STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 27, 2020)

LESTER WALLACE, PERSONAL REPRESENTATIVE OF THE ESTATE OF GERARD WALLACE, DECEASED, AND RUTH WALLACE, HIS WIFE, PLAINTIFFS,	:	**C.A. No. PC-2016-5339**
V.	:	
TRANE COMPANY, SUCCESSOR-IN-INTEREST TO AMERICAN STANDARD, ET AL., DEFENDANTS.	:	

DECISION

GIBNEY, P.J. The Defendant Crane Co. (Defendant or Crane) seeks summary judgment in this personal injury action brought by Plaintiffs Lester Wallace, Personal Representative of the Estate of Gerard[1] Wallace, and Ruth Wallace, the Decedent's wife (Plaintiffs). The Defendant argues that there are no genuine issues of material fact remaining for trial, as the Plaintiffs have not offered, and have no reasonable expectation of offering, evidence that Gerard Wallace (Mr. Wallace or the Decedent) was exposed to an asbestos-containing Crane product. Plaintiffs object to the motion, arguing that there are genuine issues of material fact and that the use of third-party asbestos products in relation to Crane's boilers was foreseeable to the Defendant. Plaintiffs also raise a negligence claim based on Defendant's failure to warn of associated hazards. This Court's jurisdiction is pursuant to G.L. 1956 § 8-2-14.

[1] The Decedent is referred to as both Gerard and Gerald Wallace in the filings and record before the Court. *Compare* Pls.' Resp. ¶ 1 (using Gerald) *with* Pls.' Resp. 3; Def.'s Mem., Ex. A (Wallace Dep.), at 1:8, 11:4 (using Gerard). Gerard is the most widely used, and so the Court utilizes that name in its opinion.

I

Facts and Travel

The Decedent and his wife, Ruth Wallace, filed this instant action on November 16, 2016 after the Decedent was diagnosed with mesothelioma in September 2016. (Def.'s Mem. Supp. Mot. Summ. J. (Def.'s Mem.), Ex. A (Wallace Dep.), at 69:5-70:7.) The Plaintiffs allege that Mr. Wallace worked as a plumbing-heating installer-repairer for Portland Lehigh Fuel Company from 1949 to 1951, A.R. Wright from 1951 to 1953, Peterson Oil Company from 1954 to 1966, and Southern Maine Vocational Technical Institute (later Southern Maine Community College) from 1966 to 1985. Plaintiffs allege that Mr. Wallace, while at work, inhaled, absorbed, ingested, and came into contact with asbestos and asbestos-containing products.

Mr. Wallace grew up in Maine, where he resided for most of his life, with the exception of the three years that he served in the Navy beginning in 1943. (Wallace Dep. 13:6-11, 79:2-24, 87:4-21, 90:5-91:2, 95:12-16, 122:16-123:5.) Following his time in the Navy, Mr. Wallace worked in Maine on various jobs including work as a fuel truck driver, service technician, and finally as an instructor at Southern Maine Vocational Technical Institute from 1966 through his retirement in 1985. *Id.* at 14:11-15:15. Mr. Wallace's exposure allegations in the present motion arise exclusively from his employment at Portland Lehigh Fuel Company (Portland), A.R. Wright, and Peterson Oil Company (Peterson), all of which were located in Maine. *Id.* at 16:20-17:5, 19:4-14, 27:5-37:24, 60:16-61:3, 195:6-13. In his deposition testimony, Mr. Wallace testified to working with Crane Co. boilers during his oil burner service work at Portland, A.R. Wright, and Peterson, which was "almost exclusively residential." *Id.* at 16:7-15, 297:23-298:23.

