IN THE CIRCUIT COURT
FOR THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

CHANCE W. TAYLOR, Individually and as Special administrator of the estate of CHERYL L. TAYLOR, Deceased.	)	
Plaintiff,	)	No. 15L652
Vs.	)	
AIR & LIQUID SYSTEMS CORPORATION, a/k/a BUFFALO PUMPS, INC. et al.	)	
Defendants.	)	

ORDER

Cause comes before the Court on the Defendant, U.S. Steel's, Motion for Summary Judgment, the Court having considered same, including all facts, inferences, briefs, exhibits, oral arguments and applicable law, hereby finds and orders as follows:

The Defendant's Motion for Summary Judgment is based, in part, on the theory that Defendant, a premises owner, did not owe a duty to Plaintiff's decedent, Cheryl Taylor, since she was the spouse of an employee of an independent contractor hired by Defendant to perform certain work on its' premises. Defendant also argues that Plaintiff has failed to meet the "frequency, regularity and proximity" test as to its' alleged conduct to survive summary judgment.

Whether a duty exists is a question of law and Illinois courts have long recognized that "every person owes a duty of ordinary care to all others to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of an act, and such a duty does not depend upon contract, privity of interest or the proximity of relationship, but extends to remote and unknown

persons." Simpkins vs CSX Transportation, Inc. 2012 IL 110662, (*citing Widlowski,* 138 Ill.2d at 373, 150 Ill.Dec. 164, 562 N.E.2d 967; *Forsythe,* 224 Ill.2d at 291–92, 309 Ill.Dec. 361, 864 N.E.2d 227; *Kahn v. James Burton Co.*, 5 Ill.2d 614, 622, 126 N.E.2d 836 (1955)). However, it is also the law in the State of Illinois that no duty is owed by a premises owner to the employee of an independent contractor where the premises owner did not exercise sufficient control over the work performed by the independent contractor on its' premises. Gregory v. Beazer East, et al. 384 Ill.App.3d 178, Ill.App.Ct. 2008. The Supreme Court astutely noted that "the concept of duty in a negligence case is involved, complex, and nebulous." Simpkins at paragraph 17.

However, in an asbestos personal injury case, such as this case, the plaintiff has the burden of producing evidence sufficient to establish each element of his or her claim. This "burden of production" is met with regard to a given element of proof when there is some evidence which, when viewed most favorably to the plaintiff's position, would allow a reasonable trier of fact to conclude the element to be proven. (*Donoho v. O'Connell's, Inc.* (1958), 13 Ill.2d 113, 148 N.E.2d 434.) While circumstantial evidence may be used to show causation, proof which relies upon mere conjecture or speculation is insufficient. (*Smith v. Eli Lilly & Co.* (1990), 137 Ill.2d 222, 232, 148 Ill.Dec. 22, 560 N.E.2d 324; *Paul Harris Furniture Co. v. Morse* (1956), 10 Ill.2d 28, 38, 139 N.E.2d 275.). Further, to survive a motion for summary judgment on the issue of exposure to a defendant's asbestos product, the plaintiff must satisfy the "frequency, regularity, and proximity" test, which requires that a plaintiff "show that the injured worker was exposed to the defendant's asbestos through proof that (1) he regularly worked in an area where the defendant's asbestos was frequently used and (2) the injured worker did, in fact, work sufficiently close to this area so as to come into contact with the defendant's product." *Thacker,* 151 Ill.2d at 359, 177 Ill.Dec. 379, 603 N.E.2d at 457. A plaintiff cannot present her case to the jury unless there is sufficient evidence for the jury to conclude the defendant's conduct was a cause of the injury. *Johnson v. Owens–Corning Fiberglass Corp.*, 284 Ill.App.3d 669, 676, 220 Ill.Dec. 68, 672 N.E.2d 885, 890 (1996). Moreover, a plaintiff "has the burden of proving more than just minimal contact with a defendant's asbestos product."

Johnson, 284 Ill.App.3d at 676, 220 Ill.Dec. 68, 672 N.E.2d at 890. Here, plaintiff's claims rest, in principle part, on the testimony of a co-worker, Bill Radamacher, who worked with the Plaintiff's decedent's deceased spouse, Freddie Taylor. Mr. Radamacher, in describing the specific work performed at the Defendant's sites answered the following question:

Q-"Now, any of the work that you have discussed with regard to, with Freddie that you did at US Steel-Gary and South Works, do you know whether any of the insulation materials you either used or removed or worked with or around contained asbestos?

A-"I would almost bet on it."

Also, Plaintiff's expert, Thomas Selders CIH, was asked the following:

Q-"All right. So then are you able to state, based on what we just discussed, and the information provided you, to a reasonable degree of industrial-hygiene or scientific certainty that Freddie Taylor himself was even exposed to asbestos-containing insulation given what he's descr---or what Mr. Radamacher's described here.?"

A-"Based on just his testimony, no."

Finally, Plaintiff worked at the Defendant's sites for a couple of days in the 1970's and several months in the 1980's. The parties agreed at oral argument that asbestos in pipe insulation had been banned from use by the EPA in or about 1975.

Therefore, the Court finds, considering all the evidence in a light most favorable to the Plaintiff, that the Plaintiff has insufficient evidence that the Plaintiff's decedent's Deceased Spouse, Freddie Taylor, worked with or around or was exposed to asbestos-containing products at U.S. Steel sites, with sufficient frequency, regularity, and proximity to create a genuine issue of material fact.

Accordingly, Defendant U.S. Steel's Motion for Summary Judgment is GRANTED.

Clerk to file and serve express.

ENTERED: 10/3/17

Honorable Stephen A. Stobbs
Associate Judge Presiding