

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 21-3963-GW-PLAx Date August 1, 2022

Title *Dennis A. Rockwell, et al. v. Air and Liquid Systems Corporation, et al.*

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez

None Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Present

None Present

PROCEEDINGS: IN CHAMBERS - TENTATIVE RULING ON DEFENDANTS FOSTER WHEELER ENERGY CORPORATION AND FOSTER WHEELER LLC'S' AMENDED MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION [448]

Attached hereto is the Court's Tentative Ruling on Defendants Foster Wheeler's Motion for Summary Judgment [448], set for hearing on August 1, 2022 at 8:30 a.m.

Initials of Preparer JG

Dennis A. Rockwell et al v. Air and Liquid Systems Corp. et al.; Case No. 2:21-cv-03963-GW-(PLAx)
Ruling on Defendant Foster Wheeler’s Motion for Summary Judgment

I. Introduction

Plaintiffs Dennis A. Rockwell (“Rockwell”) and his wife, Dawn Rockwell, brought this action against over sixty Defendants for asbestos-related lung injuries suffered by Rockwell due to inhalation of asbestos fibers at his places of work. Defendants are entities that were allegedly involved in the business of manufacturing, distributing, and selling asbestos or asbestos-containing products, which eventually arrived at one of Rockwell’s worksites. It is alleged that the asbestos exposure ultimately resulted in Rockwell’s February 2021 diagnosis of mesothelioma – the cumulative, progressive, and incurable lung disease. *See* First Amended Complaint (“FAC”) ¶¶ 1-7, Exh. B, ECF No. 8. A portion of the claims pertain to exposure that occurred while Rockwell was on Navy ships in navigable waters and fall under admiralty and maritime jurisdiction, while others pertain to exposure that occurred at Camp Pendleton in California and the Long Beach Naval Shipyard. Plaintiffs brought claims against all Defendants for: (1) negligence (under maritime law); (2) negligence (under California law); (3) breach of express and implied warranties; (4) strict liability in tort (under maritime law); and (5) strict liability in tort (under California law). Plaintiff Dawn Rockwell also brings a claim against all Defendants for loss of consortium. Plaintiffs seek compensatory and punitive damages. *See id.* ¶¶ 11-71.

Before the Court is Defendants Foster Wheeler Energy Corporation and Foster Wheeler, LLC’s (collectively “Foster Wheeler”) Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment. *See* ECF No. 434 (“Mot.”). Plaintiffs have opposed the motion. *See* Plaintiffs’ Opposition to Defendants Foster Wheeler’s Motion for Summary Judgment, ECF No. 468. Foster Wheeler replied to that opposition. *See* Defendant Foster Wheeler’s Reply Brief in Support of Motion for Summary Judgment, ECF No. 485.

II. Factual and Procedural Background¹

Rockwell served in the US Navy from 1961 through 1965, and spent time aboard the

¹For purposes of factual and procedural background and the Court’s analysis further addressed below, the Court has examined in detail: (1) Defendant Foster Wheeler’s Statement of Uncontroverted Facts and Conclusions of Law in Support of Motion for Summary Judgment, ECF No. 434-2, (2) the Plaintiffs Statement of Uncontroverted Facts (“PSUF”), ECF No. 468-4, and (3) Foster Wheeler’s Response to Statement of Genuine Disputes (“RSGD”), ECF No. 498. For the sake of simplicity, any citation to particular paragraphs within the above also references all parties’ statements and responses to those same paragraphs as well as the supporting evidentiary materials.

destroyers USS Richard S. Edwards and USS Parsons where he held the position of machinist mate assigned to the engine room. *See* ¶¶ 1-2 in Plaintiffs’ Statement of Additional Uncontroverted Facts (“PSAUF”), which is contained as part of Defendant Foster Wheeler Response to Statement of Genuine Disputes in Support of Motion for Summary Judgment (“RSGD”), ECF No. 498. He initially alleged that he was exposed to asbestos and asbestos-containing products on both Navy destroyers as well as during his time at the San Diego Naval Base and the Long Beach Naval Shipyard. *See* RSGD ¶ 3. Rockwell then worked as a Boiler Tender at Camp Pendleton in Oceanside, California from 1966 through 2000 where he alleges further exposure to asbestos and asbestos-containing products. *Id.*

Plaintiffs stipulated to withdraw their claims against Foster Wheeler for alleged exposure aboard the USS Edwards and USS Parsons; thus, Plaintiffs’ only claims against Foster Wheeler are limited to the alleged exposure at Camp Pendleton.² *Id.* ¶¶ 11-12.

