

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: August 27, 2025)

ELISE M. ANGELINI, individually and :
as personal representative for the Estate :
of JOHN J. ANGELINI, :

Plaintiff, :

v. :

3M COMPANY, f/k/a MINNESOTA :
MINING AND MANUFACTURING, :
et al., :

Defendants. :

C.A. No. PC-2017-3179

DECISION

GIBNEY, P.J. Before this Court for decision is Defendant Foster Wheeler, LLC's (Defendant) motion for summary judgment on Plaintiff Elise M. Angelini's (Plaintiff) claims against it. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

Plaintiff alleges that Defendant—among several others—is liable for the substantial bodily injuries and death of her husband, John J. Angelini (Angelini), due to his exposure to asbestos, as well as for her individual claim for loss of consortium. *See generally*, Third Am. Compl. Angelini worked at several different power companies over the course of his career. *See* Pl.'s Mem. in Opp'n to Def.'s Mot. for Summ. J. (Pl's Mem.) Ex. A, Dep. Tr. of John Angelini (Angelini's Dep. Tr.), Vol. 1, 21:4-25:1, July 25, 2017. Relevant to the instant motion is the time Angelini spent working at Brayton Point, operated by New England Power Company (New England Power), beginning

sometime in the 1970s until his retirement in 1998. *See id.* at 23:4-14. At Brayton Point, Angelini worked in mechanical maintenance and was tasked with “maintaining all the equipment that was in the place.” *Id.* at 23:15-17, 25:5-10. Some of that equipment included turbine-generators, pumps, compressors, and boilers. *Id.* at 25:11-27:6.

In 1966, Defendant contracted with New England Power to design and furnish seven feedwater heaters for Brayton Point. (Def.’s Mem. Ex. 4, Robert F. Tracey Aff. (Tracey Aff.) ¶ 5.) In 1968, Defendant entered into another contract to provide two water pumps for the facility. *Id.* ¶ 8. The feedwater heaters were delivered in 1967, and the water pumps were delivered in 1972. *Id.* ¶¶ 6, 9. As designed, aspects of the heaters and pumps contained asbestos. *See* Pl.’s Mem. Ex. B, Dep. Tr. of Dennis Sol (Sol Dep. Tr.), Vol. 3 at 66:8-15, Jan. 10, 2019 (providing feedwater heaters contained asbestos gaskets), Vol. 4 at 105:15-106:3, Feb. 27, 2019 (providing asbestos present on water pumps). In addition to those installations, Defendant would, from time to time and at New England Power’s request, send representatives of the company to provide technical expertise regarding repairs of the feedwater heaters and water pumps. *See* Pl.’s Suppl. Mem. in Opp’n to Def.’s Mot. Summ. J. (Pl.’s Suppl. Mem.) Ex. L, Dep. Tr. of John Brown (John Brown Dep. Tr.) at 73:13-74:1, Jan. 9, 2024. As part of those services, Defendant would at times provide replacement parts for the heaters and pumps, some of which contained asbestos. *Id.* at 110:8-129:11.

Plaintiffs John J. and Elise Angelini filed their complaint on July 7, 2017. *See* Docket. On December 31, 2018, Plaintiff moved to file their Third Amended Complaint, which removed John Angelini as a plaintiff, and substituted Elise M. Angelini individually and as the representative of his estate. *See* Third. Am. Compl. Defendant filed the instant motion for summary judgment on July 28, 2023, and Plaintiff responded on August 28, 2023. *See* Docket. Plaintiff subsequently

filed a supplemental memorandum on January 7, 2025, which Defendant responded to on April 17, 2025. *Id.* Oral arguments on the motion were heard on May 29, 2025. The matter is now ripe for adjudication.

