**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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| CLARK COLLINS, | § | |
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| Plaintiff, | § | |
| | § | |
| vs. | § | CIVIL ACTION NO. 4:13-cv-01183 |
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| ABB, INC., *et al.*, | § | |
| | § | |
| | § | |
| Defendants. | § | |

**MEMORANDUM AND RECOMMENDATION ON**
**DEFENDANT THE WILLIAM POWELL COMPANY'S**
**MOTION FOR SUMMARY JUDGMENT**

This matter was referred by United States District Judge Vanessa D. Gilmore, for full pre-trial management, pursuant to 28 U.S.C. § 636(b)(1)(A) and (B). (Docket Entry No. 71). In this action, Plaintiff Clark Collins ["Collins"] seeks to recover from Defendant The William Powell Company ["Powell"] for injuries allegedly caused by his exposure to asbestos-containing products. (Plaintiff's First Amended Petition and Jury Demand ["Complaint"], Docket Entry No. 226). Before the court is Defendant's motion for summary judgment.[1] (The William Powell Company's Motion for Summary Judgment ["Motion"], Docket Entry No. 238). Plaintiff has responded in opposition to the motion, and Defendant has replied. (Plaintiff's Memorandum in Opposition to Defendant The William Powell Company's Motion for Summary Judgment ["Response"], Docket Entry No. 281; Powell's Reply to Document 281, Plaintiff's Response to Powell's Motion for Summary Judgment ["Reply"], Docket Entry No. 283). After considering

1. Powell has filed an additional motion for summary judgment on the "liability elements" of Plaintiff's claims. (The William Powell Company's Motion in Limine as to Alleged Liability on Negligence, Design Defect, and Manufacturing Defect Claims and Motion for Summary Judgment on Liability Elements of Plaintiff's Claims, Docket Entry No. 271). Because it is recommended that the initial motion be granted, in full, the subsequent motion for summary judgment should be moot.

the pleadings, the evidence submitted, and the applicable law, it is RECOMMENDED that Defendant's motion be GRANTED.

**I. Background**

Between 1967, and 1973, Plaintiff Clark Collins ["Collins"] worked at the Maxwell House Coffee Plant ["Maxwell House"] in Houston, Texas, as a "Mechanic 406." (Mot. 1; Resp. Ex. 1 ["Collins Deposition"] at 89:15-18, 156:13-17). In that position, Collins performed maintenance on "processing equipment," which included valves that were manufactured and supplied by Defendant The William Powell Company ["Powell"]. (Collins Dep. 89:18-20, 111:21-112:2, 116:6-25). Collins alleges that he was exposed to asbestos while servicing valves manufactured by Defendant, and that such exposure caused him to suffer from mesothelioma.[2] (Resp. 1).

On December 13, 2012, Plaintiff and his wife, Ellen Collins, filed this products liability action, in Texas state court, against forty-six companies, including Powell. (Defendant Carrier Corporation's Notice of Removal of Action under 28 U.S.C. § 1442 ["Notice of Removal"], Docket Entry No. 1, at Ex. C). The case was removed to federal court, pursuant to the Federal Officer Removal Statute, 28 U.S.C. § 1442(a)(1), in April 2013. (Notice of Removal 1). On February 20, 2015, following the death of his wife, Collins filed an Amended Complaint against Powell and the four remaining Defendants.[3] (Plaintiff's Uncontested Motion for Leave to Amend Complaint, Docket Entry No. 221; Order Granting Plaintiff's Uncontested Motion for Leave to Amend Complaint, Docket Entry No. 222; Plaintiff's First Amended Petition and Jury Demand ["Amended Complaint"], Docket Entry No. 226). In his Amended Complaint, Plaintiff

2. "Mesothelioma" is "a rare malignant tumor of the mesothelium of the pleura or peritoneum [membrane], associated with exposure to asbestos." MOSBY'S MEDICAL, NURSING, & ALLIED HEALTH DICTIONARY 207, 1016 (5th ed. 1998).

