

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 1**

Court of Appeal Case No. B328352

ELAINE HERMAN AND JACOB HERMAN,
Petitioners,

vs.

**SUPERIOR COURT FOR THE COUNTY
OF LOS ANGELES COUNTY,**
Respondent,

COLGATE PALMOLIVE COMPANY, ET AL.
Real Parties in Interest.

Superior Court for the County of Los Angeles
J.C.C.P. No. 4674; Superior Court Case No. 22STCV32540
Hon. Laura A. Seigle, Judge
Department 15

**BRIEF OF REAL PARTY IN INTEREST
CHARLES B. CHRYSTAL COMPANY**

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I. INTRODUCTION

The instant writ petition does not present the Court with a novel legal issue that requires resolution. Over thirty years ago, the California Supreme Court conclusively held that when resolving a forum non conveniens motion pursuant to Code of Civil Procedure section 430.10, “the fact that an alternative jurisdiction’s law is less favorable to the litigant than the law of the forum *should not be accorded any weight*...provided, however, that some remedy is afforded.” *Stangvik v. Shiley, Inc.* (1991) 54 Cal.3d 744, 745 [emphasis added] (“*Stangvik*”). The Supreme Court came to this considered outcome understanding that if “weight is given to the circumstances that the law in the forum state is more favorable to the plaintiff than the one in the alternative jurisdiction,” litigation in the forum state “would increase and further congest already crowded courts.” *Id.* [internal citations omitted.] No case since *Stangvik* has altered its holding.

Here Petitioners ELAINE and JACOB HERMAN (“Petitioners”), who are currently residents of Connecticut and have been residents of Connecticut for the majority of their lives, spending just seven years in California in the late 1970s and early 1980s, filed their claim for personal injury and loss of consortium in California. Petitioners allege that Mrs. Herman’s injury was caused by life-long exposure to asbestos-containing products, starting from the time she was a child in Connecticut all the way up to present day. None of Mrs. Herman’s medical providers or medical treatments have any connection to California. None of Mrs. Herman’s family members with information relevant to Petitioners’ claims reside in California. Most of the over thirty active defendants in the action are not residents of California and do not have their principal places of business in California, meaning that the defendants’ relevant witnesses and documents are outside California. Of the just three defendants who do have their principal place of business in California, one has consented to jurisdiction in Connecticut and Petitioner alleges exposure to the products of all three while living in Connecticut.

Connecticut's Long Arm Statute extends personal jurisdiction over entities who have caused harm in Connecticut. One defendant was previously dismissed after service of summons was quashed because California lacked jurisdiction over the Connecticut defendant and multiple other defendants had pending motions to quash service of summons in California, demonstrating that California is not an appropriate forum to try the claims of a plaintiff who claims decades of exposure to products in a state other than California.

Respondent court properly found that Connecticut was an appropriate forum to adjudicate this case because no statute of limitations bars Petitioners' claims and stayed the action to permit determination of whether jurisdiction can be exercised over defendants. Respondent court conducted a thorough and detailed balancing of the private and public factors in determining what is the appropriate forum to try this case – Connecticut. Respondent court did not abuse its discretion and this Court should not disturb its ruling staying the action.

While Petitioners argue that Mrs. Herman *may* be entitled to trial preference in California and no similar remedy exists in Connecticut, pursuant to *Stangvik*, respondent court could not, and correctly did not, consider this in ruling on the forum non conveniens motion. If the opposite was true, *Stangvik's* holding and legal rationale would be eviscerated, and any foreign plaintiff could file a claim in California and rely on California's more favorable statutory scheme to maintain a case in California's courtrooms based solely on that factor. California courtrooms are already congested and overburdened, constraining access to courtrooms and trial dates for California residents.

As *Stangvik* rightly recognized that any plaintiff who may, at some point in the life of a case be entitled to trial preference, claim California is an appropriate forum to litigate based on California's favorable law this would inevitably open the floodgates adding considerable strain on an already taxed court system. Petitioners do not cite a single statutory provision or case holding that trial preference entitles a foreign plaintiff to sustain a case in California that should

otherwise be tried in a foreign forum. That is because such a holding will certainly negatively impact the ability of California residents to have their day in court. This Court should adhere to the holding in *Stangvik* and decline to create a special carve-out to its decades-long precedent based on California's trial preference statute.