Mr. Wallace testified to installing "a few" Crane boilers, as well as doing service and overhaul work that could disturb the sealant around the smoke hood, though he did not remove the

boilers. *Id.* at 298:24-299:12, 29:10-30:5, 304:22-305:1. However, Mr. Wallace could not testify as to how many Crane boilers he installed, when he installed them, nor could he recall the make or model of any of the boilers. *Id.* at 299:9-12, 302:10-21. Installation, according to Mr. Wallace's testimony, involved moving a boiler into position and connecting the piping, "probably" connecting the boiler to the smoke hood with asbestos "mud" manufactured by Johns Manville and Eagle Picher. *Id.* at 302:22-303:2, 303:17-21, 303:22-304:16, 22:2-13. He could not testify to the age or service history of the Crane boilers he serviced, nor did he know whether any sealant material he may have removed was original to the boiler. *Id.* at 300:11-19, 146:13-18, 155:12-156:10, 301:24-302:3, 147:24-148:10. However, during these years, Crane produced a supply catalog listing asbestos cements for sale, including Johns Manville 450 cement and Eagle 66 asbestos powder "mud," which Mr. Wallace testified he used on Crane boilers. (Pls.' Resp. to Def.'s Mem. (Pls.' Resp.), Ex. E, at 455; Pls.' Resp., Ex. F, at 139, 141; Wallace Dep. 22:2-13, 246:22-249:8.)

Mr. Wallace died on August 19, 2017. *See* Pls.' Resp. ¶ 1. The operative Fifth Amended Complaint was filed on November 15, 2017, after his death. Defendant filed its motion for summary judgment on April 26, 2019. Plaintiffs filed their objection on May 22, 2019.

II

Parties' Arguments

Defendant moves for summary judgment under Maine law, pursuant to Rule 56 of the Maine Rules of Civil Procedure.[2] (Def.'s Mem. 1-2.) Defendant initially offers that it believes

[2] As detailed below, this Court applies Rhode Island's procedural law even where it applies foreign substantive law. However, the summary judgment standard is sufficiently comparable between the states such that further briefing is unnecessary. Generally, both rules state that the judgment sought shall be rendered forthwith if the record shows that there is no genuine issue as to any material fact and that a party is entitled to judgment as a matter of law. *Compare* Rule 56(c) of the Superior

Maine law should govern the adjudication of this case. *Id.* at 1. Defendant argues that Plaintiffs have failed to produce evidence showing that Mr. Wallace worked with or around a Crane boiler utilizing asbestos-containing components manufactured, sold, or supplied by Crane. *Id.* at 12-14. Defendant further contends that Plaintiffs have not offered evidence showing that Mr. Wallace had contact with asbestos through Crane sealant materials (either those made by the company or sold by it). *Id.* at 14-15. Defendant states that if Plaintiffs cannot prove that asbestos exposure occurred due to Mr. Wallace's exposure to asbestos-containing products original to a Crane boiler or sealant (*i.e.*, not replacement parts or sealant manufactured or sold by third parties), then Plaintiffs have not made out a *prima facie* case under Maine law, and Defendant is entitled to summary judgment. *Id.* at 16-17. Assuming Defendant is entitled to summary judgment on the personal injury claim, Defendant argues that Plaintiff Ruth Wallace's loss of consortium and conspiracy claims (which are dependent upon the underlying tort liability asserted through her late husband's claim) are similarly barred. *Id.* at 18-19.

Plaintiffs do not contest the application of Maine law, nor the propriety of summary judgment as it relates to their conspiracy claims. (Pls.' Resp. 11.) They oppose summary judgment on their other claims, arguing that inferences reasonably drawn from the evidence in the record create a dispute of material fact as to whether Mr. Wallace's asbestos-related disease was caused by exposure to Crane's products. *Id.* at 12-13. Plaintiffs contend that, under a strict liability theory, the foreseeable use of third-party asbestos-containing cement creates liability for Crane even

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Court Rules of Civil Procedure (defining the relevant record as "the pleadings, depositions, documents, electronically stored information, answers to interrogatories, and admissions on file, together with the affidavits, if any") *with* Rule 56(c) of the Maine Rules of Civil Procedure (defining the record as "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by subdivision (h)," which requires certain enumerations of facts).

where no evidence of exposure can be linked to Crane's original products. *Id.* at 13-14. Plaintiffs also argue that Crane was negligent, as it had a duty to warn of asbestos used in conjunction with its products. *Id.* at 14-15. In reply, Defendant argues that this Court has rejected foreseeability and an attendant duty to warn under similar circumstances. (Def.'s Reply 9-10.)