3. The four Defendants named in the Amended Complaint are Armstrong International, Inc.; Crane Co.; Goulds Pump, Inc.; and John Crane, Inc.

makes claims for negligence, gross negligence, and negligence *per se*; for strict products liability; for conspiracy; for aiding and abetting; and for violations of Section 22.04 of the Texas Penal Code. (Am. Compl. ¶¶ 10-32, 34).

Powell now moves for summary judgment. It is clear from his response to Defendant's motion for summary judgment, however, that Collins has abandoned all of his claims against Powell, except those based on strict products liability, negligence, and gross negligence. (Resp. 3 n. 1). From a review of the pleadings, the evidence submitted, and the applicable law, the court concludes that Defendant's motion should be granted.

**II. Standard of Review**

Summary judgment is appropriate if the record discloses "that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (a). "An issue is material if its resolution could affect the outcome of the action. A dispute as to a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *DIRECTV Inc. v. Robson*, 420 F.3d 532, 536 (5th Cir. 2005) (internal citations omitted).

"The movant bears the burden of identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact." *Triple Tee Golf, Inc. v. Nike, Inc.*, 485 F.3d 253, 261 (5th Cir. 2007) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The moving party, however, need not negate the elements of the nonmovant's case. *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005) (citation omitted). "If the moving party fails to meet [its] initial burden, the motion [for summary judgment] must be denied, regardless of the nonmovant's response." *United States v. $92,203.00 in U.S. Currency*, 537 F.3d 504, 507 (5th Cir. 2008) (internal quotation marks omitted). If the moving party meets its initial burden, however, "the nonmoving party cannot survive a summary judgment motion by resting on the

mere allegations of its pleadings." *Duffie v. United States*, 600 F.3d 362, 371 (5th Cir. 2010). "[T]he nonmovant must identify specific evidence in the record and articulate how that evidence supports that party's claim." *Id.* (quoting *Quorum Health Res., L.L.C. v. Maverick County Hosp. Dist.*, 308 F.3d 451, 471 (5th Cir. 2002). "This burden will not be satisfied by 'some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence.'" *Boudreaux*, 402 F.3d at 540 (quoting *Little v. Liquid Air. Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)).

In deciding a summary judgment motion, the court draws all reasonable inferences in the light most favorable to the nonmoving party. *Connors v. Graves*, 538 F.3d 373, 376 (5th Cir. 2008). However, the court is "not required to accept the nonmovant's conclusory allegations, speculation, and unsubstantiated assertions[,] which are either entirely unsupported[,] or supported by a mere scintilla of evidence." *Chaney v. Dreyfus Serv. Corp.*, 595 F.3d 219, 229 (5th Cir. 2008) (citing *Reaves Brokerage Co. v. Sunbelt Fruit & Vegetable Co.*, 336 F.3d 410, 413 (5th Cir. 2003)).

Further, although the court may consider all materials in the record when deciding a summary judgment motion, "the court need consider only the cited materials." Fed. R. Civ. P. 56(c)(3). "When evidence exists in the summary judgment record[,] but the nonmovant fails even to refer to it in the response to the motion for summary judgment, that evidence is not properly before the [] court." *Malacara v. Garber*, 353 F.3d 393, 405 (5th Cir. 2003). Indeed, "Rule 56 does not impose upon the [] court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment." *Id.*

**III. Analysis**

Plaintiff claims that he was exposed to airborne asbestos while performing maintenance on stainless steel valves that were manufactured and supplied by Powell. (Resp. 1; *see* Mot. Ex.

B ["McClure Affidavit"], at ¶ 7). It is not disputed, however, that the metal in the valves was not, itself, the source of any asbestos fibers. (Mot. 2; Collins Dep. 118:13-15). Collins does allege, though, that he inhaled asbestos dust that emanated from flange gaskets[4] and external insulation, both of which were used to integrate Powell valves into the piping system at Maxwell House. (Resp. 1, 4-5). Plaintiff contends that Powell is liable for his asbestos-related injuries, under theories of strict liability and negligence, because it failed to warn him of the dangers arising from the use of asbestos flange gaskets and asbestos external insulation, in connection with its valves. (*Id.* at 2, 25). Collins also seeks to recover punitive damages, on the grounds that Powell's failure to so warn him amounted to gross negligence. (*Id.* at 2-3).