II. STATEMENT OF FACTS

A. The Undisputed Facts Establish Connecticut Is the Appropriate Forum to Adjudicate Petitioners' Claims

Petitioners commenced this action on October 4, 2022 against real party in interest CHARLES B. CRYSTAL COMPANY ("CBC") and numerous other defendants, alleging that Elaine Herman suffers from peritoneal mesothelioma caused by her exposure to asbestos. [Ex. 1, R 006-061.] Petitioners' Complaint alleges that Mrs. Herman was exposed to asbestos from her personal use of talcum powder and cosmetic products for over four decades, of which only seven years took place in California. [R 059; Supp. Ex. 2, Supp. R. 010 at 13:7-9.] Petitioners' Complaint further alleges that Mrs. Herman experienced exposure to asbestos through her husband, Mr. Herman's, shade-tree auto mechanic work over a greater than thirty-year period, of which only seven years took place in California. [R 060.]

Petitioners are currently residents of Connecticut, where they have been residents for the past 38 years. [R 444.] Mrs. Herman was born in Rhode Island and lived in Connecticut her entire life, other than one year in the mid-1970s when she lived in Florida and seven years in the late 1970's and early 1980s when she lived in California. [R 443-444; Supp. Ex. 2, Supp. R. 010-011 at 13:23-14:2.] Of her 65 years, Mrs. Herman has spent 57 of them as a resident of Connecticut.

Petitioners' verified discovery responses allege that "[b]eginning in the 1960s, and continuing through the present, [Mrs. Herman] used various asbestos containing talcum powder, and cosmetic powder products, on her person, face, and body," which she claims exposed her to asbestos. [R 456 at 14:7-10.] Mrs. Herman also attested via a signed declaration that she "used cosmetic talcum powder products during [her] entire life," and that she was also "present when other members of [her family] used these types of talcum powder products." [R 581, ¶ 4.]

Petitioners' verified responses further allege that Mrs. Herman was "exposed to asbestos through asbestos dust and fibers through the automotive repair performed by her husband [Mr. Herman] and her father, Francis James Hickey, Jr." [R 458, 17:4-9.] Mrs. Herman testified at her deposition that her claimed exposure to asbestos from her father's automotive repair work occurred in Connecticut where she visited him at his place of business as a child. [Supp. Ex. 2, Supp. R. 011 at 15:6-19:9.]

Of the thirty-nine years Mrs. Herman has spent in the paid workforce, thirty-two years have been working for various Connecticut companies. [R 449-452 at 8:7-11:6.] Similarly, Mr. Herman has spent the last thirty-eight years as an employee of companies in Connecticut. [R 452-454 at 11:8-13:11.]

All of Mrs. Herman's medical providers are located in Connecticut and her medical treatment has been in Connecticut, other than treatment at one facility located in New York. [R 506.]

Three of Petitioners' four children live in Connecticut, and one lives in nearby New Hampshire. [R 445.] Mrs. Herman's ninety-one-year-old mother resides with Petitioners, who take care of her, in Connecticut. [Supp. Ex. 2, Supp. R. 012 at 19:10-18.]

B. The Trial Court Properly Considered the Private and Public Factors in Favor of Finding Connecticut Is the Proper Forum to Litigate Petitioners' Claims

Defendants Colgate-Palmolive Company and Mary Kay, Inc. filed a Motion to Stay for Forum Non Conveniens (“FNC Motion”) on January 25, 2023. [Exs. 6-12, R 99-546.] Respondent filed a joinder to that motion on February 1, 2023. [Supp. Ex. 1, Supp. R. 001-003.] Following the initial hearing on March 21, 2023, and supplemental briefing on the issue, the court conducted a hearing on the FNC Motion on April 5, 2023. [Ex. 30, R 745-769.]

