

Calif. Appellate Court Denies Efforts to Appeal Summary Judgment Order in Asbestos Talc Case

SAN FRANCISCO — A California appellate court has denied efforts to appeal a summary judgment order entered in an asbestos cosmetic talcum powder case, upholding the lower court's decision finding that the plaintiff had failed to present evidence to create triable issues of material fact.

In a one-page order issued Jan. 26, the California Court of Appeal, First Appellate District, Division Two, said the petition for peremptory writ of mandate and/or prohibition or other appropriate relief was denied.

The underlying appeal involved an award of summary judgment to Charles B. Chrystal in an asbestos cosmetic talcum powder case, in which the trial court concluded that the plaintiff had failed to "state any specific facts as to what evidence these documents contain that would prove a claim of threshold exposure."

In a tentative ruling issued May 2023, the California Superior Court for Alameda County opined that the plaintiff's evidence was "too speculative for a reasonable jury to infer that it is more likely than not that at any time during the 1979 to 1987 period White Linen powder contained 907 talc."

The final order was issued one day later; the plaintiff filed a petition for writ with the appellate court in June 2023.

Plaintiff Janel Davis asserts in her complaint that she developed mesothelioma as a result of exposure to asbestiform talc present in a number of cosmetic powder products that she used, or was in the presence of her mother using, for approximately 30 years.

Charles B. Chrystal filed a motion for summary judgment, contending that the plaintiff "failed to identify admissible evidence establishing that it is more likely than not that any cosmetic powder product she claims to have used actually contained talc supplied by CBC."

The plaintiff opposed the motion, maintaining that it had provided evidence that the defendant supplied more than 300,000 pounds of talc to Estee Lauder between 1977 and 1989, most of which was 907 talc, that the defendant cannot account for what talc was used in its White Linen product, and that 907 talc was from California and heavily contaminated with asbestos.

In a reply brief supporting its motion, defendant Charles B. Chrystal argued that the plaintiff had conceded that she was not exposed to the company's talc and that the opposition "presents no argument or evidence that any of these products were manufactured at any time with talc supplied by CBC."

"Despite the generic allegations in her boilerplate discovery responses of exposure to CBC supplied talc through the use of these products, Plaintiff's Opposition affirms she has no actual evidence to support her claims," the reply brief said. "Instead, Plaintiff now limits her allegations against CBC to one product — Estee Lauder White Linen body powder — which she claims to have used from approximately 1979 to 1987. CBC does not dispute that it supplied talc to Estee Lauder, including 907 talc."

In the tentative order, the court opined that even if a reasonable jury could infer that it was more likely than not that some of the defendant's talc was incorporated into the White Linen powder used by the plaintiff, "[the] plaintiff presents insufficient evidence to create triable issues of material fact that Defendant's 907 Talc was contaminated with asbestos."

Davis v. Superior Court of Alameda County, et al, No. A168020 (Calif. Ct. App., First App. Dist., Div. Two).

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