III

Standard of Review

Initially, the Rhode Island Supreme Court has said that "[w]e apply our own procedural law, . . . 'even if a foreign state's substantive law is applicable.'" *DeFontes v. Dell, Inc.*, 984 A.2d 1061, 1067 (R.I. 2009) (quoting *McBurney v. The GM Card*, 869 A.2d 586, 589 (R.I. 2005)). "'Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.'" *DeMaio v. Ciccone*, 59 A.3d 125, 129-30 (R.I. 2013) (quoting *Estate of Giuliano v. Giuliano*, 949 A.2d 386, 390 (R.I. 2008)). Therefore, "only if the case is legally dead on arrival should the court take the drastic step of administering last rites by granting summary judgment." *Mitchell v. Mitchell*, 756 A.2d 179, 185 (R.I. 2000).

This Court will grant summary judgment "when no genuine issue of material fact is evident from 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' and the motion justice finds that the moving party is entitled to prevail as a matter of law." *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 648 (R.I. 2011) (internal quotation omitted)). The moving party "bears the initial burden of establishing the absence of a genuine issue of fact." *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (citation omitted). The Court "views the evidence in the light most favorable to the nonmoving party[,]" Mruk *v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013), and "does not pass

upon the weight or the credibility of the evidence[,]" *Palmisciano v. Burrillville Racing Association*, 603 A.2d 317, 320 (R.I. 1992). Thereafter, "'the nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.'" *Mruk*, 82 A.3d at 532 (quoting *Daniels v. Fluette*, 64 A.3d 302, 304 (R.I. 2013)).

In this context, "'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant." *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995). Consequently, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *Steinberg v. State*, 427 A.2d 338, 340 (R.I. 1981). Furthermore, "'summary judgment should enter against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case. . .'" *Newstone Development, LLC v. East Pacific, LLC*, 140 A.3d 100, 103 (R.I. 2016) (quoting *Lavoie v. North East Knitting, Inc.*, 918 A.2d 225, 228 (R.I. 2007) (further internal quotation omitted)).

IV

Choice of Law Analysis

Defendant argues that Maine substantive law should govern adjudication of this matter. (Def.'s Mem. 1, n.1.) On June 29, 2018, Defendant filed its notice of intent to apply foreign law, followed by a motion and supporting memo on December 4, 2018. (Def.'s Notice Intent; Def.'s Mot. Apply Foreign Law; Def.'s Mem. Supp. Mot. Apply Foreign Law (Def.'s Foreign Law Mem.).) Plaintiffs "agree with Crane that this Court should apply Maine law in relation to this action." (Pls.' Resp. 11.) Our Supreme Court has stated that, "[g]enerally, 'parties are permitted to

agree that the law of a particular jurisdiction will govern their transaction.'" *DeFontes*, 984 A.2d at 1066 (quoting *Terrace Group v. Vermont Castings, Inc.*, 753 A.2d 350, 353 (R.I. 2000)).

Moreover, under Rhode Island's "interest-weighing" approach to choice of law issues, Maine is the state that "'bears the *most significant relationship* to the event and the parties.'" *Harodite Industries, Inc. v. Warren Electric Corp.*, 24 A.3d 514, 534 (R.I. 2011) (quoting *Cribb v. Augustyn*, 696 A.2d 285, 288 (R.I. 1997)) (emphasis added by *Harodite* court). Our Supreme Court has confirmed that Rhode Island courts must consider the following factors when evaluating choice of law in tort matters: "'(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicil [*sic*], residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered.'" *Harodite Industries*, 24 A.3d at 534 (quoting *Brown v. Church of the Holy Name of Jesus*, 105 R.I. 322, 326-27, 252 A.2d 176, 179 (1969) (internal quotation omitted)). Mr. Wallace's contacts with Maine give that state a strong interest in and relationship with this matter. It was in Maine that Mr. Wallace lived most of his life and worked with the Crane boilers at issue here. *See* Wallace Dep. 13:6-11, 16:7-15, 16:20-17:5, 19:4-14, 27:5-37:24, 60:16-61:3, 79:2-24, 87:4-21, 90:5-91:2, 95:12-16, 122:16-123:5, 195:6-13, 297:23-298:23. It was also in Maine that Mr. Wallace was treated for mesothelioma and later died. *See id.* at 62:1-20, 68:21-70:7; Def.'s Mem. 1. This Court has applied Maine law under similar circumstances in the past. *See Hinkley v. A.O. Smith Corp.*, No. PC-15-1722, 2017 WL 1046587, at *3 (R.I. Super. Mar. 13, 2017). It will also do so here.