Petitioners’ Complaint names forty-nine defendants. [Ex. 1, R 006-008, 657.] Four have been dismissed, leaving forty-five defendants. [R 657.] As to ten of those remaining defendants, Petitioners had not filed proofs of service of the complaint and summons at the time the trial court heard the underlying motion, leaving thirty-five defendants at issue. (*Id.*) Thirteen defendants stipulated or did not object to Connecticut’s jurisdiction¹ and five others stated that they would not oppose the Motion to Stay for Forum Non Conveniens.² (*Id.*) Other defendants, including Respondent, filed statements that they would not contest jurisdiction or stipulated to Connecticut’s jurisdiction.³ (*Id.*) One defendant, Whittaker, Clark & Daniels, Inc., has since filed a Notice of Suggestion of Bankruptcy. [Supp. Ex. 3, Supp. R 014-097.] In other words, of the thirty-four defendants in play at the time of hearing on the FNC Motion, all but twelve of them consented to, or agreed not to oppose, jurisdiction in Connecticut.⁴

¹ L’Oreal USA Products, Inc.; L’Oreal USA, Inc.; Maybelline LLC; Coty Inc.; Noxell Corporation; American International Industries; Glamour Industries, Co.; Whittaker, Clark & Daniels, Inc.; SPX Corporation; Ford Motor Company; Avon Products, Inc.; Morse Tec LLC; Pep Boys; and Honeywell International Inc. [R 657; *see also* R 547 at ¶¶ 11-13; R 509-522.]

² Barretts Minerals Inc.; Mineral Technologies Inc.; Pfizer Inc.; Specialty Minerals Inc.; and Illinois Tool Works Inc. [R 657; *see also* R 547 at ¶¶ 11-13; R 509-522.]

³ Toyota Motor Sales, U.S.A., Inc.; Honda Motor Co., Inc.; Charles B. Chrystal Company; and BASF Catalysts LLC.

⁴ Petitioners claim that defendants “only showed that 25 out of 44 defendants were subject to jurisdiction in Connecticut,” is incorrect. (*See* Petition at p. 20.)

No defendant filed an opposition to the Motion to Stay for Forum Non Conveniens and several defendants, including Respondent, filed joinders to the motion to stay.⁵ [Supp. Ex. 1, Supp. R. 001-003.]

At the hearing, the Judge Seigle acknowledged that she continued the hearing on the FNC Motion and Petitioners' Motion for Trial Preference pursuant to Code of Civil Procedure sections 36(d) and (e)⁶ to the same date based on Petitioners original argument that the FNC Motion "needs to be denied because California has a preference statute and Connecticut does not, and therefore, [Petitioners] would be ... substantially disadvantaged if this case went to Connecticut" and she thought "everything depended on the outcome of the preference motion." [R 748, 3:19-4:1.] However, in reviewing the relevant case law, Judge Seigle correctly explained that California law "said that [Petitioners'] argument about which forum has better law for [Petitioners] is not an argument that can be considered" by the court when ruling on the FNC Motion. [R 749, 4:2-7.]

Acknowledging that Judge Seigle was correct on the law, Petitioners' counsel abandoned the argument that the FNC Motion had to be denied because Connecticut doesn't have a preference statute and instead argued that it should be denied because Mrs. Herman "will not have her day in court" if the California

⁵ In addition to Respondent, defendants Whittaker, Clark & Daniels, Inc.; BASF Catalysts; American International Industries; and American Honda Motor Co. also filed joinders to the Motion to Stay for Forum Non Conveniens.

⁶ Petitioners Motion for Trial Preference was brought pursuant to Code of Civil Procedure sections 36(d) and (e). Section 36(d) allows the court, in its discretion, to grant a motion for preference where there is clear and convincing medical evidence that establishes a party suffers from an illness "raising substantial medical doubt of survival of that party beyond six months, *and* that satisfies the court that the interests of justice will be served by granting the preference." Code Civ. Proc. § 36(d) [emphasis added]. Section 36(e) allows the court, in its discretion, to grant a preference motion that is "supported by a showing that satisfies the court that the interests of justice will be served by granting [] preference." Code Civ. Proc. § 36(e).

case is stayed. [R 749-751, 4:18-6:15; R 759-763, 14:13-18:1.] Again, Judge Seigle considered and correctly disregarded this argument, recognizing that it was just a backdoor means of claiming “that the preference statute in California and the fact that plaintiffs here can get a really early trial date trumps” all the other statutory considerations in evaluating a forum non conveniens motion. (*Id.*) Nor did Petitioners point to any California case law demonstrating that the health of the plaintiff or the ability to get an advanced trial date is a factor to be considered when ruling on a forum non conveniens motion. [R 760 at 15:2-15.]

