

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA**

**MINUTE ORDER**

DATE: 04/09/2015

TIME: 08:20:00 AM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Tari Cody

CLERK: Ginger White

REPORTER/ERM: [none]

CASE NO: **56-2014-00458073-CU-AS-VTA**

CASE TITLE: **Robert Denyer vs AB Electrolux**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Asbestos

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**EVENT TYPE:** Demurrer (CLM)

MOVING PARTY: Bell Industries Inc

CAUSAL DOCUMENT/DATE FILED: Demurrer to plaintiffs complaint for personal injuries, 02/23/2015

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**APPEARANCES**

No Appearance by all parties

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Prior to court convening:

counsel for moving party, via facsimile submit on the Court's tentative ruling.

The Court received, read and considered all briefs and declarations filed in this cause. The matter is submitted to the Court with argument.

The Court's tentative is adopted as the Court's ruling.

[start of tentative ruling]

The court's tentative ruling is as follows:

Overrule Defendant Bell Industries, Inc.'s ("Bell") demurrer to the first through fourth and sixth causes of action in Plaintiffs Robert and Getrude Denyer's Complaint based on the argument that they are barred by the exclusive remedy provisions of the Workers' Compensation Act, on the grounds that these claims, on their face, are not entirely barred by the exclusivity provisions.

Defendant Bell relies on the following allegations in Exhibit A to the Complaint to support its argument based on workers' compensation exclusivity:

"Plaintiff, Robert Denyer was also exposed to asbestos dust that was carried into his work areas on the person and clothing of co-workers. While performing his regular job duties his person and clothing were contaminated with such asbestos dust. Plaintiff alleges and believes that his exposure occurred at job sites including , but not limited to, the following: ...[¶¶]

Employer: Bell Industries  
Date: 1975-1992  
Site: Pacoima, CA  
Job Title: Branch Manager."  
(Complaint, Exh. A, 34:21-35:13.)

Bell construes these allegations as indicating that the sole basis for Plaintiffs' claims against Bell are Robert Denyer's exposure to asbestos at the Pacoima worksite from 1975-1992. However, the language of the above allegations is additive ("Robert Denyer was **also** exposed...", "including, but not limited to, the following"), not exclusive.

Plaintiff also alleges direct exposure to asbestos-containing products from the 1950s through 1992 (*id.* at 34:4-20), and alleges that "defendants, their 'alternate entities' and each of them" negligently manufactured/designed/distributed/sold such products "**[a]t all times herein mentioned.**" (See Complaint, ¶¶5, 6 [emphasis added].) Simply stated, the Complaint also alleges that Robert Denyer was exposed to asbestos-containing products manufactured/distributed/sold by Bell during the entire period in question (i.e., the 1950s through 1992), and the Court must take these allegations as true for the purpose of ruling on Bell's present demurrer.

Based on the above, Plaintiffs allege that Robert Denyer was exposed to asbestos-containing products manufactured/distributed/sold by Bell during time periods when Robert Denyer was not employed by Bell. During such periods, Bell was not Robert Denyer's employer, therefore the "conditions of compensation" were not satisfied, and Bell is not entitled to invoke the exclusive remedy provisions of the Workers' Compensation Act for such periods. (See, e.g., *Hughes v. Argonaut Ins. Co.* (2001) 88 Cal. App. 4th 517, 523 [Holding that the exclusivity provisions only preclude civil actions against the employee's employer; they do not prevent actions against third parties to the employment relationship].) Accordingly, Bell's "exclusive remedy" defense only applies, at most, to a portion of Plaintiffs' allegations against Bell. Because "[a] demurrer does not lie to a portion of a cause of action" (*PH II, Inc. v. Sup. Ct.* (1995) 33 Cal.App.4th 1680, 1682), Bell's demurrer to the first through fourth and sixth causes of action is overruled.

Defendant Bell to file and serve an Answer to the Complaint by no later than April 29, 2015.

[end of tentative ruling]

Demurrer overruled as to first through fourth, and sixth causes of action.

Notice to be given by courtroom clerk.