II

Standard of Review

“A motion for summary judgment ‘is designed to decide in an expeditious fashion cases presenting groundless claims.’” *Town of Exeter by and through Marusak v. State*, 226 A.3d 696, 700 (R.I. 2020) (quoting *Hexagon Holdings, Inc. v. Carlisle Syntec Inc.*, 199 A.3d 1034, 1038 (R.I. 2019)). However, “summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.” *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (quoting *DeMaio v. Ciccone*, 59 A.3d 125, 129 (R.I. 2013)). “Summary judgment is appropriate when no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law.” *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 648 (R.I. 2011)) (further internal quotation omitted); see Super. R. Civ. P. 56. “In deciding a motion for summary judgment, [a] [c]ourt views the evidence in the light most favorable to the nonmoving party.” *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013); see *Beauregard v. Gouin*, 66 A.3d 489 (R.I. 2013).

Moreover, the moving party “bears the initial burden of establishing the absence of a genuine issue of fact.” *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (internal quotation omitted). The burden then shifts to the “nonmoving party [who] bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest

upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.” *Mruk*, 82 A.3d at 532 (internal quotation omitted). “[C]ompetent evidence’ . . . is generally presented on summary judgment in the form of . . . depositions, answers to interrogatories, . . . admissions on file, . . . [and] affidavits[.]’” *Flynn v. Nickerson Community Center*, 177 A.3d 468, 476 (R.I. 2018) (quoting *Leone v. Mortgage Electronic Registration Systems*, 101 A.3d 869, 872 (R.I. 2014)).

III

Analysis

A

Choice of Law

1

Stipulation of Applicable Law

Plaintiff and Defendant agree that the law of Massachusetts controls this matter. (*See generally*, Hr’g Tr. May 29, 2025.) Rhode Island courts routinely enforce choice of law provisions in contracts “if the intention of the parties to stipulate to the jurisdiction is made clear by express language or by the facts and circumstances attending the making of the contract.” *Webster Bank, National Association v. Rosenbaum*, 268 A.3d 556, 560 (R.I. 2022) (internal quotations omitted). However, “[b]arring certain circumstances, Rhode Island will not apply the law of the chosen state if it contravenes fundamental public policy.” *Id.* (citing *Commerce Park Realty, LLC v. HR2-A Corp.*, 253 A.3d 1258, 1270 (R.I. 2021)). “Rhode Island also will not apply the law of the chosen state if ‘the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties’ choice.’” *Id.* (quoting *DeFontes v. Dell, Inc.*, 984 A.2d 1061, 1067 (R.I. 2009)). Thus, Rhode Island courts generally permit parties to stipulate to the law

of a specific jurisdiction that will govern their transactions in contract, so long as it does not run afoul of the above principles. *Id.*

However, the instant matter is not a contract claim; it sounds in tort. *See generally*, Third Am. Compl. A tentative draft of Restatement (Third) *Conflicts of Law* provides “[p]arties may, by mutual agreement, generally choose the law to govern a tort after it occurs.” Restatement (Third) *Conflicts of Law*, *Tentative Draft No. 4*, § 6.10(a) (ALI Mar. 2023).¹ In the comments, the Restatement also states:

“*b. Post-dispute choice of law.* Parties engaged in litigation are often allowed to resolve issues of fact by mutual agreement or stipulation. What law governs a particular issue is a question of law, and courts generally do not accept parties’ stipulations as to law as controlling. However, parties are also able to waive or simply decline to raise certain arguments and to settle claims in whole or in part. Agreements as to what law governs an issue may also be understood by analogy to these practices. If the parties agree to proceed as if a particular state’s law governed a tort claim, a court will often accept their agreement. For some issues, such as whether United States federal law governs for the purposes of creating federal question jurisdiction, an agreement by the parties is not sufficient.” *Id.* at § 6.10 cmt. *b.*

Yet, it is unclear if a stipulation regarding applicable law is analogous to factual stipulations or settlement agreements because the determination of questions of law are within the prerogative of the Court. Choice of law analyses can be complex, lengthy, and drain precious judicial resources; therefore, allowing parties to stipulate to which law applies to a tort action could greatly serve the interest of judicial economy. Allowing parties to so stipulate also risks encroaching on powers typically reserved for the General Assembly, which has the sole authority to create statutory causes of action and defenses. As one commenter has succinctly described, such stipulations:

¹ As Restatement (Third) *Conflicts of Law* is still being drafted, its provisions are subject to change. For that reason, and others provided in this Decision, the Court does not rely on it in coming to its determination on this issue.