Defendant moves for summary judgment on all of Plaintiff's strict liability and negligence claims, arguing that it owed Collins no duty under Texas law. (Mot. 9-12 ¶¶ 14-19). Powell contends, in particular, that it did not design, manufacture, or supply any of the asbestos-containing materials, to which Collins was allegedly exposed. (*Id.* at 2 ¶ 4a, 7 ¶ 11; Reply 3 ¶ 5). Defendant argues further that, under the "component parts doctrine," it cannot be held liable for Collins's exposure to asbestos-containing products that were manufactured and supplied by other entities. (Mot. 2 ¶ 4a; Reply 7 ¶ 13).

In support of its motion, Powell has submitted an affidavit from its corporate representative, William J. McClure ["McClure"]. (*See* McClure Aff.). According to McClure, Powell valves were sold to customers in a "bare metal" condition, without flange gaskets or external insulation. (*Id.* at ¶ 2). McClure states that Powell did not manufacture or supply any of the flange gaskets or external insulation that Collins encountered at Maxwell House. (*Id.* at ¶¶ 2-3, 6). He further declares that Powell did not specify or require the use of either asbestos flange

4. Gaskets are sealing devices, used to seal the connection points between equipment and piping, in between lengths of piping, and inside certain equipment.

gaskets or asbestos external insulation in connection with its valves. (*Id.*). Defendant has also produced evidence to show that, during the time period at issue, Maxwell House could have obtained non-asbestos flange gaskets, directly, from "numerous" Houston-based suppliers. (Mot. Ex. L).

The parties agree that Texas law applies in this lawsuit. (*See* Mot. 2 ¶ 4a; Resp. 22). In Texas, to recover on a products liability claim, under a theory of either negligence or strict liability, a plaintiff must prove the existence of a duty that is owed to the plaintiff.[5] *See Firestone Steel Prods. v. Barajas*, 927 S.W.2d 608, 613 (Tex. 1996); *Walton v. Harnischfeger*, 796 S.W.2d 225, 227-28 (Tex. App.—San Antonio 1990, writ denied). Whether there is a duty to warn of the dangers of a product is a question of law. *Barajas*, 927 S.W.2d at 613; *see also Hanus v. Tex. Util. Co.*, 71 S.W.3d 874, 880 (Tex. App.—Fort Worth 2002, no pet.); *Walton*, 796 S.W.2d at 227. It is well-settled that a manufacturer has a duty to give appropriate warnings about the risks involved in the reasonably foreseeable uses of its own product. *Houston Lighting & Power Co. v. Reynolds*, 765 S.W.2d 784, 786 (Tex. 1988). However, "[a] manufacturer generally does not have a duty to warn or instruct about another manufacturer's products, even though a third party might use those products in connection with the manufacturer's own product." *Barajas*, 927 S.W.2d at 614); *see Bostic v. Georgia-Pacific Corp.*, 439 S.W.3d 332,

5. Collins's claims for negligence and strict liability both rely on the same operative facts. (*See* Am. Compl. ¶¶ 11, 17; Resp. 1-27). For that reason, the claims need not be analyzed separately to determine whether a duty to warn is present. *See Humble Sand & Gravel, Inc. v. Gomez*, 146 S.W.3d 170, 181 (Tex. 2004) ("We need not consider here any ramifications of the differences between [negligence and strict liability] because Gomez does not argue that Humble had a duty under one theory different from the duty under the other theory."); *see also Hanus v. Tex. Util. Co.*, 71 S.W.3d 874, 882 (Tex. App.—Fort Worth 2002, no pet.) ("[T]he analysis of the duty to warn under strict liability and negligence theories invokes the same basic principles . . . [and thus] the duty to warn under both common law theories [exists] as a single question."); *Leal v. State Farm Auto. Ins. Co.*, No. 04-09-00308-CV, 2010 WL 962286, at *3 (Tex. App.—San Antonio Mar. 17, 2010, no pet.) ("Because appellants' claims of negligence and strict products liability closely mirror one another, we will analyze them together in determining whether a duty [to warn] exists"); *Oldham v. Thompson/Center Arms Co.*, No. H-12-2432, 2013 WL 1576340, at *6 (S.D. Tex. Apr. 11, 2013) ("The Fifth Circuit has recognized that, where the negligence cause of action is premised only on allegations and evidence directed to whether the product is unreasonably dangerous, failure to prevail on a strict liability cause of action necessarily dooms the negligence cause of action as well.").