Respondent court also correctly disregarded Petitioners’ unsubstantiated claims, reiterated again in the instant writ petition, that “all of [Mrs. Herman’s] exposures occurred in California,” noting that Mrs. Herman has alleged exposure from “1957 to the present” and “that most of those years were in Connecticut,” pointing to her declaration, signed in Connecticut, where she attested to that fact. [R 751-753 at 6:16-8:25.] The court recognized that everything in the record in support of and against the FNC Motion established that Mrs. Herman spent the vast majority of her life in Connecticut, not California, and her allegations of exposure to asbestos are not just limited to the seven, out of 65 years, she lived in California.

Importantly, Petitioners did not demonstrate that, other than the lack of a trial preference statute, Connecticut was not a suitable forum to try the case. [R 754-757 at 9:16-12:5.] In fact, at the request of Petitioners on the basis that “one of the considerations as to whether or not and how quickly [Petitioners] can get a trial date” in Connecticut “is the status of discovery in the case,” Judge Seigle ordered that defendants respond to all outstanding discovery requests. [R 756-757 at 11:8-12:5.]

III. STANDARD OF REVIEW

A forum non conveniens motion involves a two-step process; in the first step the trial court must determine whether a suitable alternative forum exists. *Stangvik*, 54 Cal.3d at p. 751; *Guimei v. G.E. Co.* (2009) 172 Cal.App.4th 689, 693. That determination is subject to de novo review. *Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1528.

Where, as here, there is a suitable alternative forum, the court then proceeds to the next step, consideration of the private interests of the parties and the public interest in keeping the case in California. *Stangvik*, 54 Cal.3d at 751, 754. The court's weighing of private and public factors is discretionary and should be given substantial deference by this Court. *Id.*, at 751 [the granting of a motion for forum non conveniens "is within the trial court's discretion, and substantial deference is accorded its determination."] "We 'will only interfere with a trial court's exercise of discretion where [we find] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could have reasonably reached the challenged result." *Guimei*, 172 Cal.App.4th at 696 [internal citations omitted]. "[A]s long as there exists "a reasonable or even fairly debatable justification, under the law, for the action taken, such action will not be ... set aside." *Id.* [citation omitted]; see also *In re Marriage of Taschen* (2005) 134 Cal.App.4th 681, 691 ["appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason"].

"The court of appeal 'cannot reweigh the evidence or draw contrary inferences. We presume the trial court found every fact and drew every reasonable inference necessary to support its determination. We cannot reject evidence accepted by the trial court as true unless it is physically impossible or its falsity is obvious without resort to inferences or deduction." *National Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 918; citing *Guimei*, 172 Cal.App.4th at pp. 698-99 [internal citations omitted].

In this action, the record establishes that the trial court correctly held that Connecticut is a suitable forum for two of its decades long residents to adjudicate their claims. The issue is whether the trial court abused its discretion in weighing the private and public factors in staying the pending action in California.

IV. ARGUMENT

A. Respondent Court Correctly Stayed the Pending Action Holding That Connecticut Is a Suitable Forum

The California Supreme Court has long held that a suitable alternative forum is one where “an action may be commenced” (meaning plaintiff’s cause of action is not barred by the statute of limitations in that location) and “a valid judgment obtained in that location against the defendant” (meaning the defendant is subject to the alternative forum’s jurisdiction). *Stangvik*, 54 Cal.3d at p. 752, fn. 3; *Campbell v. Parker-Hannifin Corp.*, 69 Cal.App.4th 1542. A forum is suitable “if there is jurisdiction and no statute of limitations bar to the action...[i]t is sufficient that the action be brought, although not necessarily won, in the suitable alternative forum.” *Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1564; *American Cemwood Corp. v. American Home Assurance Co.* (2001) 87 Cal.App.4th 431, 436 (“*American Cemwood*”). The law does not require that the alternative forum, in order to be “suitable,” provide equivalent relief, and even the possibility that the plaintiff’s damage recovery may be diminished in the alternate forum is not controlling. *Corrigan v. Bjork Shiley Corp.* (1986) 182 Cal.App.3d 166, 178; see also *Stangvik, supra*, 54 Cal.3d at 754 [“[T]he fact that California law would likely provide Plaintiff with certain advantages of procedural or substantive law cannot be considered as a factor in Plaintiff’s favor in the *forum non conveniens* balance....”].