“Honoring litigant’s choice of law stipulations based on a concern for judicial economy alone, however, may prompt forceful objections from observers that courts are permitting the parties to exercise powers traditionally reserved to the legislature. Although courts have quieted the concern of usurpation of a legislative function in the realm of contracts, courts may not quell the objection as easily in tort cases. Tort actions often involve strong public policy concerns to raise standards of conduct to levels deemed acceptable by the legislature. Arguably, society should not permit a tort litigant to choose the standards of conduct applicable to his own actions.” *Choice of Law Stipulations by Litigants*, 43 Wash. & Lee L. Rev. 141, 159 (1986).

To avoid such issues, the Court will perform a choice of law analysis to determine which applicable jurisdiction is most interested in the instant action.

2

True Conflicts

The Court will first determine whether the laws of Massachusetts are in true conflict with that of Rhode Island. *See Smile of the Child v. Estate of Papadopouli*, 272 A.3d 99, 106 (R.I. 2022). “[W]ithout such a conflict, there is no need to engage in a choice-of-law analysis” and the Court can apply the foreign law. *Id.*; *see also Baumgartner v. American Standard, Inc.*, No. PC-13-4151, 2015 WL 4523476, at *5 (R.I. Super. July 22, 2015) (“If the laws are not found to be in conflict, then the laws of Ohio shall be applied[.]”). The parties have identified two laws from Massachusetts that are applicable to the instant action: (1) the Massachusetts Statute of Repose and (2) the sophisticated user doctrine.

i

The Statute of Repose

The Massachusetts Statute of Repose provides:

“Action of tort for damages arising out of any deficiency or neglect in the design, planning, construction or general administration of an improvement to real property . . . shall be commenced only within

three years next after the cause of action accrues; provided, however, that in no event shall such actions be commenced more than six years after the earlier of the dates of: (1) the opening of the improvement to use; or (2) substantial completion of the improvement and the taking of possession for occupancy by the owner.” Mass. Gen. Laws ch. 260 § 2B (the Statute of Repose).

The Supreme Judicial Court of Massachusetts has stated that the Statute of Repose “applies to ‘parties who render particularized services for the design and construction of particular improvements to particular pieces of real property.’” *Parent v. Stone & Webster Engineering Corp.*, 556 N.E.2d 1009, 1011 (Mass. 1990) (quoting *Dighton v. Federal Pacific Electric Co.*, 506 N.E.2d 509 (Mass. 1987)). Additionally, pursuant to that statute, “improvements” is defined as “a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.” *Id.* (internal quotation omitted). Importantly, the Statute of Repose has been interpreted to bar claims for injuries that have long latency times—thus, making it impossible to sue within the six-year limit—such as mesothelioma caused by asbestos. *See Stearns v. Metropolitan Life Insurance Co.*, 117 N.E.3d 694, 699-700 (Mass. 2019) (“The apparent intent of the Legislature was to place an absolute time limit on the liability of those protected by the statute.”).

Rhode Island has a similar statute of repose regarding improvements to real property. *See* G.L. 1956 § 9-1-29. Like Massachusetts, this Court has previously determined the Rhode Island statute may also bar a claim in an asbestos action if its strict time constraints are not satisfied. *In re: Asbestos Litigation*, Nos. 01-4147, 99-2703, 2002 WL 31332792, at *1 (R.I. Super. Sep. 4, 2002). Beyond those similarities, there are two differences between Massachusetts and Rhode Island statutes. The Massachusetts statute bars applicable actions after six years and the Rhode Island statute bars the same after ten years. Further, the Rhode Island statute extends protection

beyond just those who design, construct, or administer improvements, it also protects those who supply materials to construct such improvements. However, the evidence here shows the improvements designed by Defendant were completed decades before this action began. Should either statute be deemed applicable, Defendant would escape liability under either's time constraint. Additionally, Defendant was engaged with the design of both the feedwater heaters and water pumps, and is an actor protected by both statutes of repose as a designer, regardless of the Rhode Island statute's inclusion of materialmen. Therefore, the Rhode Island and Massachusetts statutes of repose are compatible with each other on the facts of this case and there is no true conflict. As a result, the Court will apply the Massachusetts Statute of Repose.

