

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

| | |
|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>George Ross et al Plaintiff/Petitioner(s) VS. 3M COMPANY et al Defendant/Respondent (s)</p> | <p>No. 25CV152599 Date: 04/24/2026 Time: 5:01 PM Dept: 18 Judge: Patrick McKinney ORDER Ruling on Submitted Matter filed by AMEC FOSTER WHEELER USA CORPORATION (fka FOSTER WHEELER LLC, fka FOSTER WHEELER CORPORATION) (Defendant) on</p> |
|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The Court, having taken the matter under submission on 04/23/2026, now rules as follows: Defendant Foster Wheeler, LLC’s (“Defendant”) Motion for Summary Judgment (“MSJ”) or, in the alternative, Motion for Summary Adjudication (“MSA”) was heard on April 23, 2026. After consideration of the supporting and opposition papers, and the arguments of counsel at the hearing, Defendant’s MSJ is GRANTED. Defendant’s alternative MSA (“MSA”) is DENIED as moot.

George Ross’ (“Mr. Ross”) and Uson Ross’ (“Mrs. Ross”) (collectively, “Plaintiffs”) allege that Mr. Ross was exposed to respirable asbestos legally attributable to Defendant when Mr. Ross cleaned out Foster Wheeler brand boilers at Standard Oil’s Richmond oil refinery on two occasions in or around 1964 and 1965.

ANALYSIS OF MOTION FOR SUMMARY JUDGMENT

Defendant seeks to meet its initial burden of production on summary judgment by pointing to Plaintiffs’ assertedly factually devoid responses to Defendant’s sufficiently comprehensive written and deposition discovery. (Andrews v. Foster Wheeler LLC (2006) 138 Cal.App.4th 96, 106-107.) The Court finds that Defendant’s Special Interrogatories Nos. 1-9 to Mr. Ross constitute sufficiently comprehensive written discovery regarding threshold exposure.

In Response to SROG Nos. 1-9, Mr. Ross incorporates by reference his later responses to SROG

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Nos. 45-47 seeking all facts and identification of all witnesses and documents supporting Plaintiffs' punitive damages claim.

The Court finds Mr. Ross' Response to SROG No. 45 seeking all facts to be factually devoid in certain material respects. The Response states that Mr. Ross worked at Standard Oil (now Chevron) oil refinery in Richmond from 1963 to 1972. The Response states that he assisted pipe fitters replacing gaskets and insulation, including on Foster Wheeler boilers. The Response also states he swept out the boilers, which included sweeping up broken down firebrick, which created dust when he swept it up. The Foster Wheeler boilers were "high temperature," "high pressure". The Response states that Foster Wheeler boilers "specifically required asbestos containing firebrick their maintenance manuals called for them." [sic] It is unclear whether this means all Foster Wheeler boilers and similar products were specified for asbestos containing firebrick or only certain specific Foster Wheeler boilers. Other than the fact that they were high temperature and high pressure, the Response does not identify the make or model number of any of the Foster Wheeler boilers Mr. Ross worked on. The Response contains no facts that any of the allegedly asbestos-containing parts, such as gaskets, packing or firebrick were OEM parts supplied by Defendant or replacement parts supplied by Defendant.

In Response to SROG No. 47, seeking identification of witnesses, Mr. Ross identifies Plaintiffs and fourteen (14) specifically identified persons most qualified, employees or former employees of Defendant. However, neither the Response to SROG No. 47 nor No. 45 state what specific personal knowledge any of Defendant's witnesses have that would establish threshold exposure.

Defendant presents the following evidence from Mr. Ross's deposition. Mr. Ross testified that the only work he recalled in connection with the Foster Wheeler boilers was sweeping out the two boilers at the Richmond refinery in 1964 or 1965. (Defendant's Undisputed Material Fact ("DUMF") Nos. 12-15.) He testified that the boilers had been installed prior to his starting work at the refinery and that they "looked old," although he could not provide an estimate of their age. (See evidence in support of DUMF Nos. 16-17.) Defendant presents affirmative evidence that Defendant's business records contain documents evidencing only Defendant's sale to the Richmond refinery of a Dowtherm vaporizer furnished in 1953 and a desulphurization reboiler furnace and a debutanizer reboiler furnace furnished in 1954. (Buggato Dec. Exh. N ("Johnson Dec.") ¶¶ 12-13.) However, Defendant's moving evidence on summary judgment is strictly construed (Saelzler v. Advanced Group 400 (2001) 25 Cal.4th 763, 768), and it is possible that Standard Oil could have purchased other Foster Wheeler equipment from third party distributors because Defendant's evidence does not negate that possibility. It is thus ambiguous and uncertain whether the products declarant Johnson identified included the "boilers" Mr. Ross swept out.

