

Tom, J.P., Friedman, Nardelli, Buckley, Renwick, JJ.

3832 Roslyn Knee, etc., Index 105766/07
Plaintiff-Respondent,

-against-

A.W. Chesterton Co., et al.,
Defendants,

The Goodyear Tire & Rubber Company,
Defendant-Appellant.

Lynch Daskal Emery LLP, New York (Scott R. Emery of counsel), for
appellant.

Weitz & Luxenberg, P.C., New York (Stephen J. Riegel of counsel),
for respondent.

Order, Supreme Court, New York County (Helen E. Freedman,
J.), entered October 25, 2007, which denied defendant-appellant's
motion for summary judgment dismissing the complaint as against
it, unanimously affirmed, without costs.

The deposition testimony of plaintiff's decedent showed that
he was exposed to gaskets and gasket materials containing
asbestos while working on a ship known as the Constellation at
the Brooklyn Navy Yard, that dust from the asbestos gaskets was
pervasive, and that he breathed it. Deposition testimony of the
plaintiff and a second witness from an unrelated asbestos
litigation and the plaintiff from a second unrelated asbestos
litigation describes work involving gaskets on the same ship,
under the same conditions, within the same time period, and
identifies appellant as the manufacturer of the gaskets.

Appellant was a party in these two other actions and present at all three depositions. We note that one of these witnesses may be available to testify at trial. We reject appellant's argument that these three witness depositions from other actions cannot be used for present purposes (see *Berkowitz v A.C. & S., Inc.*, 288 AD2d 148, 149 [2001]; *Dollas v W.R. Grace & Co.*, 225 AD2d 319, 320 [1996]). These depositions raise an issue of fact as to whether the decedent was exposed to asbestos contained in appellant's gaskets (cf. *Reid v Georgia-Pac. Corp.*, 212 AD2d 462, 463 [1995]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 17, 2008


CLERK