In determining whether to grant a motion based on *forum non conveniens*, the trial court must first determine the “nondiscretionary legal question” of

whether a “suitable alternate forum” exists. *Roman v. Liberty University* (2008) 162 Cal.App.4th 670, 682; *Morris v AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1464. Once this criterion is established, “[t]here is no balancing of interests in this decision, nor any discretion to be exercised” in finding the alternative forum suitable. *Shipley Inc. v. Superior Court* (1992) 4 Cal.App.4th 126, 132.

Here, Petitioners do not dispute that the Connecticut statute of limitations does not bar Petitioners’ claims. The first prong of the analysis is met.

Rather, Petitioners argue that Respondent “failed to present sufficient evidence to meet their burden to show that all defendants are subject to jurisdiction in” Connecticut. [Petition at p. 20.] Although Petitioners acknowledge that “the exercise of jurisdiction relates to forum-based activities,” their brief fails to address Connecticut’s Long Arm Statute, which permits a Connecticut state court “to exercise personal jurisdiction over any nonresident individual, foreign partnership or foreign voluntary association...who in person or through an agent...commits a tortious act within the state...[or] commits a tortious act outside the state causing injury to a person or property within the state...”. Conn. Gen. Stat. § 52-59b. Here, the allegations in Plaintiffs’ Complaint and their verified responses to standard interrogatories establish that Mrs. Herman was allegedly exposed to asbestos in Connecticut for decades through her father’s employment, her personal use of talcum products and Mr. Herman’s shade tree automotive repair work, establishing jurisdiction over defendants pursuant to Connecticut’s Long Arm Statute. See, e.g., *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297-298 [“Hence if the sale of a product of a manufacturer or distributor ...is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject to it suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers

its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.”]. As all of the defendants in this case are manufacturers or suppliers of allegedly asbestos-containing products which had been “placed in the interstate flow of commerce,” Connecticut courts would require those whose potential negligence created an injury to be prepared to defend themselves wherever that injury should occur—in this case, Connecticut. The second prong of the analysis is also met.

Alternatively, California law is clear: a moving defendant need not prove *all* defendants are subject to jurisdiction in the alternative forum for it to be deemed suitable, particularly in cases where there are numerous named defendants and establishing jurisdiction over each defendant would be unreasonable. *Hansen v. Owens-Corning Fiberglass Corporation* (“*Hansen*”) (1996) 51 Cal.App.753, 759. The Court of Appeal in *Hansen* held that it was “aware of no authority that a moving defendant must show *all* defendants are subject to a jurisdiction in a particular alternative forum” when requesting a stay of the action, such as is the case here. *Hansen*, 51 Cal.App.4th at 758-759 [emphasis in original]. If, after filing in the alternative forum, the plaintiff can “conclusively” show that some of the defendants are not subject to personal jurisdiction there, the plaintiff could then return to California and request the stay be lifted. *Id.* at pp. 756-757, 759.

Petitioners argue that the trial court’s reliance on *Hansen* “was misplaced and incorrect” because it “is a fact-driven departure from the *Stangvik* line of cases requiring the moving party to prove that the entire case can be picked up and moved to the alternative forum.” [Petition at p. 21.] However, the only case Petitioners cite for this sweeping assertion, *American Cemwood*, does not disturb the legal rational underpinning *Hansen*. *American Cemwood* affirms *Hansen*’s holding, finding that the trial court “correctly observed that neither of the two cases cited by plaintiffs for their proposition, *Stangvik* and *Boaz v. Boyle & Co.*, stated or implied that all defendants must be subject to jurisdiction in the alternative forum for forum non conveniens to apply,” expressly rejecting the

argument made by Petitioners here. *American Cemwood*, 87 Cal.App. 4th at p. 439-40 [internal citations omitted]. The court in *American Cemwood* distinguished *Hansen*, noting that since *American Cemwood* “involves but five defendants...it would not be unreasonable here to expect Respondents to prove the three other defendants are subject to jurisdiction in a particular alternative forum.” *Id.*, at p. 440.

