

Calif. Court Denies Request of Siblings to Consolidate 2 Separate Asbestos Trials, Cites 'Substantial Differences' in Exposure

OAKLAND — A California court has denied a request to consolidate two separate asbestos-related personal injury cases filed by siblings, citing "substantial differences" in the respective exposure periods and in the alleged exposure itself.

In a tentative ruling issued May 16, the California Superior Court for Alameda County said that while it was denying the motion to consolidate, the plaintiffs would be permitted to raise the issue of consolidation at the pretrial conference of the first case to go to trial, "when the Court will have a firm sense of which defendants will proceed to trial."

"However," the order continued, "the Court observes that the significant differences in exposure periods and types of exposure alleged in the two actions will exist regardless of which defendants remain as of the [first case] pre-trial conference."

The underlying cases were filed by Cara Grimes and John and Suzanne Lohmann. The *Lohmann* case is set for trial on June 16, while the *Grimes* trial is scheduled to begin June 23. John Lohmann alleges that he incurred direct asbestos exposure from gaskets and insulation materials used during his HVACR work and, additionally, from take-home exposure through his father's work clothing. Cara Grimes, John Lohmann's sister, says that she was exposed to asbestos fibers brought home on the work clothing of both her father and brother.

The *Lohmann* case is the second to be filed by John and Suzanne Lohmann; the first ended in a settlement. The subsequent case was filed against approximately 60 new defendants. The *Grimes* case named approximately 80 defendants, all of which were named in either *Lohmann I* or *Lohmann II*.

The plaintiffs moved to consolidate the actions for trial, arguing that trying the cases separately would create logistical problems and would require John Lohmann to present almost identical trial testimony since he is Grimes' principal produce identification witness.

In an opposition brief filed on May 7, the defendants asked that the court deny the plaintiffs' motion, arguing that the court denied a "nearly identical" motion two years ago.

"In the 18 months since the Court denied consolidation, the two cases have traveled on their separate paths without incident and are now set for trial next month, a week apart," the opposition brief said. "One of the advantages of consolidation is thus satisfied with the proximity of the trial dates, namely that witnesses common to both cases need only travel to court once to give testimony; the closeness of the trial dates here means that the parties can likely coordinate the appearances of many witnesses."

The defendants further said that consolidated cases can lead to juror confusion and resulting unfairness to the defendants, especially since the underlying causes will — as the court already found — diverge.

"Mr. Lohmann is claiming direct exposure from his own work and take-home exposure through his father; he has not sued the same number or even the same defendants as his sister has," the opposition brief said. "Ms. Grimes is claiming only take-home exposures, through her father and her brother. Which, if any, of the direct and take-home exposures were substantial factors? Which among the defendants is responsible for the products or conduct at issue, and are they responsible to the same degree, if any, in both cases? How is the jury to track the claims brought by two plaintiffs against multiple different defendants? How is the jury to assess the categories of defendants in both case[s]; for example, does the liability of a particular manufacturer to one plaintiff translate to liability for a manufacturer as to the other plaintiff, or will the jury just start to lump them all together."

The court ultimately sided with the defendants, noting that Lohmann appears to have "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," the court explained.

Ultimately, the court opined, there are substantial differences in Grims' and Lohmann's exposure periods and the manner in which they were allegedly exposed. In light of this, the cases differ enough to preclude consolidation.

"Further," the court concluded, "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 20 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."

However, in addition to allowing the plaintiffs the opportunity to re-raise the issue of consolidation at the Lohmann pretrial conference, the court also asked the parties to meet and confer about the possibility of having Lohmann's testimony taken in the Grimes case outside the presence of the Lohmann II jury.

Grimes v. Aeon Inc., et al., No. 22CV023061 (Calif. Super. Ct., Alameda Cty.).

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