

## Calif. Court Rejects Request to Consolidate 2 Asbestos Talc Cases for Trial; Allows Pretrial Consolidation

OAKLAND, Calif. — A California trial court has denied efforts to consolidate two asbestos-containing talcum powder products cases for trial, saying that the differences between the cases “raise the potential for prejudice during trial.”

In the Dec. 22 order, the California Superior Court for Alameda County did find that consolidation for pretrial purposes was appropriate, given the “almost complete overlap between the expert witnesses.”

In their complaint, plaintiffs Shelly and Thomas Yerkes contended that Shelly Yerkes developed malignant mesothelioma as a result of exposure to asbestos in talcum powder products, including ones manufactured by Avon, Johnson & Johnson, and Jean Nate.

Plaintiff Sharon Hofmaister filed her complaint one month after the Yerkes, in which she also contended that she developed malignant mesothelioma from exposure to asbestos in talcum powder products that she encountered while working as a makeup artist and hairdresser. In her lawsuit, Hofmaister identified products manufactured by Avon, Johnson & Johnson, Revlon, and L'Oréal.

Both Hofmaister and Yerkes plaintiffs moved to consolidate the cases for all purposes, noting that both cases had been designated for preferential trial settings and both cases arise from the same disease and involve common questions of law and fact.

The defendants opposed the motion.

In addressing the motion, the court first found that consolidation for trial purposes was unwarranted.

“...[T]here are individual questions of fact that predominate in each case — especially concerning the composition of the products at issue and the period of exposure,” the court wrote. “These differences risk creating avoidable costs, confusion, delay, and raise the potential for prejudice during trial. Accordingly, the court finds consolidation for trial purposes is unwarranted.”

The court did find, however, that consolidation for pretrial purposes would, in fact, be appropriate since there is a “complete overlap between the expert witnesses identified by the remaining parties.”

“Conducting parallel expert discovery of almost identical expert witnesses for cases with identical trial dates and identical expert discovery deadlines will cause unnecessary costs and delay,” the court ruled. “Accordingly, the Court finds consolidation for expert discovery appropriate.”

Counsel for the Yerkes plaintiffs are Joseph D. Satterley, Denyse F. Clancy and Michael T. Stewart of Kazan, McClain, Satterley & Greenwood in Oakland, Calif.

Avon is represented by William W. Oxley, Brian Raphel and Natalie Nahabet of Orrick, Herrington & Sutcliffe in Los Angeles.

Defendant Charles B. Chrystal Company is represented by Edward R. Hugo, Jennifer S. Willis, and Chloe J. Loomer of Hugo Parker LLP in San Francisco.

*Hofmaister v. Johnson & Johnson, et al*, No. 23CV033743; *Yerkes v. Avon Products Inc*, No. 23CV032102 (Calif. Super. Ct., Alameda Cty.).

Documents are Available Call (800) 496-4319 or Search www.harrismartin.com Order Ref# ASB-2401-09 Motion Ref# ASB-2401-10 Plaintiff Memorandum Ref# ASB-2401-11 Avon Opposition Ref# ASB-2401-12 Charles B. Chrystal Opposition Ref# ASB-2401-13 Plaintiff Reply Brief Ref# ASB-2401-14

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