SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

22CV023061: GRIMES vs AAON INC., INDIVIDUALLY, et al.
05/20/2025 Hearing on Motion to Consolidate filed by CARA P. GRIMES (Plaintiff) in Department 18

Tentative Ruling - 05/16/2025 Patrick McKinney

The Motion to Consolidate filed by CARA P. GRIMES on 04/28/2025 is Denied.

Plaintiffs Cara Grimes' ("Ms. Grimes" or "Cara") and John ("Mr. Lohmann or "John") and Suzanne Lohmann's (collectively, "Plaintiffs") Second Motion to Consolidate Grimes v. Aaon, Inc., Case No. 22CV023061 (the "Grimes Action") and Lohmann v. ALI Group North American Corp., Case No. 22CV023258 (the "Lohmann Action" or "Lohmann II") is DENIED WITHOUT PREJUDICE.

The Grimes and Lohmann Actions currently have preference trials set for respectively, 6/16/2025 (Lohmann) and 6/23/2025 (Grimes).

The Lohmann Action is the second asbestos torts action brought by John and Suzanne Lohmann. The first action, Lohmann v. Aaon, Inc., Case No. RG21-098862 ("Lohmann I") was resolved by settlement with or dismissal of all of the defendants therein, followed by the filing of the Lohmann Action in which John and Suzanne Lohmann named approximately sixty (60) new defendants. The Grimes Action names approximately eighty (80) defendants, all of them defendants in either Lohmann I or Lohmann II.

Plaintiffs principally argue that consolidation would enhance judicial economy because only a single judge, courtroom and jury would be required to try a consolidated action. Further, Plaintiffs contend that trying the two actions separately but almost simultaneously would create logistical problems and would force Mr. Lohmann, who is Ms. Grimes' principal and likely exclusive product identification witness, to provide very similar trial testimony in both actions in spite of the fact that Mr. Lohmann's age and present health circumstances are such that he is entitled to a preferential trial setting.

Defendants filed approximately five Oppositions in which at least another five defendants join. The principal and strongest argument made by the Oppositions is that Defendants would be prejudiced, particularly with respect to Ms. Grimes' take-home exposure claims if the two cases were tried together. Defendants point out that Ms. Grimes' and Mr. Lohmann's exposure periods with respect to their claims against defendants are significantly different, with Mr. Lohmann's exposure period being approximately six times as long as Ms. Grimes' and based on Mr. Lohmann's alleged direct work-related exposures to defendants' allegedly asbestos-containing products over a 36-year period, while Ms. Grimes was primarily exposed during a six-year period based on a take-home exposure theory.

The exposure period for John Lohmann's alleged direct exposure from HVACR work is from 1970 (when he began working with his HVACR technician father, Robert Lohmann ("Father") to 2006 (fifteen years before Mr. Lohmann's 2021 malignant mesothelioma diagnosis). Both John

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Lohmann and Cara Grimes were likely exposed to asbestos from their father's work as an HVACR technician from the 1950s until the date in 1970 when John began working for/with his father, based on evidence presented in dispositive motions in these two actions and in Lohmann I that asbestos-containing gaskets and insulation materials were the norm for refrigeration compressor applications during the 1950s to 1970 period.

However, the Court has not seen any non-speculative evidence regarding whose asbestos-containing products Father, now deceased, worked with prior to 1970. John Lohmann testified at deposition that many of his father's accounts were on-going when he started working for Tri-Cities Refrigeration in 1970, but the Court does not recall any testimony that would give John Lohmann personal knowledge regarding how long prior to 1970 any of those accounts started, how long the owners of the refrigeration equipment had been using the same equipment, or how often or when they replaced their equipment prior to 1970. Further, the evidence presented on the present motion is that the family moved back to California in 1967 after approximately a year in Arkansas, but that Ms. Grimes did not join them until 1969. Further, there is testimony that when the family lived in Arkansas, Father commuted to work in Tulsa and only came home for the weekends, making it unlikely either Cara or John could provide testimony based on personal knowledge regarding what products Father worked with during this period.