Mr. Ross testified that he did not know the maintenance history of either Foster Wheeler boiler; the only type of debris he recognized was firebrick; he did not know who installed this firebrick or if it was original to the boiler or replacement; and he did not know who supplied any replacement parts or materials for use on the Foster Wheeler boilers. (DUMF Nos. 18, 19, 22, 23 and 24.) Mr. Ross also testified that he did not observe other workers working on gaskets, packing or insulation while he was sweeping out the Foster Wheeler boilers and did not know what work may have been performed on the interior of the boilers before he swept them out.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

(DUMF Nos. 20-21.)

Defendant presents evidence that Mrs. Ross had not yet met Mr. Ross when Mr. Ross worked at the Richmond refinery. (DUMF No. 10.)

In Response to SROG No. 46, seeking identification of documents, Mr. Ross identified many specific documents. However, neither the Response to SROG No. 45 nor No. 46 state with specificity what evidence any of these documents contain tending to show that any materials to which Mr. Ross was exposed when he swept the boilers were both asbestos-containing and legally attributable to Defendant.

The Court finds that Defendant has met its initial burden of production on summary judgment. The burden therefore shifts to Plaintiffs to present evidence creating triable issues of material fact that the materials Mr. Ross swept up in Foster Wheeler boilers was asbestos-containing and is legally attributable to Defendant.

Plaintiffs in Opposition present additional evidence from Mr. Ross' deposition. He testified that the Foster Wheeler boilers were probably 20 by 40 feet and eight to ten feet tall. He testified that he swept out two different boilers one time each approximately one year apart. It took a few days to sweep out the boilers. (See evidence in support of Plaintiff's Additional Material Facts ("PAMF") Nos. 6-8.) Plaintiffs present no evidence that any gaskets, packing or thermal insulation were located inside the boilers where Mr. Ross swept out broken down firebrick.

Plaintiff also presents the expert witness declaration of Donald Gosney, who opines that Mr. Ross would have been exposed to respirable asbestos from gaskets, packing, thermal insulation and firebrick while Mr. Ross worked at the Richmond refinery between 1964 to 1972. However, there is no foundation for expert Gosney's apparent opinion that the firebrick on the Foster Wheeler boilers was asbestos-containing, or that any asbestos-containing parts, such as gaskets, packing or firebrick were OEM parts supplied by Defendant or replacement parts supplied by Defendant. See rulings on objections below.

Plaintiffs present evidence that Defendant sold replacement asbestos-containing parts to at least one customer (PAMF Nos. 11 and 19), but Plaintiffs present no evidence that Defendant ever sold replacement parts to the Richmond refinery.

Plaintiffs present evidence that at least some of Defendant's boilers incorporated asbestos-containing parts, including gaskets, packing, millboard and refractory products. (PAMF No. 12.)

Plaintiffs present evidence in the form of a 1964 insulation standards catalog issued by Defendant listing approved materials for different insulation purposes of Defendant's equipment. Some of these materials were asbestos-containing, and some were not. The document does not create triable issues of material fact that the firebrick on the boilers that Mr. Ross swept out were asbestos-containing or that Defendant had approved asbestos-containing firebrick for those boilers.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Although Defendant has identified specific products it has records of having sold to the Richmond Refinery in 1953 and 1954 and has presumably produced those records to Plaintiffs in this action, Plaintiffs present no evidence that any of the three identified products specified asbestos containing firebrick.

In the moving papers, Defendant cites to O'Neil v. Crane Co. (2012) 53 Cal.4th 335 for the proposition product manufacturers are not liable for asbestos containing replacement parts supplied by third parties. The case involved manufacturers of pumps and valves used on U.S. Navy ships, which at the time of the O'Neil plaintiff's exposures used asbestos containing gaskets and packing. The Supreme Court held that, where the gaskets and packing were manufactured by third parties, the plaintiff had to show that gaskets or packing that exposed their decedent to asbestos were OEM or replacement parts provided by defendant pump and valve manufacturers rather than from a third-party source. (See also Johnson v. ArvinMeritor, Inc. (2017) 9 Cal.App.5th 234, 246-248.)

