

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ELLIN GRENGER, as Executor of the :  
Estate of JAMES SCHMIDT, :  
Plaintiff, :  
v. : 3:15-cv-00941-WWE  
GENERAL ELECTRIC COMPANY, et al., :  
Defendants. :

**MEMORANDUM OF DECISION ON  
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

This is a products liability action on behalf of decedent James Schmidt, who was allegedly exposed to defendants’ asbestos containing products during the course of his various careers. Defendant CNH Industrial America LLC has moved for summary judgment, arguing that plaintiff cannot offer any admissible evidence establishing that Mr. Schmidt was exposed to asbestos from any CNH product.

Plaintiff responds that the record discloses Mr. Schmidt’s exposure to asbestos through his work on Case heavy equipment, products of CNH. Specifically, plaintiff provides:

Mr. Schmidt worked on Case-brand bulldozers, track loaders, excavators, and backhoes. He used the bulldozers to excavate. He worked as a self-employed contractor, installing sewer lines at a time when many homeowners were transitioning from septic tanks to public sewer systems. He also performed site work for newly built homes. This work required the use of heavy equipment, including bulldozer excavators. The evidence shows that two of those pieces of equipment were asbestos-containing Case bulldozers. Mr. Schmidt initially identifies one of these bulldozers as a Case “D350”; however, as his explanation continues, it becomes clear that the asbestos-containing Case equipment are smaller pieces of Case equipment that he used as a bulldozer and excavator. He refers to them as “Case 350’s” and then proceeds to describe the asbestos-containing clutches he frequently replaced on them. CNH’s affidavit fails to address these clutches.

Pl.’s Resp. at 2-3 [ECF No. 319].

CNH, who declined to reply to plaintiff's response, has failed to meet its burden of demonstrating the absence of any material factual issue genuinely in dispute. See American International Group, Inc. v. London American International Corp., 664 F.2d 348, 351 (2d Cir. 1981). The issue of Mr. Schmidt's exposure to asbestos through Case-brand products is one for the jury. Accordingly, CNH's motion for summary judgment is DENIED.

Dated this 29<sup>th</sup> day of October, 2018, at Bridgeport, Connecticut.

\_\_\_\_\_/s/Warren W. Eginton\_\_\_\_\_  
WARREN W. EGINTON  
SENIOR UNITED STATES DISTRICT JUDGE