Ms. Grimes testified that she lived in her Father’s home from 1969 to 1973, John Lohmann moved out of Father’s home in 1970 when John got married, and Ms. Grimes lived with John and his first wife from 1974 to 1976. Thus, Ms. Grimes lived in the home of an HVACR technician for approximately six years between 1969 and 1976.

After 1976, Ms. Grimes testified that she visited her parents' home at least once a week through 2000, when her Father retired from the HVACR business. The Court does not recall any testimony from Ms. Grimes that she ever performed any type of housework such as vacuuming, sweeping or laundry in either her Father's or brother John's home after 1976.

As such, John Lohmann appears to have a significantly different evidentiary basis for claims of asbestos exposures attributable to defendants than Ms. Grimes does. The Court therefore finds merit to defendants’ argument that there is a significant risk of prejudice to them with respect to Grimes' claims based on hearing substantial evidence of John Lohmann's 36-year history of alleged asbestos exposures and conflating his alleged mesothelioma-causing exposures and Ms. Grimes' more limited exposures particularly since they are brother and sister, grew up in the same household, and that John will be testifying regarding his work and his Father's work that caused Ms. Grimes’ alleged take-home exposures from 1969-1973 and 1974-1976 and possibly on a greatly reduced basis between 1976 and 2000. Further, the Court is aware that John Lohmann's deposition testimony was somewhat vague regarding when he worked with specific defendants' products throughout his long career and when he worked with certain products more than others. Lohmann has testified that he worked with many defendants’ products during his relevant, 36-year alleged exposure period while working as an HVACR technician; it might be more difficult for him to testify persuasively at trial regarding whose products he and his Father

worked with specifically between 1970 and 1976.

Ms. Grimes never worked as an HVACR technician, and the Court does not recall any testimony that Ms. Grimes was ever present when John or Father performed the work that allegedly exposed them and their clothing to asbestos fibers.

Defendant Standex also argues that pursuant to the Stipulated E-Service Orders in the Grimes and Lohmann II Actions, Plaintiffs' Motion was improperly filed on only fifteen (15) court days' notice. Although the Court was unable to locate a filed E-Service Order in the Grimes Action, the E-Service Order filed on 3/3/2023 in Lohmann II requires service of papers through File & ServeXpress by 5:00 p.m. on the date of service or the paper is treated as served the next day. Plaintiffs served their Motions in each action after 6:00 p.m. exactly 16 court days before the hearing. Standex is the only defendant to raise the issue of defective service, which Standex then waived by submitting a substantive Opposition to the Motion on the merits. Therefore, for purposes of this Tentative Ruling, the Court elects to adjudicate the Motion on the merits.

The Court finds that there are substantial differences in Ms. Grimes' and Mr. Lohmann's respective exposure periods, and in the manner in which they were allegedly exposed to defendants' asbestos-containing products. Thus, the cases differ under the first three factors set forth in Malcolm v. National Gypsum Co. (2nd Cir. 1993) 995 F.2d 346, 350351, specifically, (1) common worksite; (2) similar occupation; and (3) similar time of exposure. Further, expert witness testimony regarding Ms. Grimes' take-home exposure theory is likely to be irrelevant Mr. Lohmann's theory of direct, work-related exposures, and approximately twenty named defendants in the Grimes Action are not defendants to Lohmann II because they settled Mr. Lohmann's claims in Lohmann I. All of these circumstances increase the likelihood of jury confusion if the cases are consolidated and tried together.

Wherefore, the Court DENIES Plaintiffs' Motion to Consolidate. However, Plaintiffs may raise the issue of consolidation at the Lohmann pre-trail conference when the Court will have a firm sense of which defendants will proceed to trial. However, the Court observes that the significant differences in exposure periods and type of exposure alleged in the two actions will exist regardless of which defendants remain as of the Lohmann pre-trial conference.

The Court ORDERS the parties to meet and confer in good faith about the possibility of having the Lohmann II Action tried first and the possibility of Mr. Lohmann having his testimony taken regarding the Grimes Action exposure claims outside of the presence of the Lohmann II jury in order to avoid Mr. Lohmann having to testify again in the Grimes Action trial.

CONTESTING TENTATIVE ORDERS

Notify the Court and all other parties no later than 4:00 pm the day before the scheduled hearing and identify the issues you wish to argue through the following steps.

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