V

Analysis

In order for a plaintiff to survive a defendant's motion for summary judgment as to a particular claim, the plaintiff must "produce evidence that would establish a prima facie case for [that] claim . . . ." *DiBattista v. State*, 808 A.2d 1081, 1089 (R.I. 2002).

In *Rumery v. Garlock Sealing Technologies, Inc.*, the Maine Superior Court stated that "[s]trict liability pursuant to 14 M.R.S. § 221 may arise under any of three different theories: (1) a defect in the manufacture of a product; (2) a defect in the design of a product; or (3) a failure of the manufacturer to adequately warn with respect to danger in the use of a product." *Rumery*, No. 05-CV-599, 2009 WL 1747857 (Me. Super. Apr. 24, 2009) (citing *Bernier v. Raymark Industries, Inc.*, 516 A.2d 534, 537 n.3 (Me. 1986); *Walker v. General Electric Co.*, 968 F.2d 116, 119 (lst Cir. 1992)). As the *Rumery* court noted, the "basis for imposing strict liability on a particular defendant is that 'the product must be in some respect defective.'" *Rumery*, 2009 WL 1747857 (quoting *Bernier*, 516 A.2d at 537). Maine law also calls for evidence that an asbestos-containing product originated with the defendant, pursuant to 14 M.R.S § 221. *See Grant v. Foster Wheeler, LLC*, 140 A.3d 1242, 1248 (Me. 2016).

Additionally, a claim for negligence under Maine law requires proof of causation as a main element. *See Mastriano v. Blyer*, 779 A.2d 951, 954 (Me. 2001). Consequently, a plaintiff must prove that their injury was proximately caused by a breach of duty owed to the plaintiff by the defendant. *Id*. The Supreme Judicial Court of Maine stated in *Grant* that:

> "Evidence is sufficient to support a finding of proximate cause if the evidence and inferences that may reasonably be drawn from the evidence indicate that the negligence played a substantial part in bringing about or actually causing the injury or damage and that the injury or damage was either a direct result or a reasonably

> foreseeable consequence of the negligence." *Grant*, 140 A.3d at 1246.

Therefore, to establish a case in personal injury asbestos litigation, a plaintiff must demonstrate not only *product nexus*—that the decedent was exposed to the defendant's asbestos-containing product—but also *medical causation*, *i.e.*, that such exposure was a substantial factor in causing the plaintiff's injury. *Id.* Furthermore, "[t]he mere possibility of … causation" is not enough. *Id.* When the matter remains one of "pure speculation or conjecture, or even if the probabilities are evenly balanced," summary judgment is appropriate. *Id.*

A

Product Nexus

The Supreme Judicial Court of Maine stated in the *Grant* case that a plaintiff must provide sufficient evidence of product nexus in order to survive summary judgment. *Grant*, 140 A.3d at 1248-49. The *Grant* court held that the necessary showing of product nexus means, at minimum, evidence of 1) a defendant's asbestos-containing product, 2) at the site where the plaintiff worked or was present, and 3) where the plaintiff was in proximity to that product at the time it was being used. *See id.* at 1246 (detailing the "less burdensome standard applied by the trial court" in that case, which the plaintiff did not satisfy) (also citing to *Welch v. Keene Corp.*, 31 Mass. App. Ct. 157, 575 N.E.2d 766, 769 (1991)). A plaintiff must not only prove that the asbestos product was used at the worksite, but also that the employee inhaled the asbestos from the defendant's product. *See id.*

For purposes of this motion, Plaintiffs have established that: (1) the decedent worked at Portland, A.R. Wright, and Peterson for a period of seventeen years (Wallace Dep. 16:7-15, 297:23-298-23.); (2) Defendant Crane manufactured boilers that were installed and serviced by Decedent during his employment as a service technician (Wallace Dep. 297:23-299:12); (3)

asbestos-containing material, including Johns Manville and Eagle 66 mud, was used to provide a seal for the boilers around the fire door, smoke hood, and smoke pipe (Wallace Dep. 19:4-22:13, 27:11-17, 303:17-304:16); (4) the Decedent installed the boilers and maintenanced them; (5) installation of boilers involved use of sealant during installation of the smoke pipe (Wallace Dep. 45:3-46:11, 303:17-304:16); and (6) dust from the asbestos-containing material was generated when maintenance was performed on the boilers, particularly "on the overhaul," an annual procedure requiring the removal of the smoke hood (Wallace Dep. 29:10-30:5).