The facts of the instant case are simply not analogous to *American Cemwood* where the defendant only had to prove jurisdiction existed over three other defendants. The facts of this case are much more akin to *Hansen*, a case involving decades-long claims of exposure to numerous products manufactured and/or supplied by dozens of defendants. As *American Cemwood* correctly affirmed, under such a scenario, requiring defendants to affirmatively prove jurisdiction over each and every defendant in the alternative forum is unreasonable. *American Cemwood*, 87 Cal.App. 4th at p. 439-40. The purpose of a stay, versus a dismissal, is to allow the case to be filed in the alternative forum to determine if jurisdiction can be exercised.

Respondent court also addressed Petitioners’ arguments that three defendants, out of the thirty-four active defendants, are not subject to jurisdiction in Connecticut. One of the three defendants, Pep Boys, stipulated to Connecticut’s jurisdiction. [R 772.] As to the other two defendants, Autozone West LLC and Jafra Cosmetics International Inc., Petitioners’ own allegations contained in their complaint and verified responses to written discovery specifically allege exposure to those products in *both* Connecticut and California. [R 187-188 and 54:1-55:24.] The evidence in the record before this Court sufficiently establishes that respondent court properly stayed the action “pending a determination that all defendants are subject to jurisdiction in” Connecticut.⁷ [R 773; citing *Hansen*,

⁷ Four defendants, IMI Fabi (USA), LLC, IMI Fabi (Diana), and IMI Fabi LLC, and Bristol-Myers Squibb Company brought motion to quash service for lack of personal jurisdiction in California. [Petition at p. 14, ¶ 19.] Respondent Court

supra, 51 Cal.App.4th at p. 759.]

California case law supports respondent court’s finding that Connecticut is a suitable alternative forum and respondent court correctly stayed the action to allow a determination of whether those defendants who have not agreed to jurisdiction in Connecticut are nonetheless subject to jurisdiction in Connecticut.

B. Respondent Court Did Not Abuse Its Discretion In Balancing The Public And Private Factors In Staying The Action

Petitioners’ argument that “respondent court placed too much importance on [Petitioners’] residency” is legally and factually erroneous. [Petition at p. 22.] Respondent court’s detailed order goes through each of the thirteen private and public factors to be considered pursuant to The Judicial Council’s comments to Code of Civil Procedure section 410.30. [R 773-777.] Of the thirteen factors, two are not in play⁸, leaving eleven factors for the court to consider. Of those eleven factors, respondent court properly concluded, based on the evidence in the record, that six weighed in favor of Connecticut, two weighed in favor of California, and three were neutral between the two forums. (*Id.*)

A majority of factors weighed in favor of Connecticut as the appropriate forum to try the case.

- (1) Personal jurisdiction over Petitioners and the majority of defendants exists in Connecticut [Factor No. 1]: Petitioners currently live in Connecticut and

pointed to this fact, recognizing that “with multiple motions to quash for lack of personal jurisdiction on calendar,” questioning California’s jurisdiction, entering a stay to determine if jurisdiction over those defendants could be extended in the alternative forum was reasonable. [R 773.]

Additionally, the court previously granted defendant Girard Motors, Inc. Motion to Quash for lack of jurisdiction on the basis that Girard Motors “which is located in Connecticut and has no connection to California.” [R 777.]

⁸ Factor No. 5 “[w]hether any judgment entered in the action would be enforceable by process issued or other enforcement proceedings undertaken in this state,” was not addressed by the parties. Factor No. 8 “[w]hether a view of premises by the trier of fact will or might be necessary or helpful in deciding the case” was not relevant. [R 776; *see* Code Civ. Proc. § 430.10, Comment – Judicial Council.]

have resided there for the vast majority of their lives. Of the three defendants Petitioners allege have their principal place of business in California, one of those defendants stipulated to Connecticut's jurisdiction and the locations of the other two defendants were not addressed by Petitioners in their pleadings to the court. [R 774; *see also* fn. 1, *supra*.]

