing the welding community with information regarding the possible hazards associated with welding, and in so doing, negligently failed to provide information that was accurate and honest. This claim rests on what is commonly referred to as the “Good Samaritan Doctrine,” which is codified in Restatement (Second) of Torts, Section 324A:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if

- a) his failure to exercise reasonable care increased the risk of such harm, or
- b) he has undertaken to perform a duty owed by the other to the third person, or
- c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Restatement of Torts (Second), Section 324A.

Plaintiff argues that the Defendants were members of two main trade organizations that voluntarily undertook to provide safety information to the welding community through its various subcommittees and task groups. These two groups are the National Electric Manufacturers Association (“NEMA”) and the American Welding Society (“AWS”). Plaintiff point to depositions and the organization’s own website to show that NEMA has been involved with the development of technical and regulatory standards within the industry, as well as played an advocacy role in the formulation of public policy. Plaintiff further points to resolutions and meeting minutes of AWS that seem to reflect that the organization undertook to create safety standards for warning welders, and then charged itself with the duty of promulgating those standards to the industry. Finally, Plaintiff directs the Court to the documentation that allegedly shows the “Industry Conspirators” knew of the harmful effects of manganese exposure, and negligently (although Plaintiff’s language seems to indicate it was “purposefully”) allowed publications to be manipulated, ignored testing, and withheld information that manganese exposure was harmful from the welding industry.

Defendants, on the other hand, argue that they should not be held liable for the action or inaction of NEMA or the AWS simply because they were members of both organizations. They argue that they have assumed no additional duty to the Plaintiff by way of their membership in a trade organization, and in making this argument direct the Court to the holdings of Judge O'Malley in Solis v. Lincoln Electric Co. (N.D. Ohio May 10, 2006), No. 04:CV-17363, 2006 WL 1305068, and a Montana Circuit Court in Hunt v. Air Prods. & Chemicals (Cir. Ct. Mo. Apr. 20, 2006), No. 052-9419, 2006 WL 1229082. Both are recent welding rod cases where similar arguments were made that certain defendants voluntarily assumed the duty of informing welders of the alleged dangers of manganese exposure by way of their membership in trade organizations. Judge O'Malley and the Montana Circuit Court both held that a defendant did not assume any additional duty to a plaintiff – beyond that imposed by traditional products liability law – simply by its involvement or membership in a trade organization.

The Court agrees with that rationale. Mere membership in a trade organization is not enough to impose liability on a defendant for the actions of that organization, specifically in this case, for Defendants to be held liable for NEMA and AWS undertaking a duty to provide safety information to the welding industry about the possible harmful effects of exposure to manganese. Plaintiff has provided no evidence that any of the Defendants were specifically involved in the decision-making by the organizations to undertake the duty of providing safety information, only broad allegations that they should be held liable because

of their membership. Following Plaintiff's logic, if the Court were to hold these Defendants liable, it would likewise be possible for every other member of either of these organizations to be held liable. Similarly, any person or entity involved in the formulation of these standards and warnings through the American National Standards Association could be held liable. Finding a party liable simply because of its membership in an organization is too simplistic and broad of a judgment, and would go against public policy.

For these reasons, the Defendants' Motion for Summary Judgment on Count Eleven is granted.

IT IS SO ORDERED.

Justice Francis E. Sweeney
July 9, 2007