

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

Romanelli, *id* ESSENT: _____PART 35

Index Number : 112713/2004

HAUCK, CHARLES

INDEX NO. _____

vs

AMCHEM PRODUCTS

MOTION DATE _____

Sequence Number : 015

MOTION SEQ. NO. _____

DISMISS

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ NoUpon the foregoing papers, it is ordered that this motion *by defendant Viad for summary judgment is granted as follows*

Defendant Viad moves for s.j. dismissing the complaint both on the ground that it is not a successor corporation to Giesse Russell and that Charles Hauck was not exposed to a product manufactured by Giesse Russell.

Decedent's only-known exposure to asbestos or asbestos-containing products occurred during the summer of 1965 between his senior year at Regis H.S. and his freshman year at Boston College. He worked as an inspector's helper at Con-Edison where he visited various powerhouses. Two of them were the 14th St East River plant and the Hudson Avenue power plant. At these facilities there were 14 or 15 Giesse Russell heaters. Mr. Hauck did not identify heaters as

Dated: _____

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITIONCheck if appropriate: ☐ DO NOT POST ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

machinery to which he was exposed - he did not, however, identify "turbines, ^{pipes} pumps and tanks." He also said that ~~these~~ the equipment had blankets. Plaintiff argues that decedent meant heaters when he said tanks and that since heaters were equipment, they must have had blankets on them that contained asbestos.

Based on the above, it is too speculative to assume that during his short stay with Con-Ed, Mr. Haeck was exposed to asbestos blankets or other ^{asbestos} products associated with Griscom ^{Russell} Heaters. For that reason the claim against Viad is dismissed.

While it is not necessary to reach the successor liability issue, suffice it to say that the decision of the WD of Washington Westheller v. 140, WL 2850334, in which the Judge makes a finding that Viad is a successor to Griscom-Russell at least raises a question of fact despite the affidavits of Henry Puschler and Francis Montbuck to the contrary.

Based on the foregoing, the Clerk is directed to dismiss the case against Viad.

Dec. 2, 2005

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