- (2) Ease of proof in Connecticut [Factors Nos. 6, 7]: It is undisputed that none of Mrs. Herman's medical providers, medical records, or medical treatment have any relation to California. While Petitioners and Mrs. Herman's nine-year old mother who are residents of Connecticut state they are willing to travel to California for trial, Mrs. Herman's "medical providers cannot be compelled to travel to California to testify." [R 776.] Thus "[t]he ease of access to sources of proof, the cost of obtaining witnesses, and obtaining the attendance of witnesses weigh in favor of Connecticut" and "[m]ost of the evidence is in Connecticut or outside California, given that most of the defendants are not residents of California." (*Id.*)
- (3) Connecticut has a strong interest in providing a forum for resolution of resident's injuries [Factors 9, 11, 12]: Petitioners' Complaint, verified discovery responses, and available deposition testimony in the record establishes that Petitioners have spent most of their lives in Connecticut and have been residents of Connecticut for the past 38 years; Mrs. Herman allegedly was exposed to asbestos through talcum products and automotive products in Connecticut from the time she was a child up to the present day; and Mrs. Herman's treatment for her claimed injury has been in Connecticut. But for the seven out of sixty-five years where Petitioners lived in California, California has minimal ties to this case, including through the residency of defendants. [R 776-777; *see also Morris, supra*, 144 Cal.App.4th at p. 1467 (successful litigation in Connecticut "would have the same deterrent effect that a California court might afford" for regulating California corporations that product harmful products).]

The fact that Petitioners, non-residents of California for close to forty-years, chose California as a forum is a factor “lesser significance” because Petitioners are not California residents. *Century Indemnity Co. v. Bank of America* (1997) 58 Cal.App.4th 408, 412. And while Petitioners argue to this Court, as they did to respondent court, that “most of [Mrs. Herman’s] personal and occupational talc exposure occurred in California,” the record simply does not support such a finding. [Petition at p. 22; see also R 059; R 060; R 443-444; R 456, 14:7-10; R 458, 17:4-9; R 581, ¶ 4; R 751-753, 6:16-8:25; Supp. Ex. 2, Supp. R 010-011 at 13:7-9;15:6-19:9.] The self-serving statements contained in Mrs. Herman’s declaration are belied by all the other evidence in the record to the contrary. (*Id.*)

Respondent court did not abuse its discretion in its careful and thorough examination of the relevant factors under Code of Civil Procedure section 430.10. This Court may not reject the evidence accepted by respondent court and should presume that respondent court drew every reasonable inference to support its determination that Connecticut is a proper forum to try this matter. See *National Football League, supra*, 216 Cal.App.4th at 918.

C. Pursuant to California Precedent, Whether California Law Is More Favorable Is Not to Be Considered When Deciding Whether Another Forum Is More Convenient

Not a single California case or statute is cited in support of Petitioners’ argument that a party’s potential to obtain trial preference is a factor to be considered by a trial court in whether or not to stay a case for forum non conveniens. [Petition at pp. 22-24.] Given that California’s preference statute has been on the books for decades, had California law supported denial of a motion to stay or dismiss for forum non conveniens, such case law would exist. But it does not because California law has long held the exact opposite: the fact that a plaintiff would be disadvantaged by the law in the other jurisdictions “*may not be considered* in the forum non conveniens balance.” *Stangvik, supra*, 54 Cal.3d at p. 764 [emphasis added]; see also *Morris, supra*, 144 Cal.App.4th at pp. 1452, 1468,

fn. 2.

Conveniently, Petitioners do not address respondent court's determinative finding, based on the California Supreme Court's ruling in *Stangvik*, that "the fact that an alternative jurisdiction's law is less favorable to a litigant than the law of the forum *should not be accorded any weight in deciding a motion for forum non conveniens provided*, however, that some remedy is afforded." [R 775; citing *Stangvik, supra*, 54 Cal.3d at p. 753, fn. 5 (emphasis added).] In fact, Petitioners abandoned this exact argument during the hearing on the FNC Motion:

MR. BLUMENFELD-JAMES: YOUR HONOR, I -- I DISAGREE WITH THAT, YOUR HONOR. BUT, I WILL SET THAT ASIDE BECAUSE THAT'S NOT THE QUESTION YOUR HONOR ASKED. WHAT I WILL SAY IS IF WE DO ASSUME THERE IS NO PREFERENCE -- I APOLOGIZE. IF WE DO ASSUME THERE IS NO MOTION FOR PREFERENCE, THERE IS STILL AN ISSUE OF JUST SIMPLE JUSTICE OF COMPARING THE RIGHTS OF THE DEFENDANTS AND THE RIGHTS OF THE PLAINTIFFS. AND HERE, WE HAVE A WOMAN WHO NO LESS THAN TWO DOCTORS HAVE DECLARED IS DYING --