340 (Tex. 2014) ("A fundamental principle of traditional products liability law is that the plaintiff must prove that the defendant [] supplied the product which caused the injury.").

In addition, "[t]he component part[s] doctrine distinguishes between duties owed by the manufacturer of the final product and duties owed by a manufacturer who only supplies parts used in the final product." *Smith v. Robin Am., Inc.*, 773 F. Supp. 2d 708, 714 (S.D. Tex. 2011) (citing *Bostrom Seating, Inc. v. Crane Carrier Co.*, 140 S.W.3d 681 (Tex. 2004)). Under the component parts doctrine, "[a] component part manufacturer who does not participate in the integration of the component into the final system or product is not liable for defects in the final system or product if the component itself is not defective." *Ranger Conveying & Supply Co. v. Davis*, 254 S.W.3d 471, 480 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (citing *Bostrom*, 140 S.W.3d at 683). "For a duty to warn to be imposed on a [component part] manufacturer or seller, it must have 'actively participated in the integration process.'" *Id.* (citing *Toshiba Int'l Corp. v. Henry*, 152 S.W.3d 774, 783 (Tex. App.—Texarkana 2004, no pet.)); *see also* RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 5 (1998)).

Here, it is undisputed that Powell did not manufacture or supply any of the flange gaskets or external insulation that Collins encountered at Maxwell House. (*See* McClure Aff. ¶¶ 2-3, 6; Resp. 1-27). Further, there is no evidence that Defendant's valves were, themselves, the source of any asbestos, to which Collins was allegedly exposed.[6] (*See* Collins Dep. 118:13-15). Nor is there any evidence that Powell valves were, in any other respect, defective.[7] Under the component parts doctrine, then, Powell had a duty to warn Plaintiff of the dangers of asbestos

6. While there is some evidence that the "internals" of Defendant's valves, such as the bonnet gasket and the packing, may have contained asbestos, the record does not show that Collins ever came into contact with those materials. (*Compare* Resp. Ex. 9, *with* Collins Dep. 116:6-12, 118:13-15).

7. In his Amended Complaint, Collins appears to allege that Defendant's valves were defective in their "design and condition." (Am. Compl. ¶ 11). However, Plaintiff has neither identified, nor submitted evidence to show any such defect. (*See* Mot. 12 ¶ 19; Resp. 1-27).

only if it "actively participated" in the integration of its valves into the Maxwell House piping system. *See Ranger Conveying & Supply Co. v. Davis*, 254 S.W.3d 471, 483 (Tex. App.—Houston [1st Dist.] 2007, pet. denied). But here, there is no evidence that Powell had any such involvement in the installation of its valves at Maxwell House. For instance, the record does not show that Powell required or even advised the use of asbestos-containing materials, in connection with its valves.[8] *See Quirin v. Lorillard Tobacco Co.*, 17 F. Supp. 3d 760, 770 (N.D. Ill. 2014) (finding that a valve manufacturer had no duty to warn about asbestos-containing insulation, used in connection with its valves, because there was "no evidence that [the valve manufacturer] specified that its valves had to be used with asbestos-containing insulation"). Nor is there any evidence that Powell custom manufactured or modified the valves, according to Maxwell House's specifications. *See Ranger*, 254 S.W.3d at 484 (holding that a conveyer manufacturer was not liable, under the component parts doctrine, because the conveyer at issue was "a product that c[ould] be put to different uses depending on how it [wa]s integrated into other products"); *Smith v. Robin Am., Inc.*, 773 F. Supp. 2d 708, 715 (S.D. Tex. 2011) (holding that a motor manufacturer was not liable, under the component parts doctrine, because the motor at issue was "a small, multipurpose internal combustion engine that could have been used for any number of outdoor applications"). Further, there is no evidence that Defendant's valves required the use of asbestos flange gaskets or asbestos insulation to function properly.[9] *See Quirin v.*