In Opposition, Plaintiffs cite to Kesner v. Sup.Ct. (2016) 1 Cal.5th 1132 (without proper citation) for the general proposition that foreseeability of harm can support liability in the context of take home exposures to a worker's family members. Nothing in Kesner suggests that the far more factually apposite O'Neil and Johnson decisions are not good law.

Ultimately, the Court finds that Plaintiffs' Opposition evidence is too speculative to create triable issues of material fact that firebrick Mr. Ross swept up on the specific Foster Wheeler boilers he worked on was asbestos-containing; and, even if it was, that Defendant had approved asbestos-containing firebrick for those boilers, or that any firebrick, gaskets, packing or insulation materials on those boilers were OEM or replacement parts supplied or furnished by Defendant. The evidence presented by Plaintiffs is insufficient to create a reasonable inference by the jury at trial that Defendant exposed Mr. Ross to asbestos.

Wherefore, the Court GRANTS Defendant's MSJ.

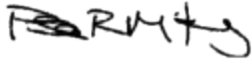
The Court DENIES Defendant's MSA as moot.

The Court OVERRULES Defendant's Reply Objections Nos. 1-9.

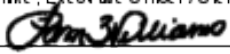
The Court SUSTAINS Defendant's Reply Objection No. 10 to the extent that expert witness Gosney is opining that the firebrick on the Foster Wheeler boilers incorporated asbestos. There is no foundation in the Gosney Declaration for such an opinion. The only evidence in the record is that these pieces of Foster Wheeler equipment may have been the two reboiler furnaces Defendant sold Standard Oil in 1954, and Mr. Johnson has declared that these reboiler furnaces were too hot for the use of asbestos containing fire brick because the asbestos would deteriorate rapidly at the high heats generated. (Johnson Dec. ¶¶ 8-17.)

Dated : 04/24/2026

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Rene C. Davidson Courthouse



Patrick McKinney / Judge

| | |
|---------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA | Reserved for Clerk's File Stamp |
| COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612 | FILED Superior Court of California County of Alameda 04/24/2026 |
| PLAINTIFF/PETITIONER: George Ross et al | Chad Finke, Executive Officer / Clerk of the Court By:  Deputy P. Drummer-Williams |
| DEFENDANT/RESPONDENT: 3M COMPANY et al | |
| CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6 | CASE NUMBER: 25CV152599 |

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Ruling on Submitted Matter filed by AMEC FOSTER WHEELER USA C... entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Amy Jo Talarico
Morgan Lewis & Bockius LLP
amy.talarico@morganlewis.com

Andrew Livingston Sharp
FOLEY & MANSFIELD, PLLP
asharp@foleymansfield.com

Andrew S. Russell
Pierce Davis & Perritano LLP
arussell@piercedavis.com

Christopher B. Bruni
MANNING GROSS + MASSENBURG LLP
cbruni@mgmlaw.com

Christopher Sean Patterson
Duane Morris LLP
cspatterson@duanemorris.com

Erika Rose Aspericueta
Steptoe LLP
easpericueta@steptoe.com

FLORENCE MCCLAIN
florence.mcclain@lewisbrisbois.com

Gilliam Fipp Stewart
HUSCH BLACKWELL LLP
gilliam.stewart@huschblackwell.com

James P. Cunningham
Tucker Ellis LLP
james.cunningham@tuckerellis.com

Chad Finke, Executive Officer / Clerk of the Court

Dated: 04/24/2026

By:



P. Drummer-Williams, Deputy Clerk

SHORT TITLE: ROSS, et al. vs 3M COMPANY, et al.

CASE NUMBER: 25CV152599

Jeremy D. Huie
Edlin Gallagher Huie + Blum
jhuie@eghblaw.com

Joseph L. Greenslade
Jgreenslade@polsinelli.com

Joshua Samuel Paul
The Paul Law Firm
jpaul@thepaulfirm.com

Kevin Clonts
PIERCE DAVIS & PERRITANO, LLP
kclonts@rizzopc.com

Lisa L. Oberg
HUSCH BLACKWELL LLP
lisa.oberg@huschblackwell.com

Michael S. Robinson
PIERCE DAVIS & PERRITANO, LLP
mrobinson@piercedavis.com

Peter Christopher Beirne
The Paul Law Firm
pbeirne@thepaulfirm.com

Robert J. Bugatto
Hugo Parker, LLP
service@HUGOPARKER.com

T. Stephen Corcoran
scorcoran@piercedavis.com