Plaintiffs allege that the Decedent's exposure arose from his employment servicing oil burners at Portland, A.R. Wright, and Peterson. (Wallace Dep. 297:23-298:23.) Decedent stated that his work included installation of a "few" boilers, though he could not state how many were Crane boilers or when he installed them. *Id.* at 299:9-12, 302:10-21. Additionally, because his service work for these companies involved residential boilers, Mr. Wallace could not specifically testify as to the locations or models of individual Crane boilers. *Id.* at 16:7-15, 297:23-298:23. Consequently, Plaintiffs have not established that, for example, Mr. Wallace installed a new Crane boiler that contained asbestos when it arrived. This means that Plaintiffs cannot establish that Mr. Wallace was exposed to an asbestos-containing product that originated with Defendant. *See Grant*, 140 A.3d at 1248-49.

Plaintiffs' additional theory of product exposure and nexus relies on the necessity of both using sealant when installing boilers and replacing sealant and cement on boilers over time. *See* Pls.' Resp. 13-14. Mr. Wallace testified that installation "probably" involved connecting the boiler to the smoke hood with asbestos "mud" manufactured by Johns Manville and Eagle Picher (Wallace Dep. 302:22-303:2, 303:17-21, 303:22-304:16, 22:2-13), and that during his yearly overhaul of the residential boilers he serviced, the sealant around the smoke hood was often

disturbed, *id.* at 298:24-299:12, 29:10-30:5, 304:22-305:1. Consequently, that work could have constituted exposure if such sealant contained asbestos.

However, again, Mr. Wallace could not testify to individual models or boilers serviced with specificity, which means that he could not testify to the content of a particular sealant that might have been disturbed. *Id.* at 300:11-19, 146:13-18, 155:12-156:10, 301:24-302:3, 147:24-148:10. He did testify to his regular practice of using Johns Manville 450 cement and Eagle 66 asbestos powder "mud" on Crane boilers during service, and Plaintiffs provided evidence that these asbestos-containing products were listed in a Crane supply catalog. *See* Pls.' Ex. E, at 455; Pls.' Ex. F, at 139, 141; Wallace Dep. 22:2-13, 246:22-249:8. Here, too, there is a missing link: Plaintiffs have offered evidence that Mr. Wallace used asbestos-containing products *and* that Crane sold those same asbestos-containing products, *but not* that Crane sold the actual asbestos-containing products used by Mr. Wallace to either him or his employers. While the nonmoving party at summary judgment is entitled to the benefit of inferences reasonably drawn from the record, it would take more than reasonable inferences to bridge this gap in the causal chain. As in *Grant*, Plaintiffs' evidence has failed to adequately link his exposure to "asbestos that originated with [Defendant]." *Grant*, 140 A.3d at 1248.

Plaintiffs also argue that this missing link should not disqualify their claim because it was foreseeable that Crane boilers would require the use of a third-party sealant. (Pls.' Resp. 13-14.) A foreseeability argument was also raised before this Court under Maine law by the Plaintiffs in *Hinkley*, cited *supra*. The Crane products at issue in *Hinkley* were valves and the asbestos-containing material was third-party gaskets and packing used with them that could not be causally linked to Crane. *Hinkley*, 2017 WL 1046587, at *1, 5. The *Hinkley* plaintiffs' foreseeability argument was addressed in a footnote, where this Court stated that "Maine courts have rejected

foreseeability arguments in relation to the dangers of a third-party product," relying on *Grant* and *Rumery*. *Id.* at *4, n.3. This remains true.