Prior to his deposition in July 2021, Rockwell composed a handwritten list of equipment he recalled working on in his career in the Navy and at Camp Pendleton. PSAUF ¶ 11. Rockwell identified the boilers he worked on by name and included them on this list.³ *Id.* ¶ 12. Rockwell testified generally that he worked on “all types [and] shapes” of boilers at Camp Pendleton, and there was a least one or two boilers in each of the buildings at Camp Pendleton. PSAUF ¶ 7. His work on these boilers included “all kinds of maintenance.” *Id.* ¶ 8.

At his deposition, Defendant Foster Wheeler’s counsel asked Rockwell where he worked with Foster Wheeler boilers, and Rockwell responded that his years in the Navy and at Camp

The Court has included herein only undisputed facts, that is, where the parties have indicated that the cited fact was “undisputed.” To the extent that a cited underlying “undisputed” fact had been nominally disputed by an opposing party, the Court finds that the stated dispute: (1) fails to actually controvert the proffered “undisputed” fact; (2) disputes the fact on grounds not germane to the actual statement made by the initial proffering party; (3) fails to cite sufficient evidence in support of the disputing party’s position; and/or (4) consists of legal arguments that do not circumvent the underlying facts. As such, the Court treats the facts delineated herein as undisputed. Any proffered facts not included in this Ruling were found to be: (1) unsupported by admissible evidence; (2) irrelevant to the Court’s present analysis; (3) conclusory legal arguments; or (4) some combination thereof.

² Although the stipulation did not specifically provide that Plaintiffs were also withdrawing their claims of asbestos exposure from any Foster Wheeler equipment located at the San Diego Naval Base and the Long Beach Naval Shipyard, that was the actual result since they explicitly “agree[d] to limit their claims in this action against Foster Wheeler to Plaintiff DENNIS A. ROCKWELL’s alleged work with Foster Wheeler equipment allegedly located at Camp Pendleton.” ECF No. 393 at page 2 of 4.

³ Rockwell’s list of boilers includes 20 manufacturers with Foster Wheeler being number 16. *See* Exhibit 2 to Declaration of Paul C. Cook in Support of Opposition to Foster Wheeler Energy Corp. Motion for Summary Judgment, ECF No. 468-2 at 53 of 286.

Pendleton “all run[] together” and that “Foster Wheeler boilers was in there some time, someplace, in [his] recollection.” RSGD ¶ 15. When asked whether he could remember a specific location, date, or type of work generally performed on a Foster Wheeler boiler, Rockwell testified that he generally worked with all boilers at “some time or another” of “all different sizes, shapes, and descriptions.” *Id.* ¶16. Nonetheless, Rockwell could not “pinpoint any particular boiler at any time or anyplace” or “the amount of ‘em that I worked on.” *Id.* Defendant’s counsel again tried to elicit specific testimony about the work he performed on Foster Wheeler boilers. *Id.* ¶ 17. In fact, Rockwell was not able to specifically testify as to whether he worked on or around a Foster Wheeler boiler at Camp Pendleton.⁴ *Id.* ¶ 19. When asked to describe the type of Foster Wheeler boiler he encountered at Camp Pendleton, Rockwell responded that he worked on boilers on his “list” and was exposed to asbestos from each of them. *Id.* ¶ 22. Rockwell testified that he believes he worked with Foster Wheeler materials because “if we was [sic] working on Foster Wheeler and that was the material that fit that, that would tell me that it was a Foster Wheeler material.” *Id.* ¶ 27.