8. Collins argues that Powell did, in fact, specify the use of asbestos flange gaskets. (Resp. 8). In support of that contention, Collins has submitted catalogues, allegedly produced by Defendant, that advertise the use of various asbestos components inside Powell valves. (*Id.* at Ex. 9). But there is no evidence that the valves depicted in the catalogues are the same valves that Collins worked with at Maxwell House. *See Dalton v. 3M Co.*, No. 10-113-SLR-SRF, 2013 WL 4886658, at *13 (D. Del. Sept. 12, 2013).

9. Plaintiff contends that the flange gaskets at Maxwell House "would have been asbestos containing[,] because of the high temperature application." (Resp. 6). In support of that contention, Plaintiff relies on the deposition testimony from his industrial hygienist, Steve M. Hays. (Resp. 6, Ex. 3 ["Hays Deposition"], at 118:9-12). However, as Defendant points out, Hays's testimony regarding the "high temperature application" was based on his erroneous assumption that Maxwell House used "superheated steam." (*See* Hays Dep. 118:17-24; Reply 1 ¶ 1 & n. 2). The uncontroverted summary judgment evidence shows that Maxwell House did not, in fact, use "superheated

*Lorillard Tobacco Co.*, 17 F. Supp. 3d 760, 769 (N.D. Ill. 2014) (explaining that "a duty may attach . . . where the asbestos-containing material was essential to the proper functioning of the defendant's product"); *Morgan v. Bill Vann Co.*, 969 F. Supp. 2d 1358, 1368 (S.D. Ala. 2013). Given these facts, Powell had no duty to warn Collins about the dangers of asbestos exposure. *See Walton v. Harnischfeger*, 796 S.W.2d 225, 228 (Tex. App.—San Antonio 1990, writ denied) ("We hold that . . . appellee had no duty to warn or instruct users of its crane about rigging it did not manufacture, incorporate into its crane, or place into the stream of commerce.").

Nevertheless, Collins argues that Powell had a duty to warn him, because it was "foreseeable" that asbestos flange gaskets and asbestos external insulation would be used in connection with its valves. (Resp. 2, 22-25). Under Texas law, however, foreseeability alone does not suffice to establish a duty to warn of a product's danger. *City of Waco v. Kirwin*, 298 S.W.3d 618, 624 (Tex. 2009). Indeed, Texas courts have repeatedly refused to impose a duty upon manufacturers, to warn about dangers arising entirely from other manufacturers' products, even if it is foreseeable that the products will be used together. *See, e.g.*, *Ranger*, 254 S.W.3d at 481-85 (holding that a conveyer manufacturer had no duty to warn of the dangers of the "larger bale-handling system," into which the conveyer was installed, because "no evidence show[ed] that [the conveyer manufacturer] actively participated in the integration process"); *Walton*, 796 S.W.2d at 227-28 (holding that a crane manufacturer did not owe a duty to warn the plaintiff about a defective nylon strap, which was attached to the crane, because the defendant did not design, manufacture, or otherwise place the nylon strap into the stream of commerce.); *Johnson v. Jones-Blair Paint Co.*, 607 S.W.2d 305, 306 (Tex. App.—Eastland 1980, writ ref'd n.r.e.) (holding that a paint manufacturer had no duty to warn the plaintiff that dried paint should not be

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steam." (Resp. Ex. 2 at 307:8-15). And, there is no evidence on the actual temperature of the materials that flowed through Defendant's valves.

removed with gasoline near an open flame, because the paint was not, by itself, "unreasonably dangerous," and because the gasoline was manufactured and supplied by another entity).