ii

The Sophisticated User Doctrine

Next to be analyzed is the sophisticated user doctrine. In Massachusetts, that doctrine “relieves a manufacturer of liability for failing to warn of a product’s latent characteristics or dangers when ‘the end user knows or reasonably should know of a product’s dangers.’” *Carrel v. National Cord & Braid Corp.*, 852 N.E.2d 100, 108 (Mass. 2006) (quoting *Hoffman v. Houghton Chemical Corp.*, 751 N.E.2d 848, 854 (Mass. 2001)). However, Rhode Island does not recognize the sophisticated user doctrine. *Baumgartner*, 2015 WL 4523476, at *8. Therefore, there is a conflict of law.

3

Interest Weighing Approach

Although there is a conflict of law regarding the sophisticated user doctrine, such a conflict may be a “false conflict” should it be determined that “only one state is interested in the application of its law[.]” *Engine Specialties, Inc. v. Bombardier Ltd.*, 605 F.2d, 1, 19 n.26 (1st Cir. 1979).

Rhode Island courts perform an interest weighing approach to determine choice of law questions. *See Smile of the Child*, 272 A.3d at 107; *see also Harodite Industries, Inc. v. Warren Electric Corp.*, 24 A.3d 514, 534 (R.I. 2011). In performing this analysis, the Court will ““look at the particular facts and determine therefrom the rights and liabilities of the parties in accordance with the law of the state that bears the *most significant relationship* to the event and the parties.”” *Smile of the Child*, 272 A.3d at 107 (quoting *Harodite Industries*, 24 A.3d at 534). There are five policy considerations in determining which jurisdiction is most significantly related: ““(1) Predictability of results[;] (2) Maintenance of interstate and international order[;] (3) Simplification of the judicial task[;] (4) Advancement of the forum’s governmental interests[;] (5) Application of the better rule of law.”” *Id.* (quoting *Harodite Industries*, 24 A.3d at 534).

Additionally, for actions grounded in tort, the Court must analyze an additional four factors. *See Harodite Industries*, 24 A.3d at 534; *see also Brown v. Church of the Holy Name of Jesus*, 105 R.I. 322, 326-27, 252 A.2d 176, 179 (1969). Those factors are:

- “(a) the place where the injury occurred,
- “(b) the place where the conduct causing the injury occurred,
- “(c) the domicil[e], residence, nationality, place of corporation and place of business of the parties, and
- “(d) the place where the relationship, if any, between the parties is centered.” *Harodite Industries*, 24 A.3d at 534 (internal quotation omitted).

4

Tort Factors

The first three tort factors overwhelmingly weigh in favor of the application of Massachusetts law. Angelini is alleged to have been exposed to asbestos in Massachusetts and his injury is alleged to be caused from his maintenance work at Brayton Point. Additionally, Plaintiff is a resident of Massachusetts, whereas Defendant is a New York corporation with its principal

place of business in New Jersey. (Third Am. Compl. ¶¶ 1, 27.) As to the fourth factor, Plaintiff and Defendant have no relationship. However, the two come into contact in this litigation by proxy of New England Power, as Defendant and New England Power performed business together and New England Power employed Angelini. If a relationship were to be found, it would center in Massachusetts where New England Power operated. As a result, all tort factors point toward Massachusetts having an exclusive interest in the instant action.