However, there may be a case, under Maine law, where the foreseeable ancillary use of a defective or toxic third-party product subjects a manufacturer to liability vis-à-vis a duty to warn. *See Richards v. Armstrong International, Inc.*, No. BCD-CV-10-19, 2013 WL 1845826, at *25 (Me.B.C.D. Jan. 25, 2013) (acknowledging this potential under the Maine strict liability statute where "a manufacturer's product *must* incorporate another's product in order to have any practical use for the intended user, and the other's product is inherently dangerous, and the manufacturer knew or should have known of the hazards inherent in the other's product"). However, that case would require that the missing link present here be filled with evidence establishing that the actual third-party product used was supplied or recommended for use with its products by a defendant.

Here, it is true that Mr. Wallace testified that, without sealant, metal boilers do not adequately contain the poisonous gases from burning coal or oil, essentially not functioning properly without its use. (Wallace's Dep. 20:10-21:4.) Moreover, Crane's own catalogs testify to the "importance of piping," making clear that the installation of its boilers required the use of piping and sealant. (Pls.' Resp., Ex. D, at 7 (Crane ad on the "importance of piping," stating that "fixtures" such as boilers "are only half the plumbing and heating system" and that piping constitutes "the vital supply lines," also encouraging customers to "check with your Crane Dealer" to "make sure the quality of your piping is as high as the Crane equipment you install").) Then, too, Crane's catalog boasts of its boilers' long lives, Pls.' Resp., Ex. D, at 3 (Crane ad for the "Crane sixteen boiler," promising "years of trouble-free, fuel-saving performance"), and Mr. Wallace testified that long-used boilers *needed* an annual overhaul to remove rust, scale, and soot from under the smoke hood, which connects to the smoke pipe, Wallace Dep. 29:4-30:5.

Because Crane's boilers required the use of sealant, and because Crane's catalog offered the very asbestos-containing sealants used by Mr. Wallace as a service technician, Crane may have had a duty to warn regarding the asbestos-containing sealants and "muds" distributed in their catalogs. However, in this case, Plaintiffs have not provided evidence that the actual sealant used by Mr. Wallace was sold to him or his employer by Crane or on Crane's recommendation for use with its boilers. Consequently, Plaintiffs have not met their burden on product nexus, failing to provide sufficient evidence of either an original Crane product or a third-party product actually distributed or recommended by Crane to Decedent, and summary judgment is appropriate.

B

Loss of Consortium and Conspiracy

The Defendant also moves for summary judgment on Plaintiffs' loss of consortium claim, alleging that when an underlying personal injury claim fails, a loss of consortium claim fails as well. (Def.'s Mem. 18.) The Plaintiffs have provided no specific argument in opposition. The Supreme Judicial Court of Maine has stated that both a loss of consortium claim and a personal injury claim are subject to the same defenses since both claims arise from the same set of facts, and the spouse's loss of consortium injury derives from the other spouse's bodily injury. *See Steele v. Botticello*, 21 A.3d 1023, 1027-28 (Me. 2011); *see also Hardy v. St. Clair*, 739 A.2d 368 (Me. 1999); *Brown v. Crown Equipment Corp.*, 960 A.2d 1188 (Me. 2008); *Parent v. Eastern Maine Medical Center*, 884 A.2d 93 (Me. 2005). Because this Court has granted Defendant's request for summary judgment on the underlying personal injury claims, the Plaintiffs' claim for loss of consortium must also fail. *See Steele*, 21 A.3d at 1027-28.

Similarly, Defendant moves for summary judgment on Plaintiffs' conspiracy claim. (Def.'s Mem. 18-19.) Under Maine law, civil conspiracy is not an independent tort, and so "absent the

actual commission of some independently recognized tort, a claim for civil liability for conspiracy fails." *Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell*, 708 A.2d 283, 286 (Me. 1998) (citing *Cohen v. Bowdoin*, 288 A.2d 106, 110 (Me. 1972)). Furthermore, Plaintiffs do not contest the propriety of summary judgment on their conspiracy charge. (Pls.' Resp. 11.) Again, because this Court has granted summary judgment on Plaintiffs' personal injury claim, summary judgment is appropriate here as well.

VI

Conclusion

This Court finds that the Defendant has met its summary judgment burden and that the Plaintiffs have failed to produce sufficient evidence of product nexus. Consequently, the Plaintiffs' claims for loss of consortium and conspiracy fail for want of an underlying tort basis. Therefore, the Defendant's motion for summary judgment is granted as to all counts of Plaintiffs' Fifth Amended Complaint. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 27, 2020**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**

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