

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JAMES STEVENS AND
SUZANN STEVENS

v.

FOSTER WHEELER, LLC, et al.

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C.A. No. 14-157L

MEMORANDUM AND ORDER

Lincoln D. Almond, United States Magistrate Judge

Pending before the Court is Defendant Armstrong International, Inc.’s (“Armstrong”) Motion for Summary Judgment (Document No. 181) filed pursuant to Fed. R. Civ. P. 56. Plaintiffs filed an Objection to the Motion. (Document No. 203). Armstrong Replied to the Objection. (Document No. 209). Plaintiffs’ Objection does not comply with this Court’s Local Rules because it does not include a Statement of Disputed Facts as required by LR Cv 56(a)(3). The consequence of such a failure is that “any fact alleged in the movant’s Statement of Undisputed Facts shall be deemed admitted....” See LR Cv 56(a)(3).

Nevertheless, the Court has reviewed the Memoranda submitted by the parties, and it appears as though this “no product identification” Motion for Summary Judgment hinges directly on whether Mr. Stevens was exposed to asbestos from Armstrong’s steam traps when he worked in the Fireroom of the U.S.S. Patoka. In their Objection, Plaintiffs contend that their expert, Arnold Moore, relied upon a receipt dated September 5, 1945 that indicates that Armstrong steam traps were utilized in the Fireroom of the U.S.S. Patoka. (Document No. 203 at p. 3). In their Reply, however, Armstrong provides the Court with a copy of the receipt which lists Anderson, not Armstrong, as the supplier of the steam traps for the U.S.S. Patoka. (Document No. 209 at p. 10). Because this Motion rests on a

narrow issue, rather than penalizing Plaintiffs' noncompliance with the Local Rules, the Court GRANTS Plaintiffs leave to file a Sur-Reply brief, specifically addressing whether or not their expert misidentified Armstrong as the supplier of the steam traps on the U.S.S. Patoka, and identifying any supporting evidence. Plaintiffs' Sur-Reply is due by November 9, 2015. If Plaintiffs elect not to file a Sur-Reply, the Court will conclude that Armstrong's claim of misidentification is unopposed and recommend that its Motion for Summary Judgment be GRANTED.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
October 30, 2015