Foster Wheeler provided an affidavit from Robert F. Tracey⁵ (“Tracey Affidavit”) which states that the “Foster Wheeler Inc. Law Department has conducted a reasonable and diligent search of its contract files to determine whether it furnished equipment to the United States Marine Cops. – Camp Pendleton, San Diego/Oceanside, California” and “[b]ased on that search, Foster Wheeler Inc. has located no Foster Wheeler Corporation or Foster Wheeler Energy Corporation contracts to furnish equipment to the aforementioned base.” Tracey Affidavit ¶¶ 4-5, Exhibit J to Declaration of Jon C. James in Support of Defendants Foster Wheeler Energy Corporation and Foster Wheeler, LLC’s Motion for Summary Judgment (“James Decl.”), ECF No. 434-3 at 350 of 400. Foster Wheeler also supplied two expert reports from Joselyn Senter: (1) an October 17, 2019 Report as to the history of the U.S. Navy’s knowledge and policies pertaining to asbestos health hazards (“Senter 2019 Report”) – attached as Exhibit L to James Decl., ECF No. 434-3 at 356-71 of 400, and (2) a February 14, 2022 Report as to whether there were any Foster Wheeler boilers at

⁴ As Rockwell testified in his deposition, “to pick out any particular boiler, time, space, after all these years, that – it just all runs together. There – there’s no picking any time, place or boiler out of the hundreds.” RSGD ¶ 19.

⁵ Tracey previously held positions with Foster Wheeler including project manager, program manager, Director of Commercial Operations, contract administrator and project director (including a period as a project director assigned to the Foster Wheeler Law Department). *See* Tracey Affidavit ¶¶ 2-3. His experience and responsibilities have included coordinating with the Law and other Departments to identify and retrieve contracts and other documents related to Foster Wheeler products. *Id.* ¶ 3.

Camp Pendleton between June 1966 and March 2000 while Rockwell was employed there (“Senter 2022 Report”) – attached as Exhibit K to James Decl., ECF No. 434-3 at 352-54 of 400.⁶ As to the subject of whether there were any Foster Wheeler boilers at Camp Pendleton, Senter stated:

I am familiar with Foster Wheeler boilers utilized on naval surface vessels, a type of boiler not utilized at Camp Pendleton. I am also familiar with Foster Wheeler boilers made for large industrial facilities, such as power plants and refineries. There was only one such large industrial boiler at the Camp Pendleton base located for emergency backup purposes in the old hospital building (H-100). That boiler was manufactured by Cleaver Brooks. All other boilers at Marine Corps Base Camp Pendleton were small units for heating buildings (a type of boiler Foster Wheeler did not manufacture).

* * * *

Because Camp Pendleton did not generate its’ [sic] own power, it had no need for high temperature piping or equipment with asbestos at the facility. There was little requirement to manage or monitor asbestos insulation hazards on board Camp Pendleton since these operations were not likely to occur in a non-emergent posture. Other than in the old hospital power facility, the potential for asbestos exposure during boiler maintenance would have been considered an extremely low probability.

Senter 2022 Report at 2 (footnotes omitted).⁷

III. Legal Standard

Summary judgment may only be granted when a movant “shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the initial burden of establishing the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial.

⁶ Senter is a Certified Industrial Hygienist and a retired Captain in the U.S. Navy who served as: (1) the Head of the Industrial Hygiene Branch, Naval Regional Medical Center at Camp Pendleton from 1981 to 1983, and (2) the President of the Navy Industrial Hygiene Association. *See* Senter 2019 Report at 1; Senter 2022 Report at 1.

⁷ Senter noted that “[t]here are over 480 boilers in buildings spread throughout the 200 square mile Camp Pendleton facility.” Senter 2022 Report at 2, n.4. Senter also stated that:

In discussions with Camp Pendleton maintenance personnel, I confirmed there are no Foster Wheeler boilers at the facility. The records show no FW boilers in the current inventory of boilers although the inventory does not identify boilers that have been replaced. One individual seemed to recall the name Foster Wheeler. He had no details other than speculate it may have been associated with a couple 2 story boilers at the facility. I am advised FW made no such boilers.

Id. at 2, n.5. In his deposition, Senter indicated that the useful life of boilers “runs about 20 years, and then they’d have [a] change-out” but that Camp Pendleton had a “practice of replacing the boiler with the same manufacturer that had been there before.” *See* April 7, 2022 Deposition of Joselyn Senter at 22 & 57, attached as Exhibit M to James Decl., ECF No. 434-3.