THE COURT: I NEED YOU TO CITE ME THE LAW THAT THAT CAN BE CONSIDERED. WHAT IS THE LAW THAT SAYS THAT THE COURT CAN CONSIDER THAT CALIFORNIA HAS THIS PREFERENCE STATUTE THAT IF THE REQUIREMENTS ARE SHOWN TRIAL IS SET WITHIN 120 DAYS AND CONNECTICUT -- I MEAN, NO ONE'S TOLD ME WHAT THE CONNECTICUT LAW IS ON THIS AND WHETHER CONNECTICUT HAS ANY KIND OF PROCEDURES. I WOULD ASSUME THEY HAVE SOME KIND OF PROCEDURES FOR SETTING CASES EARLIER, BUT I DON'T KNOW.

MR. BLUMENFELD-JAMES: YOUR HONOR, I'M NOT ASKING YOU TO
-- IT'S NOT ABOUT MOTION FOR -- THE PREFERENCE MOTION AT
ALL. I'M SAYING ASSUMING THAT'S NOT IN PLACE.

[R 748-751, 4:18-5:11 (emphasis added).]

Petitioners now improperly seek to resurrect this argument on appeal alleging that respondent court “should have considered the practical aspects of imposing a stay when balancing equitable factors.” [Petition at p. 24.] But respondent court did consider “[w]hether any party would be substantially disadvantaged in having to try the action” in Connecticut versus California as part of the analysis of Factor No. 4, correctly disregarding the fact that Connecticut does not have a preference statute as a factor it could not consider under Supreme Court precedent and finding that both sides are subject to disadvantages in both forums, ultimately holding that “[t]his factor is neutral” in the overall determination. [R 775-776.]

As Petitioners have presented this Court with no legal basis to ignore the California Supreme Court’s holding in *Stangvik* that whether the law of a foreign jurisdiction may disadvantage plaintiff is not a factor properly considered when analyzing a motion brought pursuant to Code of Civil Procedure section 430.10, respondent court cannot be held to have abused its discretion in so finding.

V. CONCLUSION

Petitioners failed to meet the high bar to establish that respondent court abused its discretion in finding that the appropriate forum to try this case is Connecticut. Respondent court diligently weighed the relevant private and public factors, determining that a majority of the relevant factors favored adjudication in

Connecticut. California precedent supports respondent court's analysis and decision. CBC respectfully requests that the Court deny the petition.

Dated: May 10, 2023

Respectfully submitted,

HUGO PARKER, LLP

/s/ Lori R. Mayfield _____

Lori R. Mayfield

Attorneys for Real Party in Interest CHARLES B.
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CERTIFICATION OF WORD COUNT

I certify that this document contains 6,037 words, including footnotes, excluding tables, according to the Microsoft Word word count program.

/s/ Lori R. Mayfield
Lori R. Mayfield

PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of 18 years, and not a party to the within action. My electronic notification address is service@HUGOPARKER.com and my business address is 240 Stockton Street, 8th Floor, San Francisco, California 94108. On the date below, I served the following:


**BRIEF OF REAL PARTY IN INTEREST
CHARLES B. CHRYSTAL COMPANY**

on the following:

SEE ATTACHED SERVICE LIST

I am familiar with my firm's practice for collecting and processing documents for mailing and/or electronic service using either TrueFiling and/or Lexis File & Serve. Under those practices, any copies served electronically would be served that day and, if served by U.S. Mail, any copies would be deposited with the service carrier that day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 10, 2023 at Las Vegas, Nevada.



Phyllis L. Thomas

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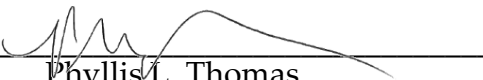
**BRIEF OF REAL PARTY IN INTEREST
CHARLES B. CHRYSTAL COMPANY**

on the following:

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(via File & ServeXpress Electronic Service List)

- (X) **BY ELECTRONIC TRANSMISSION:** Pursuant to CCP 1010.6 and CRC 2.251, or pursuant to the Stipulation and Order Authorizing Electronic Service, or by an agreement of the parties. I electronically e-served through File & ServeXpress and caused the document(s) to be sent to the person(s) at the email addresses designated on the Transaction Receipt located on the File & ServeXpress website. To the best of my knowledge, at the time of the transmission, the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 10, 2023, at Las Vegas, Nevada.


Phyllis L. Thomas