

STATE OF MICHIGAN
COURT OF APPEALS

BEVERLY JOAN MCELDFOWNEY, Personal
Representative of the Estate of RUSSELL
MCELDFOWNEY, Deceased,

Plaintiff-Appellant,

v

AIR PRODUCTS & CHEMICALS, INC.,
AMERICAN CHEMISTRY COUNSEL,
GOODRICH CORPORATION, PPG
INDUSTRIES, INC., SHELL OIL COMPANY,
UNIROYAL, INC., DOWN CHEMICAL
COMPANY, ALLIED SIGNAL, INC., a/k/a
HONEYWELL INTERNATIONAL, INC.,
RHONE-POULENC, INC., a/k/a BAYER
CROPSCIENCE, INC., UNION CARBIDE
CORPORATION, ETHYL CORPORATION,
GENCORP, INC., GEORGIA PACIFIC
CORPORATION, GOODYEAR TIRE &
RUBBER COMPANY, MONSANTO
CORPORATION, PACTIVE CORPORATION,
TENNECO AUTOMOTIVE, INC., and BORDEN
CHEMICAL, INC.,

Defendants-Appellees,

and

ZENECA, INC. and CHEVRON USA, INC.,

Defendants.

UNPUBLISHED
May 31, 2007

No. 273572
Oakland Circuit Court
LC No. 06-073263-NP

Before: Talbot, P.J., and Donofrio and Servitto, JJ.

Talbot, J. (*concurring in part and dissenting in part*).

Although I concur with the majority in affirming the trial court's grant of summary disposition on plaintiff's claims of fraud, fraudulent concealment, exemplary damages and the

dismissal of defendants, which are not identified as manufacturers, I would also affirm the trial court's grant of summary disposition based on the deficiency of plaintiff's pleadings to state a prima facie cause of action for products liability.

To establish a prima facie products liability case requires "proof (1) that the defendant has supplied a defective product and (2) that the asserted defect has caused injury to the plaintiff." *Mascarenas v Union Carbide Corp*, 196 Mich App 240, 249; 492 NW2d 512 (1992). "The threshold requirement is the identification of the injury-causing product and its manufacturer." *Id.*, citing *Abel v Eli Lilly & Co*, 418 Mich 311, 324; 343 NW2d 164 (1984). Importantly, in other products liability cases, such as those pertaining to asbestos products, this Court has adopted as a standard that "a plaintiff cannot establish the requisite connection between his injury and a particular [asbestos] product manufacturer by merely showing that the [asbestos] manufacturer's product was present somewhere at his place of work." *Mascarenas, supra* at 249 (citation omitted).

In this instance, plaintiff has taken a shotgun approach in the identification of defendants and has failed to identify any specific products linked to the asserted injury incurred. Specifically, plaintiff has named numerous defendants, which are alleged to manufacture, supply or "act in concert with the manufacturer/supplier," but does not identify the products provided by these defendants or establish plaintiff's use or exposure to these products. Instead, plaintiff merely alleges their general presence and use at plaintiff's place of employment. This is insufficient to establish the requisite link between the products and the source of the decedent's injury.

Because plaintiff has failed to establish the causation in fact element, which is required in any products liability action, *Mascarenas, supra* at 250, the trial court properly dismissed the claim. Further, with all due respect, I believe the majority mistakenly sets forth arguments, on behalf of plaintiff, which were not specifically raised or pleaded in the lower court implying the use of alternative liability theory in order to sustain this cause of action. This Court is not required to make a party's argument and then search for authority to support or reject the argument. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998). In addition, based on dismissal of the claims of fraud and fraudulent concealment, I do not believe that the elements necessary to establish such an alternative theory of liability can be sustained.

/s/ Michael J. Talbot