In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal quotation marks and citations omitted). However, when the nonmoving party bears the burden of proving the claim or defense, the moving party does not need to produce any evidence or prove the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 325. Rather, the moving party’s initial burden “may be discharged by ‘showing’ – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party’s case.” *Id.*

Once the moving party meets its initial burden, the “party asserting that a fact cannot be or is genuinely disputed must support the assertion.” Fed. R. Civ. P. 56(c)(1). “The mere existence of a scintilla of evidence in support of the [nonmoving party]’s position will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmoving party].” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Further, “[o]nly disputes over facts that might affect the outcome of the suit . . . will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Liberty Lobby*, 477 U.S. at 248. At the summary judgment stage, a court does not make credibility determinations or weigh conflicting evidence. *See id.* at 249. A court must draw all inferences in a light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

IV. Discussion

A. Negligence: Duty to Warn

In order to prevail on a negligence claim involving asbestos under California law, a plaintiff must prove causation by establishing: (1) a threshold exposure, and (2) “legal cause,” or substantial factor causation. *See Rutherford v. Owens-Illinois, Inc.*, 16 Cal. 4th 953, 982 (1997). Proving that the exposure was a legal cause of plaintiff’s injury can involve various scientific theories in asbestos cases. For example, one theory is known as the “every exposure,” “any exposure,” or “any fiber” theory. *Davis v. Honeywell Int’l Inc.*, 245 Cal. App. 4th 477, 480 (2016). Under the “every exposure” theory, each and every exposure to asbestos can be a contributing factor to the asbestos-related illness. *Id.* at 492-93. The “every exposure” theory is the “subject of legitimate scientific debate” under California case law and, therefore, “it is for the jury to resolve the conflict between the “every exposure theory” and other competing expert opinions. *Id.* at 480. Thus, a

plaintiff may utilize this theory to argue that an exposure creates a “reasonable medical probability” that it was a substantial factor in bringing about an asbestos-related injury. *Id.* at 492-93.

1. Contact with an Asbestos-Containing Foster Wheeler Boiler

Foster Wheeler has presented evidence that: (1) it has no record of selling or providing *any* boilers for use at Camp Pendleton; (2) with the exception of one large industrial boiler located for emergency backup purposes at the old hospital building, all boilers at Camp Pendleton were small units for heating buildings (a type of boiler that Foster Wheeler did not manufacture); (3) the large industrial boiler at the old hospital building was manufactured by Cleaver Brooks; (4) because Camp Pendleton did not generate its own power (except at the old hospital facility), it had no need for high temperature piping or equipment with asbestos at the military base; and (5) other than at the old hospital power plant, the potential for asbestos exposure during boiler maintenance at Camp Pendleton would have been a low probability. Foster Wheeler has also cited to specific testimony from Rockwell. After advising Rockwell that “Foster Wheeler has no record of having furnished any equipment to Camp Pendleton,” the following exchanges occurred:

Q. Can you testify under penalty of perjury that you saw any Foster Wheeler equipment at Camp Pendleton?

* * * *

A. After all the years and all the boilers, Foster Wheeler boiler name is in my memory of working around or associated with Foster Wheeler boilers.

Q. And where do you associate Foster Wheeler boilers?

A. In all the years, in all the – the Navy and Camp Pendleton, it all runs together. And with my years of working, that I just keep [. . .] remembering Foster Wheeler boilers was in there some time, someplace, in my recollection.

* * * *

Q. What I'm trying to understand is if you have any specific memory of a Foster Wheeler boiler, so that you can provide testimony as far as a specific location, date, or the type of work that was performed.

* * * *

A. On my list I have all kinds of boilers, and over all of the times that I worked on every type of boiler, just about, that was ever made, at some time or another, I have worked on ‘em, been around other people that worked on ‘em. They’ve been all different sizes, shapes, descriptions, and to pinpoint any particular boiler at any time or anyplace that I worked on it, is next to impossible after all these years, and the amount of ‘em that I worked on.

See July 13, 2021 Deposition of Dennis A. Rockwell at 420-22, attached as Exhibit H to James Decl., ECF No. 434-3. At his July 19, 2021 Deposition, Rockwell testified:

Q. My question is specific to Foster Wheeler, and it’s this: Can you testify that you

personally worked on or around a Foster Wheeler boiler at Camp Pendleton?

A. Give me your -- all your records and whatnot to help me refresh my memory. If you can furnish them records, that would help me tremendously.