Likewise, other jurisdictions have reached the same conclusion in asbestos cases with similar fact patterns. *See, e.g.*, *Quirin v. Lorillard Tobacco Co.*, 17 F. Supp. 3d 760, 771 (N.D. Ill. 2014) (holding that a valve manufacturer "had no duty to warn [the plaintiff] about asbestos-containing insulation, pipe coverings, or cement, [because] it did not supply the original insulation and other materials used with the piping systems into which its valves were incorporated"); *Morgan v. Bill Vann Co.*, 969 F. Supp. 2d 1358, 1369 (S.D. Ala. 2013) (holding that a pump manufacturer "is not liable for harm caused by . . . asbestos-containing packing and gaskets that users of [its] pumps might install, where [it] did not manufacture, sell or distribute such asbestos-containing components"); *Faddish v. Buffalo Pumps*, 881 F. Supp. 2d 1361, 1371 (S.D. Fla. 2012) ("a manufacturer's duty to warn, whether premised in negligence or strict liability theory, generally does not extend to hazards arising exclusively from *other* manufacturers' products, regardless of the foreseeability of the combined use and attendant risk"); *O'Neil v. Crane Co.*, 266 P.3d 987, 1005 (Cal. 2012) (finding a valve manufacturer to be not liable for the dangers of asbestos-containing replacement parts supplied by third parties); *Braaten v. Saberhagen Holdings*, 198 P.3d 493, 501 (Wash. 2008) ("whether the manufacturers knew replacement parts would or might contain asbestos makes no difference because such knowledge does not matter"); *May v. Air & Liquid Sys. Corp.*, 100 A.3d 1284, 1292 (Md. App. 2014) (rejecting the argument that a pump manufacturer had a duty to warn of the hazards of asbestos-containing replacement parts, merely because it was "foreseeable" that those parts would be incorporated into the defendant's pumps).

On this record, Collins has not raised a genuine issue of material fact on whether Powell owed him a duty to warn about the dangers of asbestos that would allow him to prevail on his

claims for negligence and strict products liability. For that reason, summary judgment should be granted on those claims. And, because Plaintiff has failed to establish the existence of a legal duty, in this instance, there is no need to address his claim that Powell's conduct was grossly negligent. *See Salazar v. Ramos*, 361 S.W.3d 739, 749-50 (Tex. App.—El Paso 2012, pet. denied).

**IV. Evidentiary Objections**

The exhibits that are attached to Plaintiff's response to Defendant's motion for summary judgment include deposition testimony from his industrial hygienist, Steve M. Hays; deposition testimony, and an affidavit, from his occupational medicine specialist, Dr. Edwin Holstein; deposition testimony, and a medical report, from his causation expert, Dr. John Maddox; his own deposition testimony; deposition testimony from Defendant's corporate representative, William J. McClure; Powell marketing materials; trade journal publications; and regulations from the Ohio Department of Health. (Resp. Ex. 1-24). Powell objects to these submissions, because they are "hearsay;" "unreliable;" "unsupportable;" "irrelevant;" "speculati[ve];" "not based on personal knowledge;" and "not properly authenticated." (The William Powell Company's Objections to Plaintiff's Summary Judgment Evidence, Docket Entry No. 282, at ¶¶ 2-34). In weighing Powell's motion for summary judgment, however, the court has not relied on any of the objected-to evidence. For that reason, the objections are moot.

**V. Miscellaneous Motions**

Defendant also has pending a motion for leave to obtain a supplemental expert report; a motion to strike Plaintiff's claim for past and future alleged medical expenses; a motion for leave to assert a third party action; a motion to strike the expert report and testimony by Steve Hays; a motion for disclosure of settlement documents and information; a motion to strike the expert testimony and opinions by Dr. Arnold Brody; a motion to strike the expert report and testimony

