

Tom, J.P., Mazzarelli, Gonzalez, Sweeny, DeGrasse, JJ.

3875 In re: New York County Asbestos Litigation

Robert F. Perdicaro, et al.,
Plaintiffs-Respondents,

Index 106604/07

-against-

A.O. Smith Water Products, et al.,
Defendants,

Treadwell Corporation,
Defendant-Appellant.

McGivney & Kluger, P.C., New York (Kerryann M. Cook of counsel),
for appellant.

Belluck & Fox, LLP, New York (Seth A. Dymond of counsel), for
respondents.

Order, Supreme Court, New York County (Helen E. Freedman,
J.), entered February 25, 2008, which denied defendant
Treadwell's motion for summary judgment dismissing the complaint
and all cross claims as against it, unanimously reversed, on the
law, without costs, and the motion granted. The Clerk is
directed to enter judgment dismissing the complaint and all cross
claims as against Treadwell.

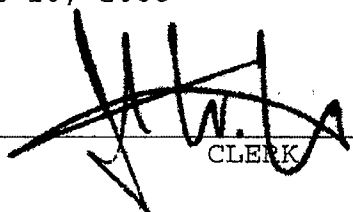
In opposition to Treadwell's prima facie showing of
entitlement to summary judgment, plaintiffs' evidence failed to
raise a factual issue whether plaintiff worker (a Con Edison
employee) was present at various Con Edison powerhouses at the
same time Treadwell workers or its subcontractors were installing
alleged asbestos-based insulation on new equipment. Plaintiff

worker's evidence was insufficient to raise a triable issue of fact whether he was exposed to asbestos-based insulation at any given time at the powerhouses. He admittedly lacked training in insulating work, and offered no factual support that would reasonably suggest that the insulation he saw in use at the time he was purportedly present at the Con Ed powerhouses was asbestos-based; the evidence indicated that insulation utilized at these powerhouses often contained fire/heat-resistant components other than asbestos. Although the record indicated Treadwell had ordered asbestos-content paper, glass-cloth and millboard in connection with Con Edison's Arthur Kill contract, there was no testimony from plaintiff worker that he ever observed the use of such materials at the Arthur Kill construction site. It would be purely speculation to assume that such insulating materials were used during his sporadic and limited presence at the Arthur Kill powerhouse. We find, as matter of law, that plaintiffs' evidence in opposition to the motion was insufficient to raise a factual issue whether Treadwell's acts constituted a substantial factor in causing

plaintiff worker's alleged lung disease (see *Diel v Flintkote Co.*, 204 AD2d 53 [1994]).

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

ENTERED: JUNE 10, 2008



CLERK