Q. Well, sir, that's exactly my point. We have no records of having furnished any Foster Wheeler equipment to Camp Pendleton. * * * * All I can go by is your recollection. So what I'm asking you, sir, is: Do you have a personal recollection of having worked on or around any Foster Wheeler equipment at Camp Pendleton? * * * * I'm just looking for what you can recall, sir. And if you don't recall, you can say so.

A. I said, I have been exposed to asbestos from all the different boilers on my list, from start to finish of my career.

Q. Sir, can you testify under penalty of perjury that you saw any Foster Wheeler equipment during the time you worked at or for Camp Pendleton?

A. I've answered that question.

Q. Respectfully, you have not, sir.

A. Respectfully, I have.

See July 19, 2021 Deposition of Dennis A. Rockwell at 942-43, attached as Exhibit I to James Decl., ECF No. 434-3.

To counter to the above cited evidence that there were no Foster Wheeler boilers at Camp Pendleton, Plaintiffs repeatedly proffered the same stock nonresponsive response:

Rockwell was able to identify boilers, and the other equipment he worked on, by name tags directly affixed to the boilers and equipment. Evidence: Ex. 1 to Cook Decl., Rockwell Depo., Vol. 1, 80:1 – 6; 81:4 – 13; p. 83:17 – 21.

Rockwell prepared a handwritten list of equipment he recalled working on in his career in the Navy and at Camp Pendleton. Evidence: Ex. 1 to Cook Decl., Rockwell Depo., Vol. 1, 83:22 – 84:12; 88:25 – 89:17; 90:22 – 91:2; Ex. 2 to Cook Decl, handwritten list, dated June 8, 2021 [attached to Rockwell Deposition as Exhibit 1].

Rockwell recorded his recollection of boilers that he worked on during his career, and recalled working on and around others working on Foster Wheeler boilers. Evidence: Ex. 1 to Cook Decl., Rockwell Depo., Vol. 1, 97:7 – 20; 101:19 – 25; 03:3 – 4; 103:20 – 104:25; 202:24 – 203:4; 203:18 – 24; Ex. 2 to Cook Decl, handwritten list, dated June 8, 2021 [attached to Rockwell Deposition as Exhibit 1].

See, e.g., RSGD ¶¶ 15-26. Plaintiffs' response does not create a material issue of disputed fact. The question is not whether Rockwell was able to identify boilers, and the other equipment he worked on, by name tags directly affixed to the boilers and equipment; but rather does he have any actual recollection or other evidence as to the presence of Foster Wheeler boilers *at Camp Pendleton*. Plaintiffs correctly point out that Rockwell did prepare a list of equipment that he recalled working on in his career in the Navy and at Camp Pendleton. However, that list does not

indicate at which facility Rockwell encountered the equipment. Indeed, Rockwell provided the names of 20 boiler manufacturers where Foster Wheeler was 16th on the list. While Rockwell did state that he worked on and around others working on Foster Wheeler boilers (*see* July 9, 2021 Rockwell Deposition at 103-04), again the issue is not whether he ever worked on a Foster Wheeler boiler, but rather if he worked on a Foster Wheeler boiler at Camp Pendleton. Hence, the direct questions of Foster Wheeler’s counsel at his deposition (*e.g.* “Can you testify that you personally worked on or around a Foster Wheeler boiler at Camp Pendleton?”) were determinative. Rockwell’s failure to answer those questions results in a dearth of admissible evidence to rebut Foster Wheeler showing that it had never supplied boilers to Camp Pendleton and there is no actual evidence of any Foster Wheeler boiler in use at that location.⁸

Additionally, because Rockwell never identified any particular Foster Wheeler boiler that he worked on at Camp Pendleton, there is no evidence that any such boiler contained asbestos or that, if it did, he came into contact with the asbestos while working on that equipment. As noted in Senter’s 2022 Report, the boilers at Camp Pendleton (except for the one at the old hospital power facility which was manufactured by Cleaver Brooks) had no need for high temperature piping or concomitant accoutrements with asbestos. While Foster Wheeler did admit that asbestos products *may* have been installed in or applied to components of boilers during the erection and/or installation of the equipment (*see* PSAUF ¶ 32), Plaintiffs provided no evidence to rebut Foster Wheeler’s showing that Rockwell never indicated that he observed the erection or installation of a new Foster Wheeler boiler while he was at Camp Pendleton. *See* RSGD ¶ 13.