by Dr. Edwin Holstein; a motion to strike the expert report and testimony by Dr. John Maddox; and a motion for settlement credit. (Defendant The William Powell Company's Motion for Leave to Obtain Supplemental Expert Report or Alternatively Motion for Continuance, Docket Entry No. 243; Defendant The William Powell Company's Motion to Strike Plaintiff's Claim for Past and Future Alleged Medical Expenses, Docket Entry No. 253; Defendant The William Powell Company's Motion for Leave to Assert Third Party Action Against Manville Personal Injury Settlement Trust Based on Plaintiff's Manville Bankruptcy Trust Claim Disclosed in March 2015, Docket Entry No. 255; The William Powell Company's Motion to Strike Expert Report and Testimony of Steve Hays and Underlying Opinions, Docket Entry No. 257; Defendant The William Powell Company's Motion for Disclosure of Settlement Documents and Information, Docket Entry No. 261; The William Powell Company's Motion to Strike Expert Testimony and Opinions of Dr. Arnold Brody or Alternatively Motion in Limine as to Dr. Brody, Docket Entry No. 266; The William Powell Company's Motion to Strike Expert Report and Testimony of Dr. Edwin Holstein, Docket Entry No. 267; The William Powell Company's Motion to Strike Expert Report and Testimony of Dr. John Maddox and Underlying Opinions, Docket Entry No. 268; The William Powell Company's Motion for Settlement Credit of $97,930.00 Pertaining to Bankruptcy Claims Plaintiff has Not Filed and to Compel Plaintiff to File Bankruptcy Trust Claims or Alternatively Motion to Continue or Abate Trial Setting Until Plaintiff Files and Resolves All Such Claims and for Judicial Notice, Docket Entry No. 272).

In addition, Plaintiff has filed a motion to strike Powell's request to designate responsible third parties. (Plaintiff's Motion to Strike Defendant The William Powell Company's Motion to Designate Responsible Third Parties Pursuant to Section 33.004(1) or, in the Alternative, No Evidence Motion for Summary Judgment, Docket Entry No. 262). Because it is recommended

that Defendant's motion for summary judgment be granted, in full, the pending motions should be denied as moot.

**VI. Conclusion**

Accordingly, it is **RECOMMENDED** that Defendant's motion for summary judgment be **GRANTED**. If so, then the following listed motions should be moot: Defendant Powell's motion for leave to obtain a supplemental expert report [Docket Entry No. 243]; Defendant Powell's motion to strike Plaintiff's claim for past and future alleged medical expenses [Docket Entry No. 253]; Defendant Powell's motion for leave to assert a third party action against Manville Personal Injury Settlement Trust [Docket Entry No. 255]; Defendant Powell's motion to strike expert report and testimony of Steve Hays [Docket Entry No. 257]; Defendant Powell's motion for disclosure of settlement documents and information [Docket Entry No. 261]; Plaintiff's motion to strike Defendant Powell's motion to designate responsible third parties [Docket Entry No. 262]; Defendant Powell's motion to strike expert testimony and opinions of Dr. Arnold Brody [Docket Entry No. 266]; Defendant Powell's motion to strike expert report and testimony of Dr. Edwin Holstein [Docket Entry No. 267]; Defendant Powell's motion to strike expert report and testimony of Dr. John Maddox [Docket Entry No. 268]; Defendant Powell's motion for summary judgment on the liability elements of Plaintiff's claims [Docket Entry No. 271]; and Defendant Powell's motion for settlement credit of $97,930.00 [Docket Entry No. 272]. In addition, the cross-action brought by Defendant Crane Company against Powell is also moot. (*See* Defendant Crane Co.'s Answer to Plaintiff's First Amended Complaint, Cross-Claim and Answer to All Cross-Claims, Docket Entry No. 237, at ¶ 43).

The Clerk of the Court shall send copies of the memorandum and recommendation to the respective parties, who will then have fourteen days to file written objections, pursuant to 28 U.S.C. § 636(b)(1)(c). Failure to file written objections within the time period provided will bar

an aggrieved party from attacking the factual findings and legal conclusions on appeal. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

The original of any written objections shall be filed with the United States District Clerk, P.O. Box 61010, Houston, Texas 77208; copies of any such objections shall be delivered to the chambers of Judge Vanessa D. Gilmore, Room 9513, and to the chambers of the undersigned, Room 7007.

**SIGNED** at Houston, Texas, this 27th day of May, 2015.

**MARY MILLOY**
**UNITED STATES MAGISTRATE JUDGE**