5

Policy Considerations

The first factor, predictability of results, “concerns enabling parties to know beforehand the consequences of a certain course of action.” *Pardey v. Boulevard Billiard Club*, 518 A.2d 1349, 1352 (R.I. 1986). Angelini’s exposure allegedly occurred from his employment in Massachusetts, and Defendant was involved in designing improvements for Angelini’s Massachusetts employer. Both parties could have reasonably expected that Massachusetts law would control issues arising from either of those transactions.

The second and fourth factors—maintenance of interstate order and advancement of the forum’s governmental interests—slightly weighs in favor of Massachusetts’ interest. Rhode Island neither has governmental interest in forgoing a sophisticated user defense to benefit an out-of-state resident, nor does it have an interest in applying such a law to protect an out-of-state corporation. Massachusetts, however, has an interest in the defense being applied to protect commerce in its state. Should foreign suppliers of goods fear that they could lose a potential defense when they are subject to suit in Rhode Island for a transaction occurring in Massachusetts, they might reassess if conducting such business is worth the risk.

Regarding the third factor, applying the sophisticated user defense likely would not be a substantial burden upon this Court. There are several cases in Massachusetts’ jurisprudence which would assist in guiding the Court. *See, e.g., Carrel*, 852 N.E.2d at 108; *Hoffman*, 751 N.E.2d at 854.

Finally, the fifth factor—the better rule of law—weighs in favor of Massachusetts. The sophisticated user doctrine essentially “applies where a warning will have little deterrent effect[.]” and “allows the fact finder to determine that no such duty [to warn] was owed.” *Hoffman*, 751 N.E.2d at 855. “It is a corollary of the ‘open and obvious’ doctrine[.]” *Carrel*, 852 N.E.2d at 109 (quoting *Koken v. Black & Veatch Construction, Inc.*, 426 F.3d 39, 45-46 (1st Cir. 2005)). Although Rhode Island does not recognize the defense, a finder of fact might formulate the doctrine on its own and question why New England Power is not being held responsible for any failure to warn Angelini.

6

Massachusetts Law Applies

As the tort factors and policy considerations overwhelmingly weigh in favor of finding that Massachusetts is the interested jurisdiction in this action, there is a false conflict regarding the sophisticated user defense. Therefore, Massachusetts’ substantive law controls this action. Further, because the interest analysis is in harmony with the parties’ stipulation regarding choice of law, the Court need not determine whether such a stipulation is proper.

B

The Massachusetts Statute of Repose

Massachusetts has a statute of repose for builders of improvements to real property. Defendant argues that it designed and installed water pumps and feed heaters as permanent

improvements to Brayton Point in 1968, and thus, any claim by Plaintiff is now barred by the Statute of Repose. Plaintiff, on the other hand, contends that because Angelini was making ordinary repairs to those improvements, the claims are beyond the scope of the Statute of Repose.

In *Parent*, the plaintiff was injured while testing an electrical distribution panel at a power plant and filed a negligence action against the defendant, which had installed the panel approximately twenty-five years earlier, alleging the defendant failed to affix a warning label describing the amount of electricity upon installation. *Parent*, 556 N.E.2d at 1010. The Supreme Judicial Court of Massachusetts held that the panel was an improvement, as it was permanent and “involved the expenditure of labor and money, and served to make the facility productive as a power generating plant.” *Id.* at 1011. As the defendant installed the panel as an improvement, and because the failure to warn related to the design of the improvement, that court held the plaintiff’s claim necessarily was barred by the Statute of Repose regardless of the fact that he was engaged in routine and ordinary repairs. *Id.* Therefore, the nexus upon whether the Statute of Repose applies depends on the actions undertaken by the defendant, and not subsequent actions performed by the plaintiff.