In light of the fact that Foster Wheeler has proffered un rebutted evidence that it never sold or any of its boilers for use at Camp Pendleton and there are no records of Foster Wheeler boilers at that military base, Rockwell’s testimony that “in [his] recollection” he encountered Foster Wheeler boilers at some point in his career does not create a genuine dispute of material fact. Further, even if Rockwell’s generalized testimony that he encountered Foster Wheeler boilers during his work career was sufficient, Plaintiffs have still failed to present any evidence that said purported boilers were ones that contained asbestos or that Rockwell interacted with their asbestos-

⁸ In essence, Rockwell’s answer to the question was that he was “exposed to asbestos from all the different boilers on my list, from start to finish of my career.” *See* July 19, 2021 Deposition of Dennis A. Rockwell at 943. Rockwell’s inability to specifically recall whether he in fact encountered a Foster Wheeler boiler at Camp Pendleton during the 1966 through 2000 period is admittedly understandable and not surprising. However, his lack of any actual recollection of a contact at the facility cannot be used to counter Foster Wheeler’s otherwise un rebutted evidence that it did not sell any boilers for use at Camp Pendleton.

containing components.⁹ In sum, the Court finds that Plaintiffs have failed to establish that Rockwell came into contact with an asbestos-containing Foster Wheeler boiler at Camp Pendleton.

2. Causation

Given the Court's finding that Plaintiffs have not established that Rockwell came into contact with an asbestos-containing Foster Wheeler boiler at Camp Pendleton, it need not address the causation question.

B. Strict Liability: Duty to Warn, Loss of Consortium and Punitive Damages

Under California law, strict liability attaches to three types of product defects: manufacturing defects, design defects, and warning defects. For asbestos-related product injuries, plaintiff must establish two elements to prove causation: (1) "some threshold exposure," and (2) that such exposure is a substantial factor in bringing about the injury. *Rutherford v. Owens-Illinois, Inc.*, 16 Cal. 4th 953, 982 (1997).

For the same reasons outlined above in Section IV(A), Plaintiffs have not sufficiently demonstrated that Rockwell was exposed to asbestos from a Foster Wheeler boiler at Camp Pendleton. Thus, their strict liability claim fails.

Under California law, loss of consortium is a stand-alone personal injury. *See Leonard v. John Crane, Inc.*, 206 Cal. App. 4th 1274, 1279 (2012) ("While the cause of action is triggered by the spouse's injury, 'a loss of consortium claim is separate and distinct.'") (citation omitted). Nonetheless, it is dependent upon the tortious injury to the plaintiff's spouse. *Hahn v. Miranda*, 147 Cal. App. 4th 740, 746 (2007). Here, the Court has already determined that Plaintiffs' California negligence and strict liability claims do not survive. The Court, therefore, grants summary judgment as to the California loss of consortium claim.

Defendant argues that Plaintiffs are not entitled to punitive damages under California law. Punitive damages are available for tortious acts when there is "clear and convincing evidence" that the defendant committed the tortious act with "oppression, fraud, and malice." Cal. Civ. Code § 3294(a). To succeed, Plaintiffs need to provide evidence that there was an intentional misrepresentation, intent to cause injury, or some other despicable conduct carried out with willful and conscious disregard for the rights and safety of others. Cal. Civ. Code §§ 3294(a), (c).

⁹ As established by Foster Wheeler, except for the boiler at the old hospital building which was manufactured by Cleaver Brooks, the boilers at Camp Pendleton were not of the type that would require high temperature piping or concomitant equipment that would utilize asbestos material. *See, e.g.*, Senter 2022 Report at 2.

The Court notes that there is no remaining legal basis for Plaintiffs' claim for punitive damages, as the underlying tort claims have been dismissed. Thus, the Court grants summary judgment to Foster Wheeler for the claim for punitive damages.¹⁰

V. Conclusion

Based on the foregoing discussion, the Court **GRANTS** the motion for summary judgment as to all of the causes of action in the FAC against Foster Wheeler.

¹⁰ Foster Wheeler's brief does not specifically mention or otherwise raise any argument as to Plaintiffs' causes of action for breach of warranty. However, presumably those causes of action would be premised on Rockwell's encountering an asbestos-containing Foster Wheeler boiler at Camp Pendleton.