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===== Start of Answer #1 (1113 words) =====

**MEMORANDUM OF POINTS AND AUTHORITIES**

To: Christopher Schroeder  
Fm: Applicant  
Da: July 28, 2015  
Re: Wilson v. Belton Company, Inc.

**ARGUMENT**

**III. THIS COURT SHOULD GRANT BELTON'S SUMMARY JUDGMENT  
MOTION.**

**A. THERE IS NOT A TRIABLE ISSUE OF MATERIAL FACT AS TO  
CAUSATION BASED ON NEGLIGENT INSULATION WORK AT THE  
MARTINVILLE POWERHOUSE.**

To begin with, there is not a triable issue of material fact as to causation based on negligent insulation work at the Martinville Powerhouse.

As a general rule, the plaintiff must specifically identify that it was the defendant's equipment that caused the plaintiff's injury, that the equipment or insulation work contained or caused asbestos exposure, or that the work done by the defendant caused the release of respirable fibers into the air. Andrews. Without such evidence, there is no exposure. Ibid. Without exposure, there can be no causation. Ibid.

Even with such evidence, it may not be enough, if expert declarations amount to nothing more than speculation. Ibid.

In Andrews, the court held, that the plaintiff argument that the trial court erred by concluding that there was no triable issue of material fact as to causation in spite of some evidence about the Brinkley Bass and experts declaration failed. Ibid. The court reasoned that the plaintiffs did not identify the defendant equipment were on the Bass within the the time of his arrival. Ibid. Nor did they identify any evidence showing that the defendant's work caused the release of the asbestos. Ibid. Lastly, they identified the experts declaration as little more tha speculation. Ibid.

Here, like Andrews, even though Wilson identified some evidence having to to with Belton, he failed to identify if Belton's equipment was at the Martinville Powerhouse within the 16 years of Wilson's arrival. Further, Wilson failed to identify any evidenc showing that Belton equipment "actually" contained asbnesos. Finally, Wilson failed to show that Belton's insulation "caused" the release of the respirable asbestos. And without any of these showings, there is no exposure. And without any exposure, there is no causation.

Further, Charles Nye's declaration amount to nothing more than speculation. Like the court in Andrews said, "*The aerodynamic properties of rspirable asbestos fibers work in tandum with the aerodynamic properties of the environment in which they find themselves.*"

Therefore, there is not a triable issue of material fact as to causation based on negligent insulation work at the Martinville Powerhouse. there is not a triable issue of material fact as to causation based on negligent insulation work at the Martinville Powerhouse.

**B. THERE IS NOT A TRIABLE ISSUE OF MATERIAL FACT AS TO CAUSATION BASED ON NEGLIGENT INSULATION AT THE COLLINS POWERHOUSE.**

There is no triable issue of material fact as to causation based on negligent insulation work at the Collins Powerhouse.

A declaration by a party in opposition to a summary judgment motion that contradicts a prior statement by the party in discovery cannot raise a triable issue of material fact. Visueta (citing D'Amico). Except, where a declaration may raise a triable issue of material fact, even if it contradicts a prior discovery statement, if the party offers a credible explanation for the contradiction. Ibid.

Here, like the case in Visueta, Wilson has failed to offer any credible explanation for his contradiction. Not only did Wilson fail to offer a credible explanation, if failed to offer any explanation at all. This is because when Belton tried to seek clarification by way of it interrogatory, there were several interrogatories that were not even responded to. Any claim also that they were not contradictions but "ambiguosus" also fails because Wilson failed to respond to those interrogatories seeking clarifcantion also.

Therefore, there is no triable issue of material fact as to causation based on negligent insulation work at the Collins Powerhouse.

**C. THERE IS NOT A TRIABLE ISSUE OF MATERIAL FACT AS TO CAUSATION BASED ON PROFESSIONALLY NEGLIGENT DESIGN OR BUILDING OF BOTH THE COLLINS POWERHOUSE AND THE MARTINVILLE POWERHOUSE.**

There is no triable issue of material fact as to causation based on professionally negligent design or building of structures at both the Collins Powerhouse and the Martinville Powerhouse.

First, and fundamentally, a plaintiff must offer evidence that the defendant was



even involved in the designing or building of any structure. Andrews. Secondly, a defendant moving for summary judgment need only challenge a claim clearly presented by the plaintiff. Ibid (citing Moghadam). Lastly, to survive summary judgment, a plaintiff must submit expert evidence identifying the standard of care and describing its breach. Ibid (citing Miller).

In, Andrews, the court held that that the plaintiff had failed to establish that there was a triable issue of material fact as to causation under the law applicable to a claim for damages for personal injury based on exposure to asbestos arising from professional negligence in designing or building structures. Ibid. The court reasoned that, first, there was no evidence that the defendant, Foster Wheeler, was even involved in the designing or building of any structure. Ibid. Secondly, the court reasoned that the plaintiff, Andrews, did not "clearly" present his claim from which a defendant moving for summary judgment need only challenge. Ibid. Lastly, the court reasoned that, again, plaintiff Andrews, failed to submit expert evidence identifying the standard of care and describing its breach. Ibid.

Here, like Andrews, Wilson's evidence that Belton was involved is questionable at best. Wilson relies on statements by Rance to establish Belton's involvement. But on its face, these statements are unreliable for several reasons. First, he worked with Wilson from 1961 to 1966 but is trying accurate describe specifications at least 11 to 16 years earlier about Belton's involvement. Secondly, Rance begins to waiver in whether or not Belton was involved or with statement such as, "I believe, but am not positive," as to Belton's identification and involvement.

Next, it is true that Wilson expressly identified "designing and building" in his complaint, but what is also true is that his claim with regards to "designing and building" was not done "clearly." In Andrews, the plaintiff did not present the claim "clearly," in fact he didn't present it at all. In our case, Wilson may have presented the claim, expressly identifying, "designing and building," but he didn't

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do it "clearly," which explains why interrogatories were sent, to which they did not reply.

Lastly, Wilson, may have engaged an expert when he had Charles Nye make a declaratrion, but he still failed to identify: 1. the Standard of Care and 2. a Description of its Breach. Both are needed.

Therefore, There is no triable issue of material fact as to causation based on professionally negligent design or building of structures at both the Collins Powerhouse and the Martinville Powerhouse.

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Question #1 Final Word Count = 1113

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**END OF EXAM**