Here, Defendant entered a contract with New England Power to furnish seven feedwater heaters at Brayton Point in 1966 and to provide two water pumps in 1968. Def.’s Mem. Ex. 4, Tracey Aff. ¶¶ 5, 8. The feedwater heaters and water pumps were delivered in 1967 and 1972, respectively. *Id.* ¶¶ 6, 9. Both required Defendant to invest significant labor, money, and thousands of hours in planning, designing, and construction. *Id.* ¶¶ 7, 10, 21, 27. The feedwater heaters are “approximately 36 to 47 feet long and approximately 7,805 to 13,625 square feet,” and weigh between 61,550 to 116,560 pounds when they are not full of water. *Id.* ¶¶ 18-19. The water pumps are 46 feet long, 10 feet in diameter, and weigh about 79,000 pounds. *Id.* ¶¶ 24-25. Both sets of

equipment were clearly intended to be permanent improvements, as contemplated by the Statute of Repose, and were essential to Brayton Point's operation as a powerhouse. *Id.* ¶¶ 20, 26.

Plaintiff provides no evidence to suggest that the feedwater heaters and water pumps are anything other than permanent improvements. However, she does argue that even if they are improvements, the asbestos containing materials in them cannot be considered improvements. In making that argument, she relies on *State Farm Mutual Automobile Insurance Co. v. W.R. Grace & Company-Conn.*, 24 F.3d 955 (7th Cir. 1994). In that case, the plaintiff constructed new corporate headquarters in the early 1970s. *Id.* at 956. An architect's design for the building called for "cementitious" fireproofing. *Id.* The plaintiff purchased such fireproofing from the defendant, which was ultimately installed by contractors hired by the plaintiff. *Id.* Ten years later, the plaintiff discovered that the fireproofing contained asbestos, removed it, and brought action against the defendant for negligence, failure to warn, and breach of warranty. *Id.* The defendant then relied on the Illinois statute of repose to argue against its liability. *Id.* at 957. The Seventh Circuit disagreed, first because the defendant "did not spray the structural steel in the buildings," and therefore was not intended to be protected by the statute. *Id.* The defendant merely sold a product and did not contribute to the design or construction of the building. *Id.* Second, the defendant attempted to argue that the fireproofing spray was an improvement. This argument was rejected because it was a minor factor relative to the overall construction of the building. *See id.* at 958 ("An extension to a kitchen is an improvement; the paint on the extension is not.").

The Court notes that *State Farm* involves the interpretation of the Illinois Statute of Repose, not the Massachusetts Statute of Repose. However, it is also factually distinguishable from the instant action. First, Defendant designed the feedwater heaters and the water pumps installed in Brayton Point, and thus, it is in the class of actors shielded by the Statute of Repose. Second, unlike

the defendant in *State Farm*—who merely *supplied* an asbestos product—Defendant’s *design* of both improvements included the use of asbestos insulation and gaskets. The Massachusetts Superior Court has held that asbestos involved in the design of an improvement is covered by the Statute of Repose. *See Sylvestre v. New England Insulation Co.*, No. MICV201507031, 2017 WL 5308017, at *1 (Mass. Supp. Apr. 27, 2017) (“Plaintiff argues that asbestos fibers released during the initial construction never became part of an ‘improvement to real property’ within the meaning of the Statute. The court disagrees.”). This Court will not second guess the application of Massachusetts law by a Massachusetts court based on an extra-jurisdictional decision. *See Flotech, Inc. v. E.I. Du Pont de Nemours Co.*, 627 F. Supp. 358, 372 (Mass. Dist. Ct. 1985) (“[T]he First Circuit has not hesitated to apply Massachusetts law as declared by the Massachusetts Superior Court where no Massachusetts appellate court has spoken to the particular issue.”).

Therefore, insofar as Plaintiff’s claims relate to the initial design and installation of the feedwater heaters and water pumps, Defendant is an actor who performed activities protected by the Statute of Repose. Such claims must necessarily fail.

C

Sophisticated User Doctrine

However, Plaintiff’s claims are not limited to Defendant’s actions associated with the design and installation of the improvements. She also presents evidence that Defendant supplied New England Power with replacement parts that contained asbestos, specifically a supply of spare asbestos-containing gaskets for the feedwater heaters. *See John Brown Dep. Tr.* at 110:8-129:11. Additionally, Defendant had directed New England Power that every time a joint containing a gasket was dismantled a new gasket should be installed that matches the “type and material installed as the original equipment.” *Id.* at 133:2-135:10. The original design of those gaskets were

“[s]tainless steel spiral wound with an asbestos insert[.]” *Id.* at 127:11-22. There is evidence to suggest that Angelini worked on replacing such gaskets, and, therefore, a finder of fact could determine that he was exposed to asbestos while doing so. *See* Sol. Dep. Tr. Vol. 1 at 69:24-70:2 (“Q: [D]id Mr. Angelini work on these feed water heaters? A. All the time.”); Angelini Dep. Tr. Vol. 2 at 116:24-117:2 (“If that equipment was at Brayton Point, I worked on it at one time or another.”); Sol Dep. Tr. Vol. 1 at 15:22-16:2 (testimony that maintenance workers at Brayton Point worked on “[a]nything and everything in the building”). Further, the feed water heaters were insulated with asbestos, which caused dust that Angelini would breathe. Sol Dep. Tr. Vol. 1 at 69:13-70:10. Such evidence supports a claim for products liability; that Defendant had a duty to warn about the asbestos contained in those replacement gaskets. As those gaskets replaced the old ones, Angelini’s work with them would constitute an ordinary repair of the improvements and the Statute of Repose would not apply.

Yet, the sophisticated user defense may shield Defendant from liability. As noted above, that doctrine “relieves a manufacturer of liability for failing to warn of a product’s latent characteristics or dangers when ‘the end user knows or reasonably should know of a product’s dangers.’” *Carrel*, 852 N.E.2d at 108 (quoting *Hoffman*, 751 N.E.2d at 854). Defendant argues that New England Power should be classified as the end user for the purposes of the defense, and they provide ample evidence that New England Power was more than well aware of the dangers of asbestos at the relevant time period. *See generally* Def.’s Mem. Ex. 7, Aff. of Deborah Tamborski. As far back as 1973, New England Power had safety protocols in place to deal with maintaining and removing asbestos in line with OSHA standards at the time. *Id.* at Ex. B. As New England Power was aware of the dangers of asbestos, it follows that any warning from Defendant to New England Power would have been superfluous. Therefore, if New England Power is found

to be the end user, Defendant will be excused from any claim of product liability. Plaintiff does not deny that New England Power was sophisticated relative to asbestos; rather, she contends Angelini is the proper end user. It follows that his lack of contemporaneous understanding of the dangers of asbestos indicates he was not sophisticated.

Massachusetts and other jurisdictions employing the defense in similar scenarios have determined that, generally, the end user is an employer. *See Taylor v. AIRCO, Inc.*, 503 F. Supp. 2d 432, 443-44 (Mass. Dist. Ct. 2007) (holding employer who purchased toxic chemicals to be end user in employee's action against supplier of chemicals); *see also Marques v. Bellofram Corp.*, 550 N.E.2d 145, 147 (Mass. Ct. App. 1990) (holding employer to be end user in employee's action against manufacturer of air regulator instrument); *Morgan v. Brush Wellman, Inc.*, 165 F. Supp. 2d 704, 718 (E.D. Tenn. 2001) (federal government end user of nuclear materials in action of federal employee against supplier of such materials). As a result, New England Power, not Angelini, is the end user of the asbestos containing products. Such a determination is logical when considering that New England Power contracted for the products to be used in its facilities to produce electricity for its benefit.

Plaintiff has provided no evidence to rebut the evidence indicating New England Power's knowledge of asbestos; rather, she argues there has been no evidence to show that New England Power's knowledge exceeded that of Defendant. While the decision in *Carrel* does say the defense is applicable when the user's knowledge far exceeds that of the defendant, that language comes from a quote of the jury instructions provided by the Massachusetts Superior Court. *Carrel*, 852 N.E.2d at 108. The Massachusetts Supreme Judicial Court stated, however, that the defense "“applies where a warning will have little deterrent effect[.]”" *Id.* at 109 (quoting *Hoffman*, 751 N.E.2d at 854). It also stated the doctrine relieves a manufacturer of liability when "“the end user

knows or reasonably should know of a product's dangers.” *Id.* at 108 (quoting *Hoffman*, 751 N.E.2d at 854). The Massachusetts Supreme Judicial Court’s formulation of the doctrine does not require the end user’s knowledge to “far exceed” that of the manufacturer; it does not even require actual knowledge when an end user “reasonably should know of a product’s dangers.” *Id.* (internal quotation omitted). Therefore, there is no genuine issue of material fact that New England Power was a sophisticated end user, regardless of whether its knowledge far exceeded that of Defendant, and Defendant is entitled to summary judgment on any claims of product liability.

D

Contractual Duty

Finally, Plaintiff notes that Defendant would send representatives to Brayton Point to assist with repairs and provide expertise on several occasions. *See* John Brown Dep. Tr. at 73:13-74:1. Those visits included repairs to the feedwater heaters at Brayton Point. *Id.* at 75:11-16. On those occasions, Defendant would “provide expertise to [New England Power’s] workers[.]” *Id.* at 79:4-8. Defendant provided such expertise in 1968, 1969, 1975, 1979, and 1986. *See id.* at 85:3-9, 87:10-21, 90:16-20, 95:14-96:3, 104:14-20. Additionally, Angelini’s coworker stated that when work was being coordinated with outside representatives on the appropriate equipment, “you wouldn’t put nothing back without a measurement, physical eyes, coordination, looking, inspection before that went back.” Sol Dep. Tr. at 81:8-16.

Massachusetts recognizes that a duty to warn can develop contractually. *See Parent*, 556 N.E.2d at 1011-13 (recognizing the defendant’s contract to perform later repairs to improvements gave rise to a duty outside of statute of repose due to the contractual obligations of those repairs). “It is settled that a claim in tort may arise from a contractual relationship, . . . and may be available to persons who are not parties to the contract.” *Id.* at 1012 (internal citation omitted). “In particular,

we have held that a defendant under a contractual obligation ‘is liable to third persons not parties to the contract who are foreseeably exposed to danger and injured as a result of its negligent failure to carry out that obligation.’” *Id.* (quoting *Banaghan v. Dewey*, 162 N.E.2d 807 (Mass. 1959)). A contract provision in *Parent* was sufficient to impose a duty on the defendant because it had assumed responsibility for engineering and technical direction and safety. *Id.* at 1013. As a result, the defendant should have discovered and corrected the dangerous condition—that a high voltage panel was not properly labeled as such—which caused the plaintiff’s injury. *Id.*

Here, Defendant’s corporate witness does not recall there being any service contracts between his former company and New England Power. John Brown Dep. Tr. at 107:11-15. However, he does indicate that New England Power did pay for such expertise in overseeing repairs. *Id.* at 80:13-81:7. The absence of a memorialized written contract does not equate to there being no contract between Defendant and New England Power, and a finder of fact would be entitled to conclude that such a contract exists because of New England Power’s payment for Defendant’s performance. Based on the deposition testimony of Angelini’s coworker, a finder of fact could also determine that Defendant breached a duty to discover and correct the lack of warning around the asbestos because outside representatives inspected everything before repairs were completed. As Defendant was aware of harms asbestos may cause, it was reasonably foreseeable to Defendant that Angelini would be exposed to asbestos if not adequately warned. *See Parent*, 556 N.E.2d at 1012.

IV

Conclusion

For the foregoing reasons, Defendant’s motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff’s claims arising from Defendant’s design of

improvements to Brayton Point, or its supply of asbestos-containing products, fail as a matter of law under the Statute of Repose and the sophisticated user defense theories. However, Plaintiff's claims arising from Defendant's contractual duties survive. Counsel shall submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Elise M. Angelini v. 3M Company f/k/a Minnesota Mining and Manufacturing

CASE NO: PC-2017-3179

COURT: Providence County Superior Court

DATE DECISION FILED: August 27, 2025

JUSTICE/MAGISTRATE